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*Chagla C. J.*

the tenancy in that particular case was determined, and the question that arose before the learned Chief Justice and his two colleagues was whether the Amending Act applied or the old Act applied, and the learned Chief Justice in his judgment said that the old Act would apply and not the new Act, and the reason which the learned Chief Justice expressly gives for coming to this conclusion is that the new Act alters the nature of the notice and provides for a period of the notice which the old Act did not require and he is troubled by the fact that if the new Act was to apply all the notices given would be invalid, and, therefore, he did not think it right that the new Act should be made applicable to the notices which were already given before the new Act came into force. But he makes it clear that if there had not been this provision with regard to notices a different view could well have been taken of the effect of the Amending Act. Therefore, with respect to the Calcutta High Court, that decision was given on the peculiar facts of the case. The facts before us are entirely different. The Amending Act does not in any way invalidate notices already given before the Amending Act came into force. The notices are perfectly valid. What the Amending Act does is that it imposes a new limitation upon the right of the landlord to obtain possession, and if the landlord fails to satisfy the Court at the date when the tenancy expires and he becomes entitled to possession that he is entitled to possession in law as the law then stands, he cannot obtain relief from the Court.

We are, therefore, of the opinion that the Amending Act would apply to all cases where the period of notice expired after the Amending Act came into force.

*Answer accordingly.*

K. B. S.

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## APPELLATE CRIMINAL

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*Before Mr. Justice Dixit and Mr. Justice Vyas.*

RAMCHAND TOLARAM KHATRI AND ANOTHER *v.* THE STATE.*

1955
Oct. 13

*Evidence—Witnesses who are unwilling parties to giving of bribe, whether accomplices or partisan witnesses—Whether corroboration required for the acceptance of their evidence—Panchas who accompany a police raiding party, whether partisan witnesses—Indian Penal Code (Act XLV of 1860), ss. 161, 34.*

Although evidence of witnesses who are not willing parties to the giving of bribes but who are only actuated with the motive of trapping

*Criminal Appeal No. 652 of 1955 with Criminal Appeal No. 671 of 1955.

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the accused cannot be treated as evidence of accomplices, it is nevertheless evidence of partisan witnesses, who are interested in seeing that the trap laid by the Police on their information succeeds and such evidence should not be relied upon without independent corroboration. The degree of corroboration, however, in the case of tainted evidence of an accomplice would be higher than that in the case of a partisan witness. There can be no rigid rule as to what degree of corroboration would be necessary for accepting partisan evidence, before it could be accepted. The degree of corroboration must depend upon the facts of each case.

The Panchas whom the Police take on a raid cannot be called members of a raiding party; they have no partisan interest in the raid or its result. Their evidence would require no independent corroboration before acceptance.

*Shiv Bahadur Singh* v. *State of Vindhya Pradesh*,[1] referred to.

CRIMINAL Appeals from the decision of B. C. Vakil, Esquire, Special Judge, Greater Bombay.

One Ram Rijumal Kripalani (Accused No. 1) was a District Officer for Industrial Co-operatives, and Ramchand Tolaram Khatri (Accused No. 2) was a supervisor in the office of the Assistant Registrar of Co-operative Societies, Bombay. The Modern Tanners' Co-operative Society had been given a loan of Rs. 3,925 by the Government of Bombay. On October 21, 1954, both the accused visited the premises of the Soceity when accused No. 2 inspected the accounts of the Society. He then told one Abdul Rehman (a Member of the Managing Committee of the Society) that since other Co-operative Societies were paying them (viz. accused Nos. 1 and 2) money this Society also should pay them money. Subsequently accused No. 1 had on several occasions telephonic conversations with Abdul Rehman as regards the payment suggested by accused No. 2. On November 13, 1954, both the accused went to the Factory of the Society and proposed to Abdul Rehman and one Bhagwat that the Society should pay them Rs. 5,000 or one-half per cent on the turnover. After some haggling the amount was reduced to Rs. 3,000. Both the accused threatened that if the amount was not paid they would have to report adversely on the affairs of the Society. On November 17, 1954, Abdul Rehman approached the Anti-Corruption Branch of the Police who recorded his statement regarding the demand made by the accused. In the meanwhile the accused had informed the Society that they would be visiting the Factory on November 19, 1954, in the morning. The Anti-Corruption Branch of the Police, on being informed of this, decided to lay a trap. On the appointed morning a Police party accompanied by two Panchas went to the Society's office. Both the accused came to the entrance of the Society's building but, growing suspicions, would not enter the office. They called Abdul Rehman outside and told him that they would not enter the office. Abdul Rehman informed the Police officers who

1. (1954) A. I. R. S. C. 322.

were inside the building of what the accused were saying. In the meantime the accused had left the Factory and had stood at some distance on the road. Abdul Rehman suggested to them that they might all go to an hotel. Accused No. 2 and Abdul Rehman then entered an hotel, accused No. 1 standing outside near the entrance. The two Panchas went inside the hotel, one sitting near the counter and the other standing behind accused No. 2. Accused No. 2 made a demand for money from Abdul Rehman, who handed over to him 25 currency notes of Rs. 100 each. Accused No. 2 enquired as to why a smaller amount than Rs. 3,000 was being paid but Abdul Rehman told him that he should content himself with it. Accused No. 2 put the bundle of notes in the fold of a newspaper he was carrying in his hand. He went up to accused No. 1 and gave the newspaper to him. Abdul Rehman also came out of the hotel and gave a prearranged signal to the Police. A Police constable caught hold of accused No. 1 who threw away the newspaper containing the currency notes. Accused No. 2 was also held by another constable. A Panchanama was made and the newspaper in the folds of which there were currency notes was attached.

The accused were placed for trial before the Special Judge, Greater Bombay, who convicted both the accused of an offence under s. 161 read with s. 34 of the Indian Penal Code and sentenced accused No. 1 to one year's rigorous imprisonment and a fine of Rs. 500 and accused No. 2 to 9 months' rigorous imprisonment and a fine of Rs. 300.

The accused preferred separate appeals to the High Court.

*K. A. Somjee,* with *R. Jethamalani,* for Accused No. 1.

*E. B. Ghaswala,* with *Y. S. Murudkar,* for Accused No. 2.

*V. S. Desai,* Assistant Government Pleader, for the State

*Vyas J.*—(After stating the facts and discussing the evidence His Lordship proceeded:—)

The learned Counsel Mr. Somjee for accused No. 1 (appellant in Appeal No. 671 of 1955) has referred us to a decision of the Supreme Court in *Shiv Bahadur Singh* v. *State of Vindh Pra.*,[2] in which the learned Judge of the Supreme Court said that where witnesses were not willing parties to the giving of bribe to the accused, but were only actuated with the motive of trapping the accused, their evidence could not be treated as the evidence of accomplices. In the view of Their Lordships, their evidence was nevertheless the evidence of partisan witnesses who were out to entrap the accused and that being so their evidence could not be relied upon without independent corroboration. In the present case, Abdul Rehman was not a willing bribe-giver. Both the accused compelled the

2. [1954] A. I. R. S. C. 322.

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Society to give a bribe to them which was given by Abdul Rehaman. The Society was threatened with an adverse report. Dues to the tune of Rs. 2,184-8-0 which were due from the Society to the State on April 1, 1954, had not been paid by the Society. A demand in that connection had been made on the Society on July 1, 1954. The Joint Registrar who had visited the Society on August 18, 1954, had drawn the attention of the Society to it. In the same connection, a letter had been received by the Society from the Assistant Registrar on October 5, 1954. Thereafter, though the Society promised to pay off the amount, it was not paid promptly. Even at the date, November 19, 1954, the abovementioned amount of Rs. 2,184-8-0 had remained unpaid by the Society. The Joint Registrar in his inspection notes had raised an objection regarding the payment by the Society to Mr. Basu, a member of the managing committee of the Society, of a commission of two per cent on orders booked by him. The drawbacks pointed out by the Joint Registrar had to be rectified before September 5, 1954.. Accused No. 1 had been asked to see to the implementation of the inspection report of the Joint Registrar. The Joint Registrar had also wanted to know the Society's turnover during the last two or three years. Both the accused in these circumstances compelled the Society, through Abdul Rehman, a member of the managing committee of the Society, to pay a bribe to them on the threat of adverse report. Accordingly, in our view, Abdul Rehman was not an accomplice. He was not a willing and guilty participator in the crime. He was a partisan witness in terms of the judgment in the abovementioned Supreme Court case. His evidence would, therefore, not be tainted evidence, but it would be interested evidence which would require independent corroboration before acceptance. When we say that Abdul Rehman's evidence would not be tainted evidence, we mean that it is not tainted evidence in the sense that it is not evidence of a person who had tarnished his hands by the commission of an offence. It is interested evidence or partisan evidence of a person who wanted that the trap laid by the police upon his information should succeed. Not being tained evidence, it would not suffer from the disability of being unworthy of acceptance without independent corroboration. But being interested evidence, caution requires that there should be corroboration from an independent source before its acceptance. To convict an accused on the tainted evidence of an accomplice is not illegal, but it is imprudent. To convict an accused upon the partisan evidence of a person at whose instance a trap is laid by the police is neither illegal nor imprudent, but inadvisable. To convict an accused on accomplice evidence is imprudent, because it is

just posible that in some cases an accomplice may give evidence because he may have a feeling in his own mind that it is a condition of his pardon to give that evidence. No such consideration obtains in the case of the evidence of a person who is not a guilty associate in crime, but who invites the police to lay a trap. All the same, as the person who lodges information with the Anti-Corruption Branch of the Police for the purposes of laying a trap for another is a partisan witness interested in seeing that the trap succeeds, it would be necessary and advisable to look for corroboration to his evidence before accepting it. The degree of corroboration, however, in the case of tainted evidence of an accomplice would be higher than that in the case of a partisan witness, such as Abdul Rehman was in this case. There can be no rigid rule as to what degree of corroboration would be necessary for partisan evidence before it could be accepted. The degree of corroboration requisite in each case would depend on its own facts. I shall point out when I go to the question of corroboration that Abdul Rehman's evidence is strongly and independently corroborated.

The Panch witnesses Laxman and Ravji were neither accomplices nor could they be called partisan witnesses. They were not members of a raiding party. Mr. Somjee, for accused No. 1 has invited our attention to certain observations of Their Lordships of the Supreme Court in the abovementioned Supreme Court case and has argued that these observations would show that in Their Lordship's view, if the Panchas were taken by the police with themselves before the raid, they would be members of a raiding party and would, therefore, be partisan witnesses. The observations relevant on this point are to be found in paragraph 12 at page 328 of the Supreme Court judgment and they are :

> "No such criticism could, however, be levelled against the evidence of Gadkari and Parulekar, who were absolutely independent witnesses brought into the bedroom of the appellant No. 1 after the raid was over. They had nothing to do with the affairs of the syndicate nor with the intention of Nagindas or the police authorities to trap the appellant No. 1."

Now, it is undoubtedly true that since Gadkari and Parulekar had arrived on the spot after the raid was over, they could not be called members of a raiding party; but it would not be correct in our view to deduce a reverse proposition by inference from the above observations of Thier Lordships that they wanted to lay down a rule that, if the police took the Panchas with themselves, before the raid, the Panchas would become members of the raiding party and should, therefore, be looked upon as partisan witnesses. Nowhere in the judgment of Their Lordship do we find a positive proposi-

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tion laid down that the Panchas, in whose presence the raid is effected, are members of a raiding party and, therefore, partisan witnesses. In our view, the Panchas whom the police take with themselves before going for a raid cannot be called mebers of a raiding party. The Panchas have nothing to do with the raid or the operations of the raid. They are not participators in the act of raiding. The decision to effect a raid is the decision of the police. The Panchas are not parties to that decision nor do they subsequently become parties to it at any stage of the raid. The raid is decided upon the information supplied by the informant who is generally the complainant and the Panchas have nothing to do with that decision or the result of it, viz., the actual raid. Unless the Panchas are sharers in the police intention to raid, we fail to see how they can be characterised as components of a raiding party. The intention to raid comes into existence first in the mind of the police and then they collect the Panchas. So the Panchas are no parties to that intention nor do they subsequently become parties to it by any conduct on their part. At no stage of the raid does the conduct of the Panchas become the conduct of persons actively interested in the result of the raid. The police, who are a raiding party, carry out the raid and wish that the raid should succeed. The informant who really initiates the police decision to make a raid would also like that the raid should succeed. Therefore, he too is a member of the raiding party. He is really responsible for bringing about the raid. He would accordingly be a partisan witness, unless he is a willing participator in the crime in which case he would even be an accomplice. But the Panchas who are taken to accompany the police have nothing to do with the raid or the result of the raid. They are indifferent about it. It matters nothing to them whether the raid succeeds or fails. They have no partisan interest in the raid or its result. The police do not take them with themselves in order that they should take any part in the raid itself. They are taken merely to see and hear what takes place during the raid which is carried out by the police with the help of the informant. They dispassionately see what takes place during the raid and record what they see and hear and the record is the Panchanama. To put the matter in a nutshell, the police takes the Panchas with themselves so that they should watch what happens. They are not interested in what happens nor are they parties to the trap. The law of the land requires that certain things should be done by the police in the presence of independent, respectable persons so that the presence of the said persons may put the particular transaction beyond the pale of suspicion. In these circumstances to construe the

conduct of independent and respectable people, who accompany the police at the asking of the police to serve as Panchas, as being the conduct of partisan persons would be grossly unfair to these people. The Panchas who accompany the police at the invitation of the police are doing a civic duty, a duty to the society, a duty to the administration of law and justice and if the reward of it is that their evidence becomes dubbed as partisan evidence and, therefore, weak or suspect evidence in the absence of corroboration and they themselves become dubbed as members of a raiding party and lose their independent and respectable character, then it is time that the revision of the provisions of the Criminal Procedure Code on the subject is seriously considered. For it is a serious matter indeed if the Panchas who accompany the police as independent, impartial people to do a duty of helping the course of administration of Justice, lose in the bargain for doing their duty, their independent character and acquire a stigma of being partisan witnesses. Take for instance an extreme case in which a highly respectable and educated person of status is required by the police to accompany them when they go for a raid. Are we to take it that the evidence of that witness becomes partisan evidence and would be unworthy of acceptance unless it is independently corroborated? The answer to this question could only be an answer in the negative.

In our view, these Panch witnesses Laxman and Ravji, with whose evidence I have already dealt in detail, are neither accomplice witnesses nor partisan witnesses. They are independent witnesses and their evidence is good evidence and requires no corroboration before acceptance.

[The rest of the judgment is not material to the report.]

*Appeals dismissed.*

K. B. S.

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## APPELLATE CIVIL

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*Before Mr. Justice Dixit and Mr. Justice Vyas.*

NATWARLAL AMBALAL THAKORE, PETITIONER *v.* THE STATE OF BOMBAY AND ANOTHER, OPPONENTS.*

1955
Oct. 15

*Drugs Act (XXIII of 1940), s. 33—Bombay Drugs Rules, 1945, R. 62A—Constitution of India—Whether the Rule confers unfettered discretion upon licensing authority—Whether any policy underlying the Drugs Act and Rules.*

*Special Civil Application No. 1510 of 1955 with Special Civil Application Nos. 1511 to 1513 of 1955.