A

ABDULLA MOHAMMED PAGARKAR

v.

STATE (UNION TERRITORY OF GOA, DAMAN AND DIU)

September 11, 1979

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

B *Criminal Trial—Public servant charged with the offence of preparing false muster rolls, inflating wages and other bills—Burden of proof on whom lies.*

Indian Penal Code. Ss. 120(*B*)(1), 420, 468 *and* 471 *& Prevention of Corruption Act s.* 5(1)(*d*)*—Conviction under—Validity of.*

C A survey carried out by the Port Trust suggested that the canal connecting two rivers required urgent deepening and widening to make it navigable for barges during the monsoon season when the sea turned rough and navigation became hazardous across the mouth of the river. The appellant (A-1) who at that time was the Captain of Ports invited tenders through press advertisement and the appellant in the Second Appeal (A-2) was the only person who submitted a tender. Since the tender was the only one received, the Lt. Governor forwarded it to the Central Government for approval. He did not accept the D suggestion that in view of the urgency, the work might be taken up immediately in anticipation of approval. Even so A-1 entrusted the work to A-2 who started the work. In the meantime the Government of India directed that the work should be carried out departmentally. A-1 obtained concurrence of the public works department for payment of daily wages to workers.

According to the prosecution, the *modus operandi* adopted by the appellants E was that A-2 actually submitted hand-written statements without his signature on the work done each day specifying the quantity of cubic metres of mud and salt excavated, the number (without names) of male and female labourers employed, the wages paid to labour at the approved rates and so on. A-1 got the required statements typed in his office and sent them for the concurrence of the Finance Department through the concerned department. Thereafter A-1 drew the amounts and paid cash to A-2 against a regular receipt.

F In course of time the Directorate of Accounts asked for muster rolls of labourers employed in the work. A-1 prepared a register and muster rolls. On a suspicion regarding the genuineness of the muster rolls, the case was entrusted to the Central Bureau of Investigation which reported that against a total sum of Rs. 4.73 odd lacs paid by the Government to A-1 the work done was not worth more than Rs. 76,247/43.

G The Special Judge convicted and sentenced both the appellants on the ground that they had entered into a conspiracy to cheat the Government in the matter of execution of the work by presenting inflated bills and receiving against them far greater amounts than had actually been spent and that the muster rolls produced were false documents. The Judicial Commissioner upheld the findings of the Special Judge.

Allowing the appeals,

H HELD : 1. There is no evidence on record that the tender submitted by A-2 was actually accepted by the Government and that it was on that basis that the entire work was executed. [612 B]

2. Although it may be correct to say that even a work which is required to be carried out departmentally can be entrusted to a contractor, in the instant case no bills were drawn nor was sanction accorded to any payment on the basis of any part of the work having been executed through A-2 working as a contractor. The bills contained the number of labourers engaged and the amount pertaining to their wages at the sanctioned rates. No mention was made in the bills that the work was being carried out through a contractor. A-2 did not sign any of the bills and his name as well as his connection with the execution of the work remained conspicuous by its absence therefrom. [612 C-E]

3. The onus of proof of the existence of every ingredient of the charge always rests on the prosecution and never shifts. It was incumbent on the State to bring out beyond all reasonable doubt that the number of labourers actually employed in carrying out the work was less than that stated in the summaries appended to the bills paid for by the Government. [614 D-E]

4. Although there was a difference between the number of labourers engaged on each day as deposed to by the prosecution witnesses and that shown in the bills it is not safe to rely on mere impression of the prosecution witnesses long after the work had been executed. [614 F]

5. The irregularities committed by the appellant in the execution of the work do furnish a circumstance giving rise to a strong suspicion in regard to the bonafides of the appellants in relation to execution of the work, but mere suspicion, however strong, cannot be a substitute for proof. It is not possible to place the burden of proof of innocence on the person accused of a criminal charge [614 H]

6. In regard to the value of work actually done there was sharp disparity in the figures arrived at by the courts below. The view of the Courts below that it was for the accused to show that the number of labourers employed conformed to that shown each day in the summaries attached to bills, is an approach not sanctioned by law. [616 H—617 A]

7. The prosecution has not established that the bills or the summaries were false in material particulars. Although the appellants proceeded to execute the work in flagrant disregard of the relevant rules and ordinary norms of procedural behaviour of Government officials and contractors in the matter of execution of works undertaken by the Government, such disregard has not been shown to amount to any of the offences of which the appellants have been convicted. The findings of the lower courts no doubt make the suspicion still stronger but it cannot be said that any of the ingredients of the charge had been made out. [618 C, E-F]

8. Although some of the documents were prepared at the instance of the appellants when a demand for them was made by the Accounts Department, the charge cannot be sustained in relation to any of its heads, their being no proof of falsity of any of the entries made in those documents. [618 H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 224 and 268 of 1977.

A Appeals by Special Leave from the Judgment and Order dated 19-3-77 of the Judicial Commissioner's Court, Goa, Daman and Diu at Panaji in Criminal Appeal Nos. 19 and 21 of 1973.

T. Godiwala, P. C. Ghokhale and *B. R. Agarwala* for the Appellant in Crl. A. No. 224/77.

B *S. Bhandare* for the Appellant in Crl. A. No. 268/77.

H. R. Khanna and *M. N. Shroff* for the Respondent.

The Judgment of the Court was delivered by

KOSHAL, J. By this judgment we shall dispose of Criminal Appeals Nos. 224 and 268 of 1977 in both of which a judgment dated C 19th of March, 1977 of the Judicial Commissioner, Goa, upholding the conviction of the appellants and the sentences imposed upon them by the trial court is challenged.

The appellants were tried jointly by the Special Judge, Panaji, who found them guilty and awarded them punishments as specified in D the table below :

Serial number of the accused	Name of the accused	Section of the law under which conviction recorded	Sentence
E (1)	(2)	(3)	(4))
1.	Abdulla Mohammed Pagarkar	(a) Section 120B(1) read with sections 420, 468 and 471 of the Indian Penal Code as also section 5(1)(d) of the Prevention of Corruption Act.	Rigorous imprisonment for two years and a fine of Rs. 500/-, the sentence in default of payment of fine being rigorous imprisonment for one month.
F		(b) Sections 420 and 468 and section 109 read with sections 468 and 471 of the Indian Penal Code.	Rigorous imprisonment for two years and a fine of Rs. 500/-, the sentence in default of payment of fine being rigorous imprisonment for one month.
G		(c) Section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act.	Rigorous imprisonment for two years and a fine of rupees two lakhs, the sentence in default of payment of fine being rigorous imprisonment for eighteen months.
H			

(1)	(2)	(3)	(4)
2.	Moreshwar Hari Mahatme	(a) Section 120B(1) read with sections 420, 468, 471 and 109 of the Indian Penal Code as well as section 5(1)(d) of the Prevention of Corruption Act.	Rigorous imprisonment for two years and a fine of Rs. 500/-, the sentence in default of payment of fine being rigorous imprisonment for one month.
		(b) Section 5(1)(d) of the Prevention of Corruption Act read with section 109 of the Indian Penal Code.	
		(c) Sections 420, 468 and 471 read with section 109 of the Indian Penal Code.	Rigorous imprisonment for two years and a fine of Rs. 500/-, the sentence in default of payment of fine being rigorous imprisonment for one month.
		(d) Section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act and section 109 of the Indian Penal Code.	Rigorous imprisonment for two years and a fine of rupees two lakhs, the sentence in default of payment of fine being rigorous imprisonment for eighteen months.

All the substantive sentences of imprisonment in the case of each of the accused were directed to run concurrently. It may be stated here that the charges framed against them under sections 467 and 477A of the Indian Penal Code were not found proved and they were acquitted of the same.

2. The prosecution case has to be set out at some length and may be stated thus. In the year 1965 the appellant Abdulla Mohammed Pagarkar (hereinafter referred to as A-1) was holding the post of Surveyor-in-Charge, Mercantile Marine Department, Marmagoa as also of the Captain of Ports, Panaji. In his capacity last-mentioned, the work of deepening and widening the Kumbarjua canal which connects river Zuari with river Mandovi required his urgent attention as the canal had to be made navigable at low tide for the use of mine barges during monsoon season when the sea becomes rough and it is hazardous to navigate across the mouth of the river Mandovi at Aguda. A survey of the canal had been carried out by the Marmagoa Port Trust and its report had been

submitted to the concerned authorities. Tenders were invited by A-1 through an advertisement in the press and appellant Moreshwar Hari Mahatme (hereinafter described as A-2) was the only person to present one, which he did on the 5th of January, 1966. As the cost of the work exceeded rupees one lakh and the tender was a solitary one, the Lieut. Governor forwarded it to the Central Government for approval and did not accept a suggestion made by the Secretary to the Industries and Labour Department (to be hereinafter called I.L.D.) that the work be started immediately in anticipation of the said approval. Nevertheless A-1 entrusted the work to A-2 who started executing it on March 15, 1966. No approval of the tender was received from the Government of India who directed, however, that the work be carried out departmentally.

Through a letter dated 16th of May, 1966 (Exhibit P-7), the said Secretary informed A-1 that as the work was to be executed departmentally the conditions laid down in Rules 133 and 141 of the General Financial Rules (G.F.R.) had to be fulfilled and directed him to obtain the concurrence of the Public Works Department (P.W.D. for short) for the various rates mentioned in a bill which A-1 had submitted earlier for payment in connection with the work. Such concurrence was obtained by A-1 on May 26, 1966, to payment of daily wages at the rates of Rs. 4.50 and Rs. 3.00 per head for male and female labourers respectively although the prevailing P.W.D. rates were Rs. 3.50 and Rs. 2.00 respectively (Exhibit P-9).

The two appellants entered into a conspiracy to cheat the Government in relation to the execution of the work. A-2 would submit occasionally to A-1 hand-written statements of the work done each day, specifying therein the details of quantity in cubic metres of the mud and salt excavated, the number (without the names) of male and female labourers employed, the cost of labour in accordance with the approved rates, charges for the country craft employed, etc. None of these statements bore the signature of A-2. A-1 would get typed copies of these statements prepared in his office and would send one of such copies under his own signature to the I.L.D. for sanction which used to be accorded after the concurrence of the Finance Department had been obtained. Thereafter a contingent bill would be prepared in the office of A-1 and in that bill A-1 would certify under his own signature that the work was carried out departmentally in compliance with Rule 141 of the G.F.R. Each of such bills accompanied by the relevant copy of the statement of work signed by A-1 would be forwarded to the Accounts Department which would issue a cheque in favour of A-1 who would realise the amount of the cheque and pay it in cash to A-2 against a regular receipt.

A stage was reached when the Directorate of Accounts objected to the payment of the bills and asked for muster rolls of labourers employed for execution of the work. A-1 then had prepared register exhibit P-37 and muster roll exhibit P-36 on the basis of entries in a copy book (exhibit P-47) which had been supplied to A-1 by A-2. The entries in the muster roll having been found to be suspicious, the case was entrusted to the Central Bureau of Investigation who found that, as against a total amount of Rs. 4,73,537.50 paid by the Government to A-1 and by him to A-2, the work done was worth no more than Rs. 76,247.43. It was this conclusion which led to the prosecution of the appellants.

3. Now we shall give a resume of the defence stand taken by A-1. He held numerous offices in addition to that of the Captain of Ports and as such he had to perform multifarious duties while the staff placed at his disposal was grossly inadequate by any standards so much so that he did not even have an Accounts Officer. As the work of deepening and widening the Kumbarjua canal needed urgent attention, tenders for its execution were called and A-2 was found to be the only tenderer. A-1 was assured by the Secretary, I.L.D., that the necessary order approving the tender would soon be forthcoming and that the execution of the work should be taken in hand immediately in anticipation of orders. The Assistant Marine Surveyor, Shri D'Souza (PW.4) was instructed to personally supervise the work which was started on the 15th of March, 1966. By the end of April, 1966, A-1 was told that the work should be executed departmentally by engaging labour and not through A-2. However that was not possible under the circumstances and the work proceeded as before. Shri D'Souza (PW. 4) used to check the volume and the kind of material excavated daily and to make entries in his notebook accordingly. When objection was taken by the Directorate of Accounts at the end of the financial year to the passing of the bills on the ground that muster rolls were not being maintained, A-1 made enquiries from Shri D'Souza (PW 4) and learnt that A-2 had maintained a gang-wise muster roll on the basis of which documents were prepared by Shri D'Souza (PW 4) under the orders of A-1 and were submitted to the I.L.D. The work was executed in conformity with the bills submitted by A-1 to the Government. In any case, A-1 acted in good faith and if any of the bills did not conform to facts the reason must be that he had been cheated by A-2.

4. The stand taken by A-2 in defence was more or less the same. He averred however that the bills were prepared not on the basis of labour engaged but on the volume of work done, that he never sup-

plied any labour to A-1, that the total material excavated amounted to 35,516.70 cubic metres, that there was no question of keeping any muster or acquittance roll as the work was executed by the labourers on piece-rate basis and that the average number of labourers working per day for execution of the work was about 700.

5. From the documentary evidence placed on the record at the trial the learned Special Judge found the following facts proved :

(a) Under directions of A-1 the execution of the work was started by A-2 before the tender submitted by the latter, which had been forwarded by the Lieut. Governor for approval to the Government of India, had been accepted.

(b) Through a letter dated the 16th May, 1967 (exhibit P-7) the Secretary, I.L.D., directed A-1 to have the work executed departmentally in accordance with the conditions laid down in Rules 141 and 133 of the G.F.R. and to obtain concurrence of the P.W.D. to various rates applicable to the work. Such concurrence was actually obtained by A-1 (Letters exhibits P-8 and P-9).

(c) The work was being carried out by A-2 with his own labour and no labour on muster roll was employed by A-1.

(d) A-2 prepared statements of work or summaries which he submitted to A-1 who would then sign typed copies thereof and forward the same for sanction to the I.L.D. On receipt of such sanction A-1 would prepare contingent bills and sign each of them along with a certificate that the work was being carried out departmentally in accordance with Rule 141 of the G.F.R. as per the attached summary. Each bill would then be submitted along with the summary to the Accounts Department which issued the corresponding cheque to A-1. The amount of the cheque was then realised by A-1 and paid over to A-2 under a receipt.

(e) Muster roll exhibit P-36 for the period from 15-3-1966 to 6-4-1967 was prepared in the office of A-1 and under his directions at a stretch after the completion of the work and on the basis of exhibit P-47 which A-2 had maintained. Register exhibit P-37 was similarly prepared on the basis of

written statements containing details of labour employed and submitted by A-2. A

6. The learned Special Judge further arrived at the findings given below from the oral evidence produced before him :—

(i) A-2 was fully aware that his tender had not been accepted by the Government and that A-1 had been directed to carry out the work departmentally. B

(ii) The amount really spent by A-2 in execution of the work was no more than Rs. 32,287.75 against which he manoeuvred, with the assistance of A-1, to receive a sum of Rs. 4,73,537.50 from the Government. C

(iii) None of the bills could have been sanctioned for payment by the Accounts Department but for the certificate appended by A-1 to each of them that the work was being carried out departmentally under Rule 141 of the G.F.R. D

7. From the above findings the learned Special Judge concluded that the two accused had entered into a conspiracy to cheat the Government in the matter of the execution of the work by presenting inflated bills and receiving against them far greater amounts than had actually been spent, that muster rolls ultimately produced to support E the bills contained false averments and were forged documents, and that A-1 was fully aware that the certificate regarding the work being carried out departmentally in accordance with Rule 141 of the G.F.R. and appended to each of the bills was false. It was also proved to his satisfaction that muster roll exhibit P-36 and register exhibit P-37 were dishonestly or fraudulently prepared by A-1 to support false bills and F that this was done with the assistance of A-2. The amount really spent on the work done having been found by the learned Special Judge to be only Rs. 32,287.75, he held that the Government had been cheated into an excess payment of Rs. 4,41,249.75.

It was in these premises that the learned Special Judge convicted G and sentenced the two accused as stated earlier.

8. The learned Judicial Commissioner upheld the findings of fact arrived at by the learned Special Judge except the one relating to the amount actually spent in execution of the work which, in his opinion, was Rs. 76,247.43 as made out by the entries in books exhibits P-79 H to P-82 which were recovered as a result of a search of the house of A-2. The conviction recorded against and the sentences imposed upon

A the appellants by the learned Special Judge were therefore confirmed by the learned Judicial Commissioner.

9. On behalf of the appellants it was vehemently contended before us by their learned counsel that the tender submitted by A-2 was actually accepted by the Government and that it was on that basis that B the entire work was executed. In support of this argument there is not a shred of evidence on the record and we have therefore no hesitation in rejecting it straightway. In exhibit P-7 there is a clear intimation to A-1 that the work was to be carried out departmentally and that therefore he should obtain concurrence of the P.W.D. to the rates applicable to various items of work. Faced with this situation learned C counsel for A-1 submitted that even under Rule 141 of the G.F.R. any work to be carried out departmentally could be entrusted to a contractor and in that submission he is right. However, it carries his case no further inasmuch as no bills were drawn nor was any sanction accorded to any payment on the basis of any part of the work having D been executed through A-2 working as a contractor. On the other hand those bills contained the number of labourers engaged for the work and the amounts claimed pertained to their wages at the sanctioned rates. In fact no bill contains even a mention of the fact that any contractor was executing the work or that A-2 was anywhere in the picture. Add to it the fact that A-2 did not submit any signed bills or statements E either to A-1 or to the I.L.D. or, for that matter, to the Directorate of Accounts. In so far as correspondence between A-1 on the one hand and Government departments on the other is concerned, the name of A-2 and his connection with the execution of the work remained conspicuous by its absence except insofar as the tender submitted by him was concerned and that tender, as already stated, never became effec- F tive by its acceptance by any department or office of the Government. The position which the two appellants therefore took in no uncertain terms throughout the period during which the work was executed was that it was being handled directly by the Department and not through any contractor. Any plea based on its execution through A-2 as a contractor must therefore be repelled.

G

10. A more serious argument put forward in support of the appeals was that the work actually executed had not really been shown to be worth anything less than the amount paid for it to A-2, i.e., Rs. 4,73,537.50. The attack on the findings to the contrary arrived at by the two courts below consists of the submission that they are based H really on mere conjectures rather than on evidence. And this attack appears to us, on a consideration of the material on the record, to be well founded, as we shall presently show.

11. The amount of Rs. 4,73,537.50 was received by A-1 against 4 bills the details of which appear below :

Serial number	Exhibit mark on the bill	Amount of the bill
		Rs.
1.	P-13	98,294·50
2.	P-18	82,811·00
3.	P-24	84,847·00
4.	P-28	2,07,585·00
	Total	4,73,537·50

As already stated, each of the bills above mentioned was accompanied by a document detailing the number of labourers employed. Other particulars such as sex of and rate of wages payable to each labourer also appeared in the document which has been described as a "summary". It is admitted on all hands that each bill conformed to the corresponding "summary" but was not accompanied, when submitted or passed, by any vouchers. The case propounded on behalf of the State is that the summaries contained false entries so that the number of labourers actually employed for the execution of the work was grossly inflated and that it was on that account that the appellants were able to draw moneys from the State Treasury far in excess of those actually paid by them for the execution of the work. On the other hand, the claim on behalf of the appellants is that no evidence at all is available to indicate that any of the entries made in the summaries as also in the bills did not conform to facts.

12. The learned Special Judge analysed the oral evidence of PWs. 1, 4, 7, 8, 13, 14, 17, 19 and 20 and observed that the number of labourers including the crew of the country craft working at all the sites where dredging was in progress during the period in question varied, according to those witnesses, from 80 to 200. He further noted the fact that in the statement recorded under section 342 of the Code of Criminal Procedure even A-1 had taken the stand that the number of labourers found by him working at the canal, whenever he visited the site, varied between 200 and 250. He then proceeded to quantify the amount of money paid to the labourers at Rs. 32,287.75 with the following observations :

"From the receipts produced by the prosecution witnesses Nos. 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20 and 21 it is seen that the amount paid by A.2 to the labourers and country craft owners is to the tune

of Rs. 32,287.75. There was no suggestion of the Advocate of A.2 to the Investigation Officer that besides the documents produced by A.2, there were other receipts which were not attached by the Investigating Officer and produced by the prosecution. The only contention of A.2 appears to be that, besides the amounts proved by the receipts above, there were other amounts paid to the labourers for which receipts were not collected. All the prosecution witnesses above had denied the suggestion of A.2 that, besides the amounts for which they have passed receipts, there were other amounts received by them for which they have not passed the receipts. Only P.W. 14 and P.W. 16 in their cross examination, had admitted that besides the amounts for which they had issued receipts, they were also paid for some work on salary basis for which they were not issued receipts. These amounts, however, could not, according to me, go to thousands of rupees. Any how, it was for A.2 to prove that he had spent amounts besides those proved by the prosecution which A.2 had failed to do."

Now this is hardly a proper approach to the requirements of proof in relation to a criminal charge. The onus of proof of the existence of every ingredient of the charge always rests on the prosecution and never shifts. It was incumbent therefore on the State to bring out, beyond all reasonable doubt, that the number of labourers actually employed in carrying out the work was less than that stated in the summaries appended to the bills paid for by the Government. It is true that the total number of labourers working on a single day has been put by the prosecution witnesses mentioned above at 200 or less, while according to the summaries appended to the bills it varied on an average from 370 to 756. But then is it safe to rely on the mere impression of the prosecution witnesses, testified to long after the work had been executed, about the actual number of labourers employed from time to time? The answer must obviously be in the negative and the justification for this answer is furnished by the variation in the number of labour employed from witness to witness.

The mind of the learned Special Judge in coming to the finding about the value of the work done being no more than Rs. 32,287.75 appears to have been influenced by the gross irregularities committed by the appellants in the execution of the work, specially their failure to prepare vouchers relating to all the payments as also a proper muster roll. These irregularities no doubt furnish a circumstance giving rise to a strong suspicion in regard to the *bona fides* of the appellants in the matter of the execution of the work but suspicion, however strong, cannot be a substitute for proof. And it is certainly not permissible to place the burden of proof of innocence on the person accus-

ed of a criminal charge. However, that is precisely what the Special Judge appears to have done while observing that "it was for A.2 to prove that he had spent amounts besides those proved by the prosecution which A.2 had failed to do."

13. The finding of the learned Judicial Commissioner on the point suffers from a similar defect. After examining the oral evidence in relation to it he observed :

> "The evidence of these witnesses clearly indicated that the average total number of labourers working in the Canal per day were 100 to 160. Taking an average of 123 labourers per day, out of which, on the basis of the statements furnished by A.2, less than 12000 would be males at the rate of Rs. 4.50 and a little more than 13000 females at the rate of Rs. 3.50, we have roughly a total sum of Rs. 80,000/- spent on labour. This more or less tallies with the amount mentioned in the vouchers. Shri S. V. Naik has on behalf of A.2 suggested in cross-examination of these witnesses that the average number of workers working in the canal per day was 350 to 400. Even if we accept this figure the total amount payable on account of the labourers employed would be Rs. 3,00,000.00, but the accused have collected a sum of Rs. 4,73,537.50."

He differed with the learned Special Judge on the point of the value of the work actually done and in that behalf he has reasoned thus in another part of the judgment :

> "No account books or receipts were produced by A.1 or A.2 to the Government in support of the contingent bills and of the claims for the amounts which they received. No account books were produced or shown by any one of them. It is not the case of A.2 that he did not receive receipts for the payments made to the labourers, nor is it his case that he did not have any account books regarding the work. In fact, it would be unbelievable that a businessman or a labour-supply contractor should not keep account books or should not receive receipts for payments made. It is not the case of A.2 or A.1 that they had lost the account books or the receipts. When a search was effected of the residence of A.2, receipt books Exh. P. 79 and P. 82 and some books relating to the work were seized. When a question was put to A. 2 under S. 313 of the Code of Criminal Procedure, 1973, regarding this evidence,

his answer was that neither the receipt books nor the books were account books. The receipts in the books are in serial numbers from 101 to 700. In the first search taken receipts bearing serial Nos. 151 to 200 for the period from 14-4-66 to 25-1-68 were missing. These receipts were all in one book, namely, Exh. P.82. Ex. P.82 was seized on a subsequent search. Another book Ex. P.82 was also found in subsequent search. This book bears no serial numbers. All these three books constitute Ex.P.79, 80 and P.82 containing receipts relating to the work. The total amount mentioned in the receipts relating to the work was Rs. 76,248.43. A.2 has not stated that he had vouchers for any other money paid by him nor has he produced any such vouchers. P.Ws No. 7 to 10 and 14 to 21, twelve in all, who did the work of excavation in the canal have stated that they passed receipts for all moneys received by them. When suggestions were made to some of them that some payments were made to them without receipts, they denied the fact. The other books seized, namely, Ex. P. 81 collectively, were, according to A.2, cash books. However, serial No. 23/II item No. 35, which was part of Ex. P. 81 is definitely an account book and not a cash book. In any event, A.2 does not rely on any of these books nor has he said anything to show that any payments were recorded therein, which are other than the payments shown in Ex. P.79, 80 and 82. A.2 did not examine any workers who worked in the canal and who, according to him, had received any payments which were not receipted for. It is evidence from Ex.P.79 to P.82 that some moneys spent in the work were receipted and accounted for. Considering all these facts, the question that A.2 might have paid any amounts without receiving receipts can be ruled out. Ex. P.79 to P.82 together with the other evidence on record support the version of the prosecution that the total amount of work done by the accused did not exceed Rs. 76,248.43."

We may at once state that there is no evidence on the record to indicate that the books seized from the premises of A.2 contained entries *about all the payments made by him to the labour employed for the execution of the work* and that is a fact the correctness of which we see no reason to presume. The danger of assumptions of the type made by the two courts below is highlighted by the disparity in the figures which they reached in relation to the amount of the value above mentioned. Each had his own way of looking at

it; but then the grievous error into which they fell was that they thought that it was for the accused to show that the number, of labourers employed conformed to that shown for each day in the summaries attached to the bills. And that is an approach not sanctioned by law.

14. In coming to the finding under consideration the learned Judicial Commissioner also took into consideration the deposition of Lasli Rupert Donaud (PW-6) who surveyed the canal in September, 1965 and again in May, 1969, i.e., both before and after the work had been executed and in that connection prepared two documents, viz., exhibits P-55 and P-66, detailing his observations on the two occasions respectively. According to the witness the volume of solids to be dredged "to a depth of 10 feet below datam equals 5858 cubic metres". This figure is roughly one-fifth of 28,324.70 cubic metres which is the volume of total material alleged by the appellants to have been actually removed during the execution of the work and paid for. The argument advanced on behalf of the State that the disparity in the two figures itself shows that the claim of the appellants is false, although attractive on the face of it, is not acceptable to us on a deeper consideration. According to PW-6, the soundings taken on the two occasions were almost identical from which it was sought to be deduced that practically no work at all was done, which is not the case of either party. This shows that either the contents of the two documents represented observations which did not conform to facts or which, in any case, could not be taken as a safe guide for calculating the actual number of labourers employed during the execution of the work which was carried out between the two surveys. Besides, our attention has not been drawn by learned counsel for the State to any evidence from which it may be inferred that the portions of the canal where soundings were taken by PW-6 represented the entire length of the canal in relation to its breadth and depth. Again, the silting process which is a continuous one, cannot be lost sight of. In between the point of time when the first survey was undertaken by PW-6 in 1965 and the end of the period during which the work was executed, a lot of silt must have settled at the bed of the canal and dredged out which would surely mean a considerable increase in the work actually done over the figure of 5858 cubic metres resulting from his estimate. Also siltation may have occurred and, for aught one knows, to a considerable extent, between the completion of the work and the point of time when PW-6 took the soundings in 1969. Allowance has also to be made for the state of the tide when the surveys were undertaken. As pointed out by the witness himself, the

A soundings of 1969 were not taken at the lowest tide. As it is, the witness had to make the following admission when he was asked if he could say on the basis of his two surveys whether any dredging was done in between :

> "If some dredging is done during the year 66 and 67 in
B the Canal and the soundings are taken in 1969 if it is almost identical to the soundings of 1965 I would not be able to say whether dredging was done in the Canal or not. . . ."

We consider it very unsafe, in this state of the evidence to agree with the learned Judicial Commissioner that the disparity between the
C estimate arrived at by PW-6 and the volume of material claimed to have been dredged proved "that the documents on which moneys were collected by the accused are false". It appears to us that in coming to this conclusion, he was also influenced by the factors which raised a strong suspicion against the appellants.

15. Learned counsel for the State to buttress the evidence which
D we have just above discussed with the findings recorded by the learned Special Judge and detailed as items (a) to (e) in paragraph 5 and items (i) and (iii) in paragraph 6 of this judgment. Those findings were armed by the learned Judicial Commissioner and we are clearly of the opinion, for reasons which need not be re-stated here, that they
E were correctly arrived at. But those findings merely make out that the appellants proceeded to execute the work in flagrant disregard of the relevant Rules of the G.F.R. and even of ordinary norms of procedural behaviour of Government officials and contractors in the matter of execution of works undertaken by the Government. Such disregard however has not been shown to us to amount to any of the offences
F of which the appellants have been convicted. The said findings no doubt make the suspicion to which we have above adverted still stronger but that is where the matter rests and it cannot be said that any of the ingredients of the charge have been made out.

Apart from the findings and evidence referred to earlier in this
G paragraph, no material has been brought to our notice on behalf of the State such as would indicate that the bills or the summaries in question were false in any material particular.

16. Although it does appear that quite a few of the documents admittedly prepared by or at the instance of the appellants in connection with the execution of the work came into existence not while the
H work was in progress but only later when a demand for them was made by the Accounts Department, the charge cannot be sustained in relation to any of its heads, there being no proof of the falsity of any

of the entries made in those documents. In the result, therefore, we accept both the appeals, set aside the conviction recorded against and the sentences imposed upon each of the appellants and acquit them of the charge in its entirety. A

N.V.K. *Appeals allowed.* B