THE STATE OF BIHAR

v.

BASAWAN SINGH

1958

March 21.

(BHAGWATI, VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE, JJ.)

Criminal Law—Bribe—Trap—Testimony of the raiding party—Reliability—Independent corroboration—Whether essential—Whether circumstantial evidence sufficient—Evidence of Magistrate interested in the trap—Evidence of accomplices and partisans—Reliability.

The respondent, a sub-inspector of police, was charged with acceptance of Rs. 100 as a bribe from two persons, B and P, for dropping a case which he had instituted against B under the Essential Supplies (Temporary Powers) Act, 1946. The prosecution case was that when the demand for the bribe made by the respondent could not be avoided, B and P approached the Anti-Corruption Department, and it was arranged that the respondent should be paid at the police station the bribe money in the shape of currency notes produced by B and P and initialled by M, who was in charge of the Anti-Corruption Department, and that M, along with a Deputy Superintendent of the Department and a first class Magistrate, should be at the police station at the time of payment, dressed as ordinary villagers; that as soon as the amounts in notes were received by the respondent the officers disclosed their identity, that thereupon the respondent tried to throw away the currency notes but that as a result of the officers catching hold of his hands the notes were found in his hand except one which was missing and that as a result of a search made in the presence of two search witnesses later the missing note was also found. The respondent was tried by the Special Judge who accepted the prosecution evidence and found him guilty of the offence under s. 161 of the Indian Penal Code. On appeal to the High Court the learned single Judge who disposed of the appeal held that the respondent could not be convicted because (1) there was no independent witness to support the testimony of the "raiding party" consisting of the two bribe-givers and the three officers, (2) the search witnesses did not prove the transaction nor were they present at the time of the occurrence, and (3) the decision in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, [1954] S.C.R. 1098, had laid down an invariable rule that in cases of this nature the testimony of those witnesses who form what is called "the raiding party" must be discarded, unless that testimony is corroborated by independent witnesses. The State appealed by special leave:

Held, (1) that the evidence of the two search witnesses provided independent corroboration in a material particular to

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the testimony of the raiding party, because the missing currency note, one of the series testified to by the raiding party, could be found where it was actually found only if the testimony of the raiding party was true.

(2) that corroboration need not be by direct evidence that the accused committed the crime; it is sufficient even though it is merely by circumstantial evidence of his connection with the crime.

Rameshwar v. *The State of Rajasthan*, [1952] S. C. R. 377, followed.

(3) that the decision in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, [1954] S.C.R. 1098, has not laid down any inflexible rule that the evidence of the witnesses of the raiding party must be discarded in all cases in the absence of any independent corroboration.

The correct rule is that if any of the witnesses are accomplices, their evidence is admissible in law but the judge must warn the jury of the danger of convicting the accused on the uncorroborated testimony of an accomplice; if the case is tried without the aid of a jury, the judge should indicate in his judgment that he had this rule of caution in mind and give reasons for considering it unnecessary to require corroboration; if, however, the witnesses are not accomplices but are merely partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as any other interested evidence is tested, and in a proper case, the Court may look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 134 of 1955.

Appeal by special leave from the judgment and order dated January 13, 1955, of the Patna High Court in Criminal Appeal No. 339 of 1953, arising out of the judgment and order dated May 22, 1953, of the Court of the Special Judge at Gaya in Special Case No. 3 of 1952.

C. K. Daphtary, Solicitor-General of India, A. K. Dutta and *S. P. Varma*, for the appellant.

H. J. Umrigar and *Ratnaparkhi, A. G.*, for the respondent.

1958. March 21. The Judgment of the Court was delivered by

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S. K. DAS J.—This appeal by special leave has been brought by the State of Bihar from the judgment and order of a learned single Judge of the High Court of Patna, dated January 13, 1955, by which the learned Judge set aside the conviction and sentence passed against the present respondent Basawan Singh and acquitted him of a charge under s. 161, Indian Penal Code, on which charge he had been convicted by the learned Special Judge of Gaya by his judgment and order, dated May 22, 1953.

It is necessary to state here very briefly the salient facts of the prosecution case. One Bhagwan Das (prosecution witness no. 7) had a ration shop at a short distance from police station Arwal in the district of Gaya. One of the persons entitled to receive rationed articles from the said shop was Mahabir Prasad (prosecution witness no. 10), who was a brother of a businessman named Parmeshwar Prasad (prosecution witness no. 11). Mahabir Prasad held a ration card for ten units, and on October 4, 1951, he purchased five maunds of wheat on the strength of his ration card from the shop of Bhagwan Das. A cash memo was issued for the purpose, and the sale was entered in the register of the shop. Mahabir Prasad carried the wheat in four bags on two ponies. He himself went ahead on a cycle and the ponies followed him. A gentleman named Ram Singhasan Singh, stated to be the Secretary of Arwal Thana Congress Committee, sent an information to the police station to the effect that Bhagwan Das had sold the wheat in what was called the "black market". On receipt of this information, Basawan Singh, who is respondent before us and who was at that time sub-inspector of police attached to the said police station, instituted a case under s. 7 of the Essential Supplies (Temporary Powers) Act, 1946, against Bhagwan Das and Mahabir Prasad. He seized the wheat which was being carried on the two ponies, went to the shop of Bhagwan Das and questioned him about the transaction. Bhagwan Das denied the charge of black-marketing and alleged that the transaction was a *bona fide* sale on the strength and authority of a ration

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card. He showed the duplicate copy of the cash memo and the entry in the sale register to the respondent. The respondent then checked the stock of wheat in the shop of Bhagwan Das and found that the stock tallied with the relevant entry in the stock register. In the meantime Mahabir Prasad who had been sent for also came to the shop with his cash memo and ration card. These were shown to the respondent who, however, arrested both Bhagwan Das and Mahabir Prasad and took them to the police station. It was alleged that at the police station the respondent demanded Rs. 500 as a bribe from Mahabir Prasad. Mahabir Prasad could not pay the amount, but said that he would consult his brother Parmeshwar Prasad and the latter would come and pay to the respondent whatever sum was thought necessary. Both Bhagwan Das and Mahabir Prasad were then released on bail. On the next day Bhagwan Das was called to the police station and a bribe Rs. 500 was demanded from him also. It was alleged that the respondent told Bhagwan Das that if he did not pay the amount, the respondent would harass him; but if Bhagwan Das paid the amount, the respondent would submit a final report and no case would be started against him. Bhagwan Das expressed his inability to pay such a big amount and it was alleged that ultimately the amount was reduced to Rs. 300. Bhagwan Das, however, did not pay it for some time, and the prosecution case was that the respondent took wheat from the shop of Bhagwan Das, without payment of any price, between the date October 26, 1951, and November 30, 1951; in this way, seven maunds and ten seers of wheat, it was alleged, were taken by the respondent from the shop of Bhagwan Das, though the sales were noted in the sale register in the names of various persons. On December 1, 1951, the respondent, it was stated, agreed to accept Rs. 50 from Bhagwan Das in addition to the wheat already taken by him, in full satisfaction of the demand of Rs. 300.

When Bhagwan Das found that he had no other alternative but to pay the amount demanded by the

respondent, he decided to approach the Anti-Corruption Department of the Government of Bihar. One S. P. Mukherji, Deputy Secretary to the Government of Bihar, was then in charge of the Department. Bhagwan Das met Mukherji on two dates, December 3, 1951, and December 5, 1951, and filed a written petition to him. Mukherji sent for his Deputy Superintendent of Police, a gentleman named Dharnidhar Misra, who was also attached to the Anti-Corruption Department. Bhagwan Das produced before Mukherji five Government currency notes of Rs. 10 each, the numbers of which were noted in his written petition. Mukherji put his initials on these notes and then returned them to Bhagwan Das. Mukherji then requested the District Magistrate of Patna to depute a first class Magistrate, and one Rudra Dev Sahai was so deputed. It was settled that on December 8, 1951, at about 7 p.m. the bribe money in the shape of the initialled notes would be paid to the respondent, and it was arranged that Bhagwan Das would meet the officers from Patna on the canal road from Patna to Arwal at some distance from the police station. Nothing, however, happened on December 8, 1951, because the respondent was away from the police station. On the next day, that is December 9, 1951, the officers from Patna, namely Mukherji, Misra and Sahai, met Bhagwan Das at the appointed place at about 6-30 p.m. Bhagwan Das then told the officers that Parmeshwar Prasad had also arrived there for paying Rs. 50 as bribe to the respondent for the release of the wheat which had been seized and which was still at the police station. Parmeshwar Prasad was then brought to Mukherji at about 7-30 p.m. Mukherji questioned him and recorded his statement which was endorsed by the Magistrate, Rudra Dev Sahai. Parmeshwar Prasad then produced five notes of Rs. 10 each, the numbers of which were also noted in the statement. The notes were then initialled by Mukherji. After this, the party went to the police station. The officers who had dressed themselves as ordinary villagers and posed to be relatives of Bhagwan Das squatted on the ground a few feet away

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from the verandah of the quarters which the respondent occupied, and Bhagwan Das and Parmeshwar Prasad stood on the steps of the verandah where the respondent met them. Leaving out details, which are not necessary for our purpose, what happened then was this. Bhagwan Das paid Rs. 50 in currency notes which the respondent took in his left hand. Parmeshwar Prasad also paid his amount in notes to the respondent. The officers were then called. The Magistrate and the Deputy Superintendent of Police disclosed their identity, and the Deputy Superintendent told the respondent that he had received a bribe. The respondent tried to throw away the currency notes, but the Deputy Superintendent of Police caught hold of his left palm and the Magistrate caught hold of his right hand. There was a scuffle, and the respondent was brought down from the verandah and was taken to an open place south-west of the police station. Nine currency notes were found in the hand of the respondent and they tallied with the numbers noted down earlier. One currency note was not found till a search was made by means of a petromax lantern in the presence of two search witnesses, Ganesh Prasad (prosecution witness no. 5) and Janki Sao (prosecution witness no. 4). The search was made at about 9 p.m. and the missing note was found in a crumpled condition in the south-western corner of the verandah. A report of the whole incident was then prepared by the Deputy Superintendent of Police and handed over to the officer in charge of Arwal police station. The case was then investigated into by another Deputy Superintendent of Police one Hasan of Aurangabad. After completion of investigation the Deputy Inspector General of Police, C.I.D., accorded sanction to the prosecution of the respondent on April 1, 1952. Thereafter, the respondent was tried by the Special Judge of Gaya who, by his judgment and order dated May 22, 1953, found the respondent guilty of the offence under s. 161, Indian Penal Code, and sentenced him to rigorous imprisonment for one year only.

It may be here stated that the defence of the

respondent was that in the case against Bhagwan Das and Mahabir Prasad, he had submitted a final report on October 8, 1951, to the effect that there was a mistake of fact with regard to the allegation of black-marketing and that the case should be entered as false—"mistake of fact". This report was supported by the Inspector of Police, Jehanabad, and accepted by the Sub-divisional Magistrate on October 19, 1951. The respondent denied that he ever demanded any bribe from either of the two aforesaid persons or that he had accepted as a bribe ten currency notes from Bhagwan Das and Parmeshwar Prasad on December 9, 1951. It was suggested that the officers did not actually see what had happened on the steps of the verandah and were deluded into thinking that nine currency notes were recovered from him and, with regard to the crumpled note found on the verandah, it was suggested that Bhagwan Das might have planted it, when he bowed down before the respondent.

The learned Special Judge accepted the prosecution evidence as trustworthy and rejected the defence as unworthy of credence.

Against his conviction the respondent filed an appeal to the High Court and the learned single Judge, who heard the appeal, acquitted the respondent on the main ground that there was no independent witness to support the testimony of the "raiding party" consisting of the two bribe-givers, Bhagwan Das and Parmeshwar Prasad, and the two Magistrates and the police officer, namely, Mukherji, Sahai and Misra. The learned Judge referred to the decision of this Court in *Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh*(1), and he expressed the view that that decision laid down an invariable rule that in cases of this nature the testimony of those witnesses who form what is called the "raiding party" must be discarded, unless that testimony is corroborated by independent witnesses. He then posed the question if there were any independent witnesses in the present case, and observed—

"There are no independent witnesses on the transaction itself. It was submitted, however, that there

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are search witnesses and they are independent; indeed they are. But they have proved nothing except this that at the quarters of the appellant a ten-rupee note crushed was found and a few other articles. They did not prove the transaction nor they were present at the time of the occurrence itself. The prosecution case depends for all practical purposes on the evidence of the witnesses who are members of the raiding party."

The principal questions which fall for decision in this appeal are: (1) whether the learned Judge is right in his view that the decision in *Rao Shiv Bahadur Singh* (1), lays down any universal or inflexible rule that the testimony of witnesses who form the raiding party must be discarded, unless corroborated by independent witnesses; (2) if not, what is the correct rule with regard to such testimony in cases of this nature; and (3) whether the learned Judge is right in his view that there is no independent corroboration of the testimony of the witnesses of the raiding party in the present case. But before we consider these three questions, it is advisable to dispose of the findings of fact which have been affirmed on appeal or arrived at by the learned Judge. In his judgment the learned Judge has observed:

"The first point to be determined in this case is whether Bhagwan Das was in fact, arrested in connection with the case under the Essential Supplies (Temporary Powers) Act. That has been well proved and it has not been challenged. It is also established that the appellant did arrest Bhagwan Das as well as Mahabir Prasad and that on that very day Bhagwan Das was released. It is also well established that Bhagwan Das had gone to Mr. Mukherji at Patna and related an incident and as a result of that a trap was laid and on the alleged date of occurrence the three officers, namely, Mr. Mukherji, Mr. Sahai and Mr. Misra, had gone to the Arwal police station followed by the Gorkha Police. It is also well established that the appellant on the date of occurrence was in his quarters and that it is also established beyond doubt that Bhagwan Das and Parmeshwar were with the appellant in his quarters that evening.

(1) [1954] S.C.R. 1098.

It is also established that the three officers were just near the quarters of the appellant and they were dressed in dhotis, kurtas, etc., like "dehaties". It is further established that the appellant was caught by Mr. Misra and Mr. Sahai and in his possession were found the nine notes of Rs. 10 each and that it was established that one Rs. 10 note was found in the verandah of the quarters. It is, therefore, not necessary to discuss the evidence on these points because, as I have said, these facts are well established and admitted before me in the course of the argument."

It is fairly obvious from the observations quoted above that the learned Judge accepted the testimony of the witnesses of the raiding party as to the essential parts of the prosecution case and in particular, their evidence to the effect that nine initialled notes of Rs. 10 each were found in the possession of the respondent; this finding which is tantamount to accepting the prosecution case as correct militates against his later observation that in the absence of independent corroboration, he cannot accept the testimony of the witnesses of the raiding party. We say this without meaning any disrespect, but the learned Judge perhaps thought that the witnesses of the raiding party were intrinsically trustworthy and gave true evidence, yet he based his order of acquittal on what he thought was the effect of the decision in *Rao Shiv Bahadur Singh* (1), namely, the adoption of an inflexible rule, in the words of the learned Judge, " that the evidence of the raiding party is necessarily tainted.....and on their evidence alone, it would be difficult to carry the guilt home" to the respondent. In two respects on questions of fact, the learned Judge expressed a view different from that of the trial Court: first, with regard to the motive or reason for the bribe and secondly, with regard to the purchase of 7 maunds 10 seers of wheat, without payment, between the dates October 26, 1951 to November 30, 1951. As to motive, the learned Judge referred to the circumstance that the respondent had already submitted a final report on

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October 8, 1951, which was accepted by the Sub-divisional Magistrate on October 19, and, therefore, there was no case pending against Bhagwan Das and Mahabir Prasad and the motive for the bribe could not be what was alleged by the prosecution. The learned Judge then indulged in a highly speculative finding to the effect that the "possession of the nine notes can be reasonably explained by the fact that his (the present respondent's) advice was sought for a land dispute between the relations" (meaning thereby the two Magistrates and the Deputy Superintendent of Police who posed as relations of Bhagwan Das). This line of reasoning adopted by the learned Judge completely overlooks certain salient facts and circumstances on which the trial Court had relied. The trial Court had found, on the evidence given in the case, that Bhagwan Das had no information that the case against him had ended in a final report; besides the wheat seized had not been released and Mahabir Prasad naturally wanted the wheat back. Then, again, there was nothing to prevent the respondent from demanding a bribe even after the submission of a final report, saying that he would otherwise harass Bhagwan Das and Mahabir Prasad, and, lastly, it was nobody's case, nor was there any evidence in support of it, that the nine notes were accepted by the respondent for giving legal advice in a land dispute. The suggestion of a land dispute was made to allay any suspicion as to the presence of Mukherji, Sahai and Misra, who were dressed as ordinary villagers; none of the witnesses said that the nine notes were paid for advice in connection with a land dispute. The respondent himself did not suggest that he had accepted nine notes for giving legal advice; his case was that no notes were found on him. In this state of the evidence the learned Judge was clearly in error in holding that the motive for the bribe was something other than what was alleged by the prosecution. His finding on this point is based on no evidence and is mere speculation.

As to the 7 maunds and 10 seers of wheat, the learned Judge found that the prosecution had not satisfactorily proved that the respondent was supplied

with wheat without payment. The trial Court pointed out, however, that at least two of the entries in the sale register of Bhagwan Das (Ex. 10/10 and 11/11) stood in the name of the respondent, and it was not the respondent's case that he had paid for the wheat referred to in the two entries. Whatever be the correct finding with regard to the sale or supply of these 7 maunds and 10 seers of wheat, we agree with the trial Court that the prosecution case is not essentially or vitally dependent on the sale or supply of 7 maunds 10 seers of wheat free of cost to the respondent. The charge against the respondent is the acceptance of Rs. 100 as a bribe from Bhagwan Das and Parmeshwar Prasad on December 9, 1951. That charge does not necessarily depend upon the truth or othervise of the supply of 7 maunds and 10 seers of wheat between certain earlier dates.

Having dealt with the findings of fact, we proceed now to consider the principal questions which arise in this appeal. We take first the decision in *Rao Shiv Bahadur Singh* (1). It is not necessary to recapitulate all the facts of that case; it is sufficient to state that in the trap that was laid in that case, the most important witness was one Nagindas who offered the sum of Rs. 25,000, and the two important witnesses of the raiding party were Pandit Dhanraj, Superintendent, Special Police Establishment, Delhi, and Shanti Lal Ahuja, Additional District Magistrate, Delhi. Nagindas, who was acting on behalf of his master Sir Chinubhai did not have the money to offer as a bribe, and the money was provided by the police authorities—which money was offered by Nagindas in that case. The first point for consideration in the case was whether Nagindas and one Pannalal, who was also a servant of Sir Chinubhai and who accompanied Nagindas, were accomplices and, therefore, their evidence should be treated on that basis. This was answered in the negative, on the ground that neither of them was a willing party to the giving of the bribe and, therefore, they did not have the necessary criminal intent to be treated as abettors or accomplices.

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This brings out the first distinction which has to be made: the distinction between a witness who is an accomplice and one who is not. How the evidence of an accomplice is to be treated is no longer open to any doubt; the matter has been dealt with in a large number of decisions, and as was observed by this Court in *Rameshwar* v. *The State of Rajasthan* (1), the rule laid down in *Rex* v. *Baskerville* (2), with regard to the admissibility of the uncorroborated evidence of an accomplice is also the law in India. The rule is that such evidence is admissible in law; but it has long been a rule of practice, which has virtually become equivalent to a rule of law, that the judge must warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice. In *Rameshwar's case* (1) it was pointed out:

"The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of a jury. In these cases it is necessary that the judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case."

If the witnesses are not accomplices, what then is their position? In *Rao Shiv Bahadur Singh's case* (3) it was observed, with regard to Nagindas and Pannalal, that they were partisan witnesses who were out to entrap the appellant in that case, and it was further observed: "A perusal of the evidence.....leaves in the mind the impression that they were not witnesses whose evidence could be taken at its face value." We have taken the observations quoted above from a full report of the decision, as the authorised report does not contain the discussion with regard to evidence. It is thus clear that the decision did not lay down any universal or inflexible rule of rejection even with regard to the evidence of witnesses who may be called partisan or interested witnesses. It is plain and obvious

(1) [1952] S.C.R. 377, 385.
(2) [1916] 2 K.B. 658.
(3) [1954] S.C.R. 1098.

that no such rule can be laid down; for the value of the testimony of a witness depends on diverse factors, such as, the character of the witness, to what extent and in what manner he is interested, how he has fared in cross-examination, etc. There is no doubt that the testimony of partisan or interested witnesses must be scrutinised with care and there may be cases, as in *Rao Shiv Bahadur Singh's case* (1), where the Court will as a matter of prudence look for independent corroboration. It is wrong, however, to deduce from that decision any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded, unless independent corroboration is available.

With regard to the other two witnesses, Pandit Dhanraj and Shanti Lal Ahuja, it was observed that the former was a willing tool in the hands of Nagindas, and the latter reduced himself to the position of a police witness; therefore, their evidence "was not such as to inspire confidence in the mind of the Court". Here again no universal or inflexible rule is being laid down. It should be noticed that in *Rao Shiv Bahadur Singh's case* (1) the police authorities provided the money, and that was taken into consideration in assessing the value of the testimony of Pandit Dhanraj and Shantilal Ahuja. In the case before us, no such consideration arises, because the money was provided by Bhagwan Das and Parmeshwar Prasad, and the officers went there to see what happened. We must make it clear that we do not wish it to be understood that we are deciding in this case that if the money offered as a bribe is provided by somebody other than the bribe-giver, it makes a distinction in principle. That question does not arise for decision here. All that we say and have said so far is that in assessing the value of the testimony of a witness, diverse factors must arise for consideration and the comparative importance of this or that factor must depend on the facts or circumstances of each case. No standard higher or stricter than this can be laid down, or was laid down in *Rao Shiv Bahadur Singh's decision* (1).

We must advert here to two other aspects of that decision. It was observed there in clear and emphatic

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words that it is the duty of the police authorities to prevent crimes being committed; but it is no part of their business to provide the instruments of the offence. With these observations we are in agreement. In *Brannan* v. *Peek* (1), a police officer went inside a public house and made a bet on a horse, which act amounted to an offence. The motive in making that bet was to detect the offence under the Street Betting Act, 1906; which was being committed by the accused person in that case. In these circumstances, Goddard C. J. made the following observations: "I hope the day is far distant, when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone". We also express the same hope for our country, but must hasten to add that in the case before us no offence was committed by any of the three officers, Mukherji, Sahai and Misra, in order to get evidence against the respondent. This point was again emphasised in a later decision of this Court in *Ramjanam Singh* v. *The State of Bihar* (2). It was therein observed:

"The very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them! and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the wickedness of wrongdoing, it behoves society and the State to protect them and help them in their good resolve; not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside. This is the type of case to which the strictures of this Court in *Shiv Bahadur Singh* v. *State of Vindhya Pradesh*, A.I.R. 1954 S.C. 322 at p. 334 apply."

The other aspect of the decision in *Rao Shiv Bahadur Singh's case* (3) is the employment of Magistrates as witnesses of police traps. Here again, we are in full agreement with the view that the independence and impartiality of the judiciary requires that Magistrates

(1) [1947] 2 All E.R. 572.
(2) A.I.R. 1956 S.C. 643, 651.
(3) [1954] S.C.R. 1098.

whose normal function is judicial should not be relegated to the position of partisan witnesses and "required to depose to matters transacted by them in their official capacity unregulated by any statutory rules of procedure or conduct whatever". At the same time it is necessary to make some distinctions. In a large part of the country now, the directive principle laid down in Art. 50 of the Constitution has been implemented, and there has been a separation of the judiciary from the executive. The principles on which the employment of Magistrates as witnesses of police traps has been condemned have hardly any application where the Magistrates concerned are executive Magistrates who perform no judicial functions or where the officers concerned are officers of the Anti-Corruption Department whose duty it is to detect offences of corruption. In the case before us, Mukherji and Misra belonged to such a department. Moreover, however inexpedient it may be to employ Magistrates as trap witnesses, their evidence has to be judged by the same standard as the evidence of other partisan or interested witnesses, and the inexpediency of employing Magistrates as trap witnesses cannot be exalted into an inflexible rule of total rejection of their evidence, in the absence of independent corroboration. The learned Solicitor-General referred in the course of his arguments to the difficulty of detecting corruption cases and of securing conviction in such cases. We do not think that such a consideration should influence the mind of a judge. Whatever be the difficulties, admissible evidence given in a case must be judged on its own merits, with due regard to all the circumstances of the case.

In some of the cases which have been cited at the bar a distinction has been drawn between two kinds of 'traps'—legitimate and illegitimate—as *In re M. S. Mohiddin* (1), and in some other cases a distinction has been made between tainted evidence of an accomplice and interested testimony of a partisan witness and it has been said that the degree of corroboration necessary is higher in respect of tainted evidence than for partisan

(1) (1952) Cr.L.J. 1245.

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evidence (see *Ram Chand Tolaram Khatri* v. *The State* (1)). We think that for deciding the questions before us, such distinctions are somewhat artificial, and in the matter of assessment of the value of evidence and the degree of corroboration necessary to inspire confidence, no rigid formula can or should be laid down.

For the aforesaid reasons, we think that the learned Judge of the High Court did not correctly appreciate the effect of the decision in *Rao Shiv Bahadur Singh's case* (2) and he was in error in thinking that that decision laid down any inflexible rule that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness, he cannot claim any higher status and must be treated as any other interested witness.

This brings us to the last question: if in the present case, there is any independent corroboration. We have pointed out that the two search witnesses Janki Sao and Ganesh Prasad (prosecution witnesses 4 and 5) were independent witnesses, who had nothing to do with the raiding party. They found one crumpled ten-rupee note, one of the series initialled by Mukherji and the numbers of which were noted in the statements of Bhagwan Das and Parmeshwar Prasad, at the south-western corner of the verandah, where the respondent when seized by the raiding party tried to throw away the notes. In our view, the evidence of the two search

(1) A.I.R. 1956 Bom. 287. (2) [1954] S.C.R. 1098.

witnesses does provide independent corroboration, in a material particular, to the testimony of the raiding party. The crumpled note, one of the series testified to by the raiding party, could not come of itself to the verandah; it could be found where it was actually found only if the testimony of the raiding party was true. The learned Judge said that the search witnesses came later and did not see the actual transaction, that is, the giving and taking of the bribe. That is correct; but independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by independent witnesses. As was observed by Lord Reading in *Baskerville's case* (1) even in respect of the evidence of an accomplice, all that is required is that there must be "some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it". In *Rameshwar* v. *The State of Rajasthan* (2), to which we have referred in an earlier paragraph, the nature and extent of corroboration required, when it is not considered safe to dispense with it, have been clearly explained and it is merely necessary to reiterate that corroboration need not be by direct evidence that the accused committed the crime; it is sufficient even though it is merely by circumstantial evidence of his connection with the crime.

While referring to the findings of fact we have pointed out that the learned Judge himself accepted as correct the prosecution case in its essential parts. There is in our opinion no difficulty in accepting the testimony of the raiding party in this case, supported as it is by the independent testimony of the two search witnesses.

Learned counsel for the respondent has urged before us, as a last resort, that we should not exercise the extraordinary jurisdiction vested in this Court by Art. 136, in a case of acquittal by the High Court, unless exceptional or special circumstances are shown to exist or substantial and grave injustice has been done. He has drawn attention to our decision in *The*

(1) [1916] 2 K. B. 658. (2) [1952] S.C.R. 377, 385.

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State Government, Madhya Pradesh v. *Ramkrishna Ganpatrao Limsey and others* (1). In this case, the learned Judge accepted as correct all the essential facts constituting the offence with which the respondent was charged, but he passed an order of acquittal on a misconception as to the effect of a decision of this Court. We have no doubt whatsoever that this is a fit case for the exercise of our jurisdiction under Art. 136 of the Constitution.

In view of the findings of fact arrived at by the learned Judge, the only reasonable conclusion is that the respondent is guilty of the offence with which he was charged and the order of acquittal is clearly erroneous. A point about the validity of the order sanctioning prosecution of the respondent was urged before the learned Special Judge, who held that the sanction was in order. This point was not dealt with in the High Court. But learned counsel for the respondent has frankly conceded before us that he cannot successfully urge that point here. It is, therefore, unnecessary to remand the appeal for a further hearing on merits.

The result, therefore, is that this appeal is allowed. The judgment and order of the learned single Judge of the High Court of Patna, dated January 13, 1955, are set aside; the respondent is convicted of the offence under s. 161, Indian Penal Code, and sentenced to rigorous imprisonment for one year, namely, the same sentence as was passed by the learned Special Judge of Gaya. The respondent must now surrender to serve out his sentence.

Appeal allowed.

(1) A.I.R. 1954 S.C. 20.