PETITIONER:
R. M. MALKANI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT22/09/1972

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
DUA, I.D.

CITATION:
1973 AIR 157 1973 SCR (2) 417
1973 SCC (1) 471
CITATOR INFO :
R 1986 SC 3 (30,147,219)
F 1987 SC1748 (20)

ACT:
Indian Penal Code-ss. 161, 385, 420 read with s. 511-Appellant charged for attempted bribery along with other charges-Conversation between appellant and witness tape recorded-Whether admissible in evidence Indian Telegraph Act-S. 25-Scope.

HEADNOTE:
The appellant, the Corner of Bombay, was charged under s. 161, 385 and 420 read with s. 511 of the I.P.C., for the alleged offences including attempting to obtain a bribe from a doctor who performed an operation but the patient died subsequently.
The High Court convicted the appellant under s. 161 and 385 of the I.P.C. and sentenced him accordingly.
Four questions were canvassed before this Court: (1) The Trial Court and the High Court erred in admitting the evidence of the telephonic conversation between Dr. M. a witness and the appellant which was recorded on the tape. The evidence was illegally obtained in contravention of s. 25 of the Indian Telegraph Act, and therefore, the evidence was inadmissible; (2) The conversation between Dr. M and the appellant which was recorded on the tape took place during investigation, inasmuch as the Director of the Anti-corruption Branch asked Dr. M. to talk to the appellant and therefore, the conversation was not admissible under s., 162 of the Cr. P.C.; (3) That the appellant did not attempt to obtain gratification; and (4) That the sentence of six months' imprisonment should be interferred with because the appellant has already paid Rs. 10,000/ as fine. The appellant, suffered heart attacks, and therefore, the sentence should be reduced.
Dismissing the appeal,
HELD : (i) There was no violation of the Indian Telegraph Act. The substance of the offence under S. 25 of the Indian Telegraph Act is damaging, removing, tampering, touching machinery, battery line, or post for interception or acquainting oneself with the contents of any massage. Where a person talking on the telephone allows another person to

record it or hear it, it cannot be said that the other persons who is allowed to do so is damaging, removing, tampering, touching machinery, battery line or post for intercepting or acquainting himself with the contents of any message. There was no element of coercion or compulsion in attaching the tape-recorder to the telephone. Therefore, the High Court's observation that the telephone call put by Dr. M. to the appellant was tapped by the Police Officer and that there was violation of s. 25 of the Indian Telegraph Act, is erroneous.

(ii) Tape recorded conversation is admissible, provided first the conversation is relevant to the matters in issue, secondly, there is identification of the voice and thirdly, the accuracy of the tape-recorded conversation is proved by eliminating the possibility of erasing the tape-recorder. The tape-recorded conversation is, therefore, a relevant fact under section 8 of the Evidence Act and is admissible under s. 7 of the Evidence Act.

[424 F]

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N. Srirama Raddy v. Shri V. V. Giri [1971] 1 S.C.R. 399; Yusaf Ali lsmail Nagri v. The State of Maharashtra, [1967] 3 S.C.R. 720 and S. Pratap Singh v. State of Punjab [1964] 4 S.C.R. 733, referred to.

(iii) The tape-recorded conversation is not within the vice of s. 162 of Cr. P. C. It was said that the tape-recording was in the course of investigation. S. 161 and 162 of the Cr.P.C. indicate that there is investigation when the police officer orally examine a person. The telephonic conversation was between Dr. M and the appellant, Each spoke to the other. Neither made a statement to the police officer. Therefore, there was no mischief of s. 1 62. [427 H]

(iv) It is also not correct that the appellant did not attempt an offence. The conversation was said to show bargain. The evidence is that the patient died on the 13th May 1964. Dr. M saw the appellant on 3rd October 1964. The appellant demanded Rs. 20,000/- in order that Dr. A could avoid inconvenience and publicity in papers, in case the inquest was field. Further, it was also proved that the appellant bargained land lowered his demand to Rs. 10,000/- and then again raised to Rs. 15,000/-. These facts together with other facts found by the courts to be correct anti these facts prove that the offence was committed.

(v) The appellant's contention that the sentence of imprisonment should be set aside in view of his payment of a fine of Rs. 10,000/- it is true that in some cases, the Courts have allowed the sentence undergone to be the sentence. That depends upon the facts as to what the term of the sentence is and what the period of sentence undergone is. In the present case, it cannot be said that the appellant had undergone any period of sentence. Further the gravity of the offence and the position held by the appellant at the relevant time. do not merit any lenient view about the sentence.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal 229 of 1969.

Appeal by certificate from the judgment and order dated October 9, 1969 of the Bombay High Court in Cr. A. No. 727 of 1967.

B. M. Mistry and Vineet Kumar, for the

M. C. Bhandare and B. D. Sharma and S. P. Nayar, for the

respondent.
The Judgment of the Court was delivered by
RAY, J.-This is an appeal by certificate, from the judgment dated 8 and 9 October, 1969 of the High Court at Bombay convicting the appellant under sections 161 and 385 of he Indian Penal Code. The High Court confirmed the substantive sentence to simple imprisonment for six months under section 161 of the Indian Penal Code and simple imprisonment for three months under section 385 of the Indian Penal Code. In addition, the High Court imposed on the appellant a fine of Rs. 10,000 and in default of payments of fine, further simple imprisonment for six months.
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The appellant was at the crucial time the Coroner of Bombay. The prosecution case was as follows. Jagdish prasad Ramnarayan Khandelwal was admitted to the nursing home of a Gynecologist Dr. Adatia on 3 May, 1964. Dr. Adatia diagnosed the case as acute appendicitis. Dr. Adatia kept the patient under observation. After 24 hours the condition of the patient became serious. Dr. Shantilal J. Mehta was called. His diagnosis was acute appendicitis with "generalised peritonitis" and he advised immediate operation. Dr. Adatia performed the operation. The appendix, according to Dr. Adatia had become gangrenous. The patient developed paralysis of the ilium. He was removed ?to Bombay Hospital on 10 May, 1964 to be under the treatment of Dr. Motwani. The patient died on 13 May, 1964. The Hospital issued a Death Intimation Card as "paralytic ileus and peritonitis following an operation, for acute appendicitis".
The appellant allowed the disposal of the dead body without ordering post-mortem. There was however a request for an inquest from the Police Station. The cause for the inquest was that his was a case of post operation death in a hospital. The Coroner's Court registered the inquest on 13 May, 1964. The dates for inquest were in the months of June, July, September and October, 1964. The appellant was on leave for some time in the months of June and July, 1964. This is said to delay the inquest.
It was the practice of the Coroner's Court to send letters to professional people concerned in inquest to get the explanation of the Doctor who treated or operated upon the patient. The appellant on 3 October, 1964 made an order that Mr. Adatia be called. It is alleged that the appellant had told Dr. Adatia a ,few days earlier that though he might have operated satisfactorily the cause of death given by the hospital would give rise to a presumption of negligence on his part. Dr. Adatia was asked by the appellant to meet Dr. Motwani, so that the latter could get in touch with the appellant to resolve the technical difficulties. Dr. Motwani met the appellant on 3 October, 1964. The appellant told Dr. Motwani that Dr. Adatia was at fault but he might be cleared of the charge in the inquest. The appellant asked for a sum of Rs. 20,000. Dr. Motwani said that he would consult Dr. Adatia. Dr. Motwani conveyed the proposal to Dr. Adatia. The latter refused to pay any illegal gratification. Dr. Motwani intimated the same to the appellant. The appellant then reduced the demand to Rs. 10,000. Dr. Adatia also refused to pay the same
On 4 October the appellant got in touch with Dr. Jadhav. Superintendent of the Bombay Hospital to find out if the cause of
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death given in the Hospital Card could be substantiated. Dr. Motwani told Dr. Jadhav on the same day that incorrect

cause of death was shown and great injustice was done to Dr. Adatia. Dr. Jadhav said that he Would send an amended deposition to the Coroner, the appellant.

On 5 October, 1964 Dr. Motwani and Dr Adatia decided to lodge a complaint with the Anti Corruption Bureau. Dr. Adatia's Nursing Home got messages on the telephone to get in touch with the appellant. Dr. Adatia complained to Dr. Motwani of the harassment on the telephone. Dr. Motwani rang up the appellant. The appellant asked Dr. Motwani to intimate by 10 a.m. on 7 October whether Dr. Adatia was willing to pay Rs. 10,000. Dr. Motwani rang up Mugwe, Director of the Anti Corruption Branch and complained that a higher Government official was demanding a heavy bribe from a Doctor. Must we then arranged for his staff to be present near Dr. Motwani's residence on the morning of 7 October with the tape recording equipment to record on the tape the telephonic conversation.

On 7 October 1964 Mugwe and the Assistant Commissioner of Police Sawant went to Dr. Motwani's residence. They met Dr. Motwani and Dr. Adatia. When they commenced recording the First Information Report of Dr. Motwani, Dr. Adatia left for his Nursing Home. Mugwe then arranged for the tape recording equipment to be attached to the telephone of Dr. Motwani. Dr. Motwani was asked by Mugwe to ring up the appellant in the presence of Mugwe and other Police Officers about the appellant's demand for the money. Dr. Motwani ran,, up the appellant and spoke with him. Dr. Motwani reported the gist of the talk to Mugwe. Mugwe then asked Dr. Motwani to ring up Dr. Adatia to speak on certain special points. After the talk with Di. Adatia Dr. Motwani was asked by Mugwe to ring up the appellant and ask- for an appointment to discuss the matter further. Dr. Motwani rang up the appellant and an appointment was made to meet the appellant at 12 noon the same day. The conversation between Dr. Motwani and the appellant and the conversation between Dr. Motwani and Dr. Adatia are all recorded on the tape,

The two Doctors Motwani and Adatia met the appellant in the Coroner's Chamber at 12 noon. The appellant raised the demand to Rs. 15,000 and said that Rs. 5,000 was to he paid to Coroner's Surgeon for giving an opinion in favour of Dr. Adatia. The appellant said that if the amount was not paid the police Surgeon's opinion would be incorporated in the case. The two Doctors went out of the Chamber for a while. Dr. Adatia then told the appellant that lie would pay the appellant Rs. 15,000 on 9 October, 1964.

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Dr. Adatia paid Rs. 15,000 to Dr. Motwani. Dr. Motwani took the amount to his house. Dr. Motwani informed the appellant on the. telephone that he had received the money from Dr. Adatia. The appellant asked Dr. Motwani to keep it. The appellant also told Dr. Motwani to bring the money to the appellant's house on 10 October, 1964. On 10 October the Assistant Commissioner Sawant came to Dr. Motwani's residence and asked him to go to the appellant's residence to fix up an appointment for payment of money. Dr. Motwani went to the appellant's house on 10 October, 1964 at 10 a.m. The appellant was not in the house. The appellant's wife was there. Dr. Motwani told her that he had come to pay the money. The appellant's wife said that he could pay her. Dr. Motwani said that he had no instructions to pay. As Dr. Motwani was leaving the building Sawant, the Assistant Commissioner met him. Sawant asked Dr. Motwani to come to Dr. Adatia to ring up the appellant from there.

The Police Officers and Dr. Motwani met at the residence of Dr. Adatia at about 4 p.m. The raiding party connected the

tape recorder to the telephone mechanism of Dr. Motwani. Dr.. Motwani dialled the, appellant's residence and spoke with the appellant in, the presence of the Police Officers. The conversation was also recorded on the tape. It was arranged at the talk that Dr. Motwani would pay the amount to the appellant's wife on 12 October 1964.. Dr. Motwani was asked to take a letter addressed to the appellant stating that he was returning a loan of Rs. 15,000 which he had taken at the time of buying a flat.

On 11 October, 1964 Dr. Motwani received a telephone call from the appellant asking Dr. Motwani to come to his residence to meet the person to whom the money was to be paid. Dr. Motwani declined to go then. On 12 October 1964 the appellant told Dr. Motwani that the appointment was cancelled because he had not come to the appellant's residence on 11 October. Dr. Motwani conveyed the news to the Assistant Commissioner.

Mugwe then ordered an open investigation into the case.

The appellant was charged under sections 161, 385 and 420 read with section 511 of the Indian Penal Code. Broadly stated, the charges against the appellant were these. He attempted to obtain from Dr. Adatia through Dr. Motwani a sum of Rs. 20,000 which was later reduced to Rs. 10,000 and which was then raised to Rs. 15,000 as gratification for doing or forbearing to do official acts. He put Dr. Adatia in fear of injury in body, mind, reputation and attempted dishonestly to induce Dr. Adatia and Dr. Motwani to pay the sum of money. The appellant was also

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charged with cheating for having falsely represented to Dr. Adatia and Dr. Motwani that Rs. 5,000 out of the amount of Rs. 10,000 was required to be paid to the Police Surgeon for obtaining his favourable opinion.

The appellant denied that he demanded any amount through Dr. Motwani. He also denied that he threatened Dr. Adatia (if the consequence of an inquest.

Four questions were canvassed in this appeal. The first contention was that the trial Court and the High Court errect in admitting the evidence of the telephonic conversation between Dr. Motwani and the appellant which was recorded on the tape. The evidence was illegally obtained in contravention of section 25 of the Indian Telegraph Act and therefore the evidence was inadmissible. Secondly, the conversation between Dr. Motwani and the appellant which was recorded on the tape took place during investigation inasmuch as Mugwe asked Dr. Motwani to talk and therefore the conversation was not admissible under section 162 of the Code of Criminal Procedure. The third contention was that the appellant did not attempt to obtain gratification. Fourthly. it was said that the sentence of six months imprisonment Should be interfered with because the appellant has already paid Rs. 10,000 as fine. The appellant suffered heart attacks and therefore the sentence should be modified.

The trial Court as well as the High Court found that the evidence of Dr. Motwani and Dr. Adatia needed corroboration. The High Court found that the conversation recorded on the tape corroborated their evidence. The evidence of Dr. Motwani is that on 7 October, 1964 Mugwe accompanied by Sawant and members of the Police staff went to the residence of Dr. Motwani. Mugwe directed Sawant to record Dr. Motwani's statement. Mugwe had instructed his staff to bring a tape recording machine. After the statement of Dr. Motwani Mugwe connected the tape recording machine to Dr. Motwani's phone and asked Dr. Motwani to talk to any one he

liked in order to test whether the tape recording machine was in order. Motwani was then asked to talk to the appellant. Motwani talked with the appellant. That conversation was recorded on the tape. This tape recorded conversation is challenged by counsel for the appellant to be inadmissible because it infringes Articles 20(3) and 21 of the Constitution and is an offence tinder section 25 of the Indian Telegraph Act.

Section 25 of the Indian Telegraph Act 1885 states that if any person intending (b) to intercept or to acquaint himself with the contents of any message damages, removes, tampers with or touches any battery, machinery. telegraph line, post or other thin

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whatever, being part of or used in or about any telegraph or in the working thereof he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both. "Telegraph" is defined in the Indian Telegraph Act in section 3 to mean any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian wave s, galvanic, electric or magnetic means.

Counsel for the appellant submitted that attaching the tape recording instrument to the telephone instrument of Dr. Motwani was an offence under section 25 of the Indian Telegraph Act. It was also said that if a Police Officer intending to acquaint himself with the contents of any message touched machinery or other thing whatever used in or about or telegraph or in the working thereof he was guilty of an offence under the Telegraph Act. Reliance was placed on rule 149 of the Telegraph Rules which states that it shall be lawful for the Telegraph Authority to monitor or intercept a message or messages transmitted through tele-phone, for the purpose of verification of any violation of these rules or for the maintenance of the equipment. This Rule was referred to for establishing that only the Telegraph Authorities could intercept message under the Act and Rules and a Police Officer could not.

In the present case, the High Court held that the telephone call put by Dr. Motwani to the appellant was tapped by the Police Officers and, therefore, there was violation of section 25 of the Indian Telegraph Act. But the High Court held that the tape recorded conversation was admissible in evidence in spite of the violation of the Telegraph Act.

The Police Officer in the present case fixed the tape recording instrument to the telephone instrument with the authority of Dr. Motwani. The Police Officer could not be said to intercept any message or within the meaning of section 25 of the The reason is that the Police Officer instead the oral conversation between Dr. Motwani recorded the conversation with the device of the The substance of the offence under section graph Act is damaging, removing, tampering, touching battery line or post for interception or acquainting oneself with damage or remove or touch any machinery Indian Telegraph Act. of hearing directly and the appellant tape recorder. 25 of the Indian Tele machinery the contents of any message. Where a person talking on the telephone allows another person to record it or to hear it it cannot be said that the other person who is allowed to do so is damaging, removing, tampering, touching machinery battery line or post for intercepting or acquainting himself with the contents of any.

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message, There was no element of coercion or compulsion in attaching the tape recorder to the telephone. There was no violation of the Indian Telegraph Act. The High Court is in error ,on that point.

This Court in Shri N. Sri Rama Reddy etc. v. Shri V. V. Giri(1), Ysufalli Esmail Nagree v. The State of Maharashtra(2) ,and S. Pratap Singh v. The State of Punjab(3) accepted conversation or dialogue recorded on a tape recording machine as admissible evidence. In Nagree's case the conversation was between Nagree and Sheikh. Nagree was accused of offering bribe to Sheikh.

In the Presidential Election case (supra) questions were put to a witness Jagat Narain that he had tried to dissuade the petitioner from filing an election petition. The witness defied those suggestions. The election petitioner had recorded on tape the conversation that had taken place between the witness and the petitioner. Objection was taken to admissibility of tape recorded conversation. The Court admitted the tape recorded conversation. In the Presidential Election(4) case the denial of the witness was being controverted, challenged and confronted with his earlier statement. Under section 146 of the Evidence Act questions might be put to the witness to test the veracity of the witness. Again under section 153 of the Evidence Act a witness might be contradicted when he denied any question tending to impeach his impartiality. This is because the previous statement is furnished by the tape recorded conversation. The tape itself becomes the primary and direct evidence of what has been said and recorded.

Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice'; and. thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 8 of the Evidence Act. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under section 7 of the Evidence Act. The conversation between Dr. Motwani and the appellant in the present case is relevant to the matter in issue. There is no dispute about the identification of the voices. There is no controversy about any portion of the conversation being erased or mutilated. The appellant was given full opportunity to test the genuineness of the tape recorded Conversation. The tape recorded conversation is admissible in evidence.

(1) [1971] 1 S C. R. 399.
(2) [1967] 3 S.C.R. 720
(3) [1964] 4 S.C.R. 733.

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It was said by counsel for the appellant that the tape recorded conversation was obtained by illegal means. The illegality was said to be contravention of section 25 of the Indian Telegraph Act. There is no violation of section 25 of the Telegraph Act in the facts and circumstances of the present case. There is warrant for proposition that even if, evidence is illegally obtained it is admissible. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See Jones v. Owen(6). The Judicial Committee in Kur ma, Son of Kanju

v. R.(7) dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches. The Judicial Committee held that the evidence was rightly admitted. The reason given was that if evidence was admissible it matters not how it was obtained. There is of course always a word of caution. It is that the Judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence.

This Court in Magraj Patodia v. R. K. Birla & Ors.(3) dealt with the admissibility in evidence of two files containing numerous documents produced on behalf of the election petitioner. Those files contained correspondence relating to the election of respondent No. 1. The correspondence was between respondent No. 1 the elected candidate and various other persons. The witness who produced the file said that respondent No. 1 handed over the file to him for safe custody. The candidate had apprehended raid at his residence in connection with the evasion of taxes or duties. The version of the witness as to how he came to know about the file was not believed by this Court. This Court said that a document which was procured by improper or even by illegal means could not bar its admissibility provided its relevance and genuineness were proved.

In Nagree's case (supra) the appellant offered bribe to Sheikh a Municipal Clerk. Sheikh informed the Police. The Police laid a trap. Sheikh called Nagree at the residence. The Police kept a tape recorder concealed in another room. The tape was kept in the custody of the police inspector. Sheikh gave evidence of the talk. The tape record corroborated his testimony. Just

(1) [1870] 34 J.P. 759.
(2) [1955] A.C. 197.
(3). A.I.R. [1971] S.C. 1295.

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as a photograph taken without the knowledge of the person photographed can become relevant and admissible so does a tape record of a conversation unnoticed by the talkers. The Court will take care in two directions in admitting such evidence. First, the Court will find out that it is genuine and free from tampering or mutilation. Secondly, the Court may also secures scrupulous conduct and behaviour on behalf of the Police. The reason is that the Police Officer is more likely to behave properly if improperly obtained evidence is liable to be viewed with care and caution by the Judge. In every case the position of the accused, the nature of the investigation and the gravity of the offence must be judged in the light of the material facts and the Surrounding circumstances.

The admissibility of evidence procured in consequence of illegal searches and other unlawful acts was applied in a recent English decision in R. v. Maqsud Ali(1). In that case two persons suspected of murder went voluntarily with the Police Officers to a room in which, unknown to them, there was a microphone connected with a tape-recorder in another room. They were left alone in the room. They proceeded to have a conversation in which incriminating remarks were made. The conversation was recorded on the tape. The Court of Criminal Appeal held that the trial Judge had correctly admitted the tape-recording of the incriminating conversation in evidence. It was said "that the method of the informer and of the eavesdropper is commonly used in the

detection of crime. The only difference here was that a mechanical device was the eavesdropper". The Courts often say that detection by deception is a form of police procedure to be directed and used sparingly and with circumspection.

When a Court permits a tape recording to be played over it is acting on real evidence if it treats the intonation of the words to be relevant and genuine. The fact that tape recorded conversation can be altered is also borne in mind by the Court while admitting it in evidence.

In the present case the recording of the conversation between Dr. Motwani and the Appellant cannot be said to be illegal because Dr. Motwani allowed the tape recording instrument to be attached to his instrument. In fact, Dr. Motwani permitted the Police Officers to hear the conversation. If the conversation were relayed on a microphone or an amplifier from the telephone and the police officers heard the same they would be able to give direct evidence of what they heard. Here the police officers gave direct evidence of what they saw and what they did and what they

(1) [1965] 2 All. E.R. 464.

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recorded as a result of voluntary permission granted by Dr. Motwani. The tape recorded conversation is contemporaneous relevant evidence and therefore it is admissible. It is not tainted by coercion or unfairness. There is no reason to exclude this evidence.

It was said that the admissibility of the tape recorded evidence offended Articles 20(3) and 21 of the Constitution. The submission was that the manner of acquiring the tape recorded conversation was not procedure established by law and the appellant was incriminated. The appellant's conversation was voluntary. There was no compulsion. The attaching of the tape recording instrument was unknown to the appellant. That fact does not render the evidence of conversation inadmissible. The appellant's conversation was not extracted under duress or compulsion. If the conversation was recorded on the tape it was a mechanical contrivance to play the role of an eavesdropper. In R. v. Leatham(1) it was said "It matters not how you get it if you steal it even, it would be admissible in evidence".. As long as it is not tainted by an inadmissible confession of guilt evidence even if it is illegally obtained is admissible.

There is no scope for holding that the appellant was made to incriminate himself. At the time of the conversation there was no case against the appellant. He was not compelled to speak or confess. Article 21 was invoked by submitting that the privacy of the appellant's conversation was invaded.. Article 21 contemplates procedure established by law with regard to deprivation of life or personal liberty. The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or high handed' interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. It must not be understood that the Courts will tolerate safeguards for the protection of the citizen to be imperiled by permitting the police to proceed by unlawful or irregular methods. In the present case there is no unlawful or irregular method in obtaining the tape recording of the conversation.

The second contention on behalf of the appellant was that the entire tape recorded conversation is within the vice of section 162 of the Criminal Procedure Code. In aid of that

contention the oral evidence of Mugwe, the Director of Intelligence Bureau was relied on. Mugwe said that it was under his advice and instruction that Dr. Motwani starting talking with the appellant and Dr. Adatia. Therefore, it was said that the tape recording was

(1) [1861] 8 Cox.C.C.498.

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in the course of investigation. Sections 161 and 162 of the Criminal Procedure Code indicate that there is investigation when the Police Officer orally examines a person. The telephonic conversation was between Dr. Motwani and the appellant. Each spoke to the other. Neither made a statement to the Police Officer. There is no mischief of section 162.

The third contention was that the appellant did not attempt an offence. The conversation was said to show bargain. The evidence is that the patient died on 13 May, 1964. Dr. Motwani saw the appellant on 3 October, 1964. The appellant demanded Rs. 20,000. The appellant asked for payment of Rs. 20,000 in order that Dr. Adatia would avoid inconvenience and publicity in newspapers in case inquest was held. Dr. Motwani informed Dr. Adatia about the conversation with the appellant. On 4 October, 1964 the appellant rang up Dr. Motwani and said that he was willing to reduce the amount to Rs. 10,000. On 5 October, 1964 Dr. Adatia received calls from the appellant asking him to attend the Coroner's Court on 6 October, 1964. Dr. Adatia got in touch with Dr. Motwani on 6 October and gave him that message. Dr. Adatia rang up the appellant on 6 October and asked for adjournment. The appellant granted the adjournment to 7 October. On 6 October there were two calls from the appellant asking Dr. Adatia to attend the Coroner's Court on 7 October and also that Dr. Adatia should contact the appellant on 6 October. Dr. Motwani rang up the appellant and told him that the telephonic conversation had upset Dr. Adatia. On 6 October Dr. Motwani conveyed to Mugwe, Director of Intelligence Bureau about the demand of bribe to the appellant. These are the facts found by the Court. These facts prove that the offence was committed.

The last contention on behalf of the appellant was that the sentence of imprisonment should be set aside in view of the fact that the appellant paid the fine of Rs. 10,000. In some cases the Courts have allowed the sentence undergone to be the sentence. That depends upon the fact as to what the term of the sentence is and what the period of sentence undergone is. In the present case, it cannot be said that the appellant had undergone any period of sentence. If it is said that the appellant had heart attacks and therefore the Court should take a lenient view about the sentence the gravity of the offence and the position held by the appellant at the relevant time do not merit such consideration.

For these reasons, the appeal is dismissed. The appellant will surrender to his bail and serve out the sentence.

S.C. Appeal dismissed.

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