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Calcutta High Court

Case No: None

Kali Das Basu and Others	APPELLANT
Vs	
Emperor	RESPONDENT

Date of Decision: Aug. 30, 1915

Citation: 83 Ind. Cas. 513

Hon'ble Judges: Richardson, J; Chitty, J

Bench: Division Bench

Judgement

1. The four appellants Kalidas Bose, Narendra Nath Bannerjee, Bhujanga Bhushan Dhar and Hari Das Dutta have been convicted by the Chief Presidency Magistrate of an offence u/s 120-B, Indian Penal Code read with Section 19 (f) of the Arms Act (XI of 1878) and Section 109 Indian Penal Code and sentenced each to two years" rigorous imprisonment. Two. charges were framed in the Magistrate"s Court against the four appellants and three other persons, Anukul Chandra Mookerjee, Girindra Nath Bannerjee, and Asutosh Roy, one u/s 120-B, Indian Penal Code, read with Sections 379 and 109, Indian Penal Code, and the other u/s 120-B read with Section 19 (f) of the Arms Act and Section 109, Indian Penal Code. Anukul, Girindra and Asutosh were acquitted on both charges being given the benefit of the doubt. The four appellants were convicted in the second charge only, Three other persons Baidyanath Biswas, Purba Doyal Marwari and Upendra Nath Sen had also been put upon their trial, but on the 12th November 1914, the case against them was withdrawn and they were discharged.

2. Both the charges alleged the conspiracy of the seven accused with one another and with Srish Chandra Mitter, Bepin Ganguli, Suresh Ganguli, Ganesh Chandra Bose and others unknown. The charges of conspiracy were framed in general terms, but the overt act, on which the. prosecution relied on each charge was the theft of some 50 Mauser pistols and 46000 cartridges from Messrs. Rodda & Co. and the subsequent transportation of those pistols and cartridges from one part of the city to another.

3. The part of the prosecution case which established the theft of these pistols and cartridges by Srish Chandra Mitter, up to the point when he deposited them at what has been called the Ironyard in Malanga Lane is not challenged by the appellants. It is unnecessary, therefore, to set it out in detail. Suffice to say that the offence was committed by Srish Chandra Mitter on 26th August 1914, and the goods deposited by him at the Ironyard early in the afternoon of that day. Srish did not attend Messrs Rodda & Co''s office on the 27th or 28th. On the 28th Mr. Prike was sent to find him at his house but he was not to be found. On 29th August 1914 another clerk was sent to take delivery of the remainder of the consignment, of which the goods in question formed part. It was then discovered that these goods were missing and information was given to the Police, who took immediate steps in the matter. Srish Chandra Mitter disappeared from 27th August 1914 and has not yet been traced. Kali Das and Narendra were arrested on suspicion on 30th August 1914. Bhujanga was arrested at his house on 1st September on the identification of the two coachmen Nur Mahomed and Shaikh Abdul. Haridas Dutt was not arrested until 11th October 1914. The case against him rests on an entirely different footing and must be separately dealt with. The case against Kalidas, Narendra and Bhujanga though the evidence diverges at certain points is in the main the same. Their appeals may, therefore, be conveniently taken together, any points of difference being noted. We may first notice the evidence of association of these appellants with one another, with Srish Chandra Mitter, and other persons who were or may have been members of the conspiracy charged. The conspiracy in the charge is placed between 1st March and 30th August 1914. Kalidas Bose, who lives at 7 Haldar''s Lane, was in 1912 Secretary of the Niswa Hitaishini Sabha and after that a member. Girindra Bannerjee was also a member, while Srish Chandra Mitter used to collect rice for the Sabha. This was no doubt a non-political society, but the object of the evidence relating to it was to prove acquaintance at least between Kalidas, Girindra and Srish Chandra Mitter. Kalidas at first, when questioned by the Police, denied acquaintance with Srish Chandra Mitter. He now admits it, as he could hardly help doing, seeing that it has been abundantly proved. Srish Chandra Mitter (P. W. No. 42) speaks of Kalidas, Anukul and-Srish consorting together at the wrestling yard at 23 Madan Boral''s Lane.

4. Kalidas used also to attend the Hindu Mahal Debating Union, which held its meetings at 4-3 Malanga Lane, where Girindra and Narendra reside. Kalidas was seen in ''Wellington square in April and May with Girindra, Anukul, Khagendra, Srish Pal and others. Srish Chandra Mitter and Sailendra Singh were also seen there by Kiran Chandra Sen in company with Kalidas and two or three others. On 17th May Kalidas'' house, 7 Haldar''s Lane, was searched. On his bed Was found a copy of ''Anarchy and Anarchists'' by Michael, J. Sehack with marginal notes in violet pencil, which however have not been shown to be in Kalidas'' handwriting. In his room were found copies of the Karmajogin and Desher Katha a proscribed work, a copy of the trial of Balgobind Ganga-dhar Tilak, and the Book of High Explosives by Alfred Nobel. There was also found correspondence which showed that Kalidas was an intimate acquaintance of Narendra and Girindra.

5. It is argued here that acquaintance is nothing and that the articles found on the search do not indicate any criminal intent. No doubt it is not a crime to know criminals. As to the discovery of the things found at 7 Haldar''s Lane they were undoubtedly found in his possession and the fact is relevant as it has some bearing on the charges against him though we have attached but little importance to it. The evidence of association against Narendra is not so strong. He is the cousin of Girindra and lived with him at 43 Malanga Lane. He is shown to have been well-acquainted, if not intimate, with Kalidas who was also a friend of Girindra. It is in evidence in this connection that when 4-3 Malanga Lane was searched, also on 17th May 1914, Girindra threw from a window a packet containing proscribed leaflets. This was picked up by a constable and given to Mr. Tegart. One of, the papers in this packet was the Jagantar leaflet, Exhibit 40 (2), which is a highly inflammatory and seditious document. Except for this packet nothing of a directly incriminatory nature was found at the house, and it must be borne in mind that the attempt to conceal it was made by Girindra and not by Narendra. Against Bhujanga the only evidence of association is that he was an intimate friend of Kalidas, who frequently used to come to his house at 3 Jelliapara Lane. He does not appear to have fallen under suspicion before this case, nor was there'' any search of his house in May 1914.

6. Between 17th May and 26th August there is no evidence against these three appellants. After the searches in May the Police-watchers were withdrawn and there is nothing to indicate what they were doing.

7. We now come to the events of 26th August. On that day it is proved that Srish Chandra Mitter brought to the Ironyard 10 boxes, one of which pre-siimably contained the 50 Mauser pistols and the other nine a number of Mauser cartridges for those pistols. The boxes were deposited at the Ironyard by him and two or three other Babus, who have not been identified. Some conversation took place between him and the coolies at the yard. He said that he had permission to leave the boxes there and that they would be very shortly removed. One of the coolies Raghu Maharana sent the other cooly Isswar Bisal to fetch; Rampada Mukherjee. It began to rain, at that moment and consequently Isswai Bisal did not return with Rampads Mukherjee for about an hour, while the other cooly Raghu was sheltering in the shed. By the time that they returned the boxes had been removed and no one in the Ironyard appears to have seen who took them or where they were taken. In the interval a Babu who has been identified as Narendra came to the hackney car riage stand at the junction of Bowbaza Street and Wellington Street and engaged two hackney carriages, of which the drivers were Nur Mahomed and Sheikh Abdul. He took them down to where Malanga Lane runs into Wellington Street. Leaving Sheikh Abdul to stand in Wellington Street, he took Nur Mahomed with his gharry down Malanga Lane to the north of the Ironyard Narendra then brought out a box from the Ironyard on the head of 2 or 3 Ooriya coolies. The coachman Nur Mahomed described this box as about 4 feet in length and 1 cubit in width and height. It must, therefore, have been the larger box containing the 50 pistols. This was placed on the roof of his gharry. Narendra or the Chokra Babu as he is called then got into the gharry and told the driver to

drive to Panchanantola. He drove there and stopped at the head of Jeliapara Lane. There Narendra got out and went into a house and returned with two other Babus. One of them has been identified as Bhujanga Bhusan Dhar. Narendra called two coolies, the box was taken down and placed on the coolies'' heads and the three Babus went with them down Jeliapara Lane. Bhujanga lives at No. 3 which is the fourth house from the corner. They went into that house with the box. Another Babu, who has been identified as Kalidas, came out of the Lane with Rs. 6 or Rs. 7 in his waist cloth. These he took out, and gave Re. 1 to another Babu who has not been identified--to get change and pay the gharrywallah his fare 8 annas. This was done and Nur Mahomed says that he then returned to his stand. He mentions that he saw another gharry at the head of Jeliapara Lane when lie was standing there. Kalidas appears to have then gone back towards Malanga Lane because the evidence shows that it was he who came to Wellington Street and beckoned Sheikh Abdul who was still standing there to follow him. Sheikh Abdul followed him down Malanga Lane turning north of the Ironyard to a house which has been identified as 1-1 Abhoy Haldar''s Lane. There three boxes were placed inside the gharry and Abdul was told to drive also to Panchanantola. He drove in that direction and at the turning into Hidaram Bannerji''s Lane he passed Nur Mahomed''s gharry returning near the peepul tree which stands close to the corner. He drove on to the head of Jeliapara Lane and the three boxes in his gharry were also unloaded there and carried down Jeliapara Lane to what is clearly Bhujanga''s house No. 3. It is worthy of note that on the same night at about 9 or 9-30 p. m. another coachman Sheikh Abdul Bari was engaged by 3 or 4 Babus to take certain boxes from the same place 1-1 Abhoy Haldar''s Lane and that he drove at their direction to Tallah. When they had crossed the bridge and gone some little distance the boxes were unloaded from his gharry and he was discharged. He is unable to identify any of the Babus whom he saw in that night.

8. On the 29th August, as we have said, the theft was discovered by Messrs. Rodda & Co. and information was given to the Police. In consequence of that a Police notification (Exhibit 115) was issued dated 29th August 1914. That was a notification of the theft of arms and ammunition from Messrs. Rodda & Co., and stated that their Customs clerk was wanted as he was believed to have absconded after the theft. On the following day, i.e., 30th August 1914 Kalidas and Narendra were arrested as above stated. On that day another Police order (Exhibit 94) was circulated. This directed the thana officers to depute Head Constables to visit all the stables and stands in their jurisdiction and make careful enquiries and find out the three coachmen who were said to have carried 10 packages contained in 10 wooden dealwood packing cases on the evening of Wednesday the 26th instant from Malanga Lane accompanied by four Bengali youths. The approximate size of the boxes was given and a reward of Rs. 100 was offered for each ticca gharry traced. This shows that, on the 30th the Police had information which led them to believe that the boxes had been removed from Malanga Lane in ticca gharries, not as has been argued here in bullock carts. In consequence of this, enquiries were instituted. Among others, Mahadeo Singh one of the constables of the Colootola thana, visited the stables at 60 Eden Hospital Road where Mahammed Ismail kept several gharries. He questioned

Mahammed Ismail and his coachmen. No body at that time recollected anything connected with this affair and the constable left word with them to see if they could remember anything and, if so, to report to the thana. Mahadev Singh appears to have made his enquiries on 31st August. Before that, Abdul Sobhan, who was also a Head Constable at Colootola thana, had made enquiries and spoken to various hackney carriage drivers. He states that he gave information at the Eden Hospital stables on 29th or 30th August. He had an idea that the boxes might have been taken in hackney carriages though he disclaims having seen the first order of the Police before that day. On the night of 31st August, Mahammed Ismail, in consequence of information given to him by Nur Mahamed, took Nur Mahomed to the Colootola thana at about 9 P. M. Nur Mahomed was then taken to Inspector Shevlin and he stated what he had done on 26th with regard to the transport of these boxes from Malanga Lane. In consequence of what he said Sheikh Abdul who had not come to the thana with Nur Mahamed and their master, was sent for." He was not found for some 2 or 3 hours as he was out with a fare. When he came, Inspector Shevlin directed Abdul Sobhan to, take the two drivers round and let them point out the route by which and the several places to which they had gone on the afternoon of the 26th. This was done and on their return Inspector Shevlin took the drivers to Superintendent Aldridge. Communication was then made to Mr. Tegart and Mr. McLeure; and Mr. Tegart with a number of Police Officers and the two coachmen went to 3 Jeliapara Lane in the early-hours of the morning of 1st September. On arrival at No. 3 Jeliapara Lane, the inhabitants were aroused and told to come down. Bhujanga came down the stairs with another Babu apparently his father and was immediately identified by both the coachmen Nur Mahomed and Sheikh Abdul. He was at once arrested and the house was searched but nothing incriminating was found there.

9. On 2nd September, identification proceedings took place before Mr. McLeure. His note of the proceedings has been put upon the record in this case as Exhibit 129. This was not strictly correct, but it appears to have been" placed upon the record at the request of the accused, when the other identification proceedings which had taken place before the Magistrate in the Presidency Jail were also put upon the record. Nothing turns upon the admission of this document except that in paragraph 10 Sheikh Abdul is said to have given the reason why he did hot identify Kalidas on the first occasion, namely, because when he (Kalidas) paid the carriage hire, his body was bare and when he (Sheikh Abdul) was first asked to identify all the persons before him, they had shirts on. It is not suggested that the identification proceeding before Mr. McLeure was not perfectly fairly and properly conducted. The result of that was that, on the first occasion, Nur Mahomed identified Kalidas and Bhujanga. When the various persons before the witnesses had been ordered to. remove their coats, shirts, or vests, Nur Mahommed then identified Bhujanga, Kalidas and Narendra, Sheikh Abdul was unable, in the first instance, to identify anyone. On the second occasion, when their bodies were stripped, he identified Kalidas.

10. The identity of these three appellants and the part which they took in removing the boxes from Malanga Lane on 26th August depend, upon the evidence of the two coachmen Nur Mahomed and Sheikh Abdul, and one Chuni Lal Dey who lives at the corner of Hidaram Banerji"s Lane and Jeliapara Lane, This witness had been considered by the Chief Presidencey Magistrate as not absolutely reliable. He knew Bhujanga well by sight and also knew Kalidas as frequently coming to Bhujanga"s house. " He says that he saw two gharries come in the first instance, out of one of which stepped Bhujanga and out of the other Kalidas. This, it has been said, is in conflict with the statement of the coachman Nur Mahomed. But it is to be observed that Nur Mahomed does mention the presence of another gharry at the head of Jeliapara Lane at the time when he was there. Chuni Lal Dey, however, says that Kalidas was in one of the first gharries. He also mentions two gharaies on the second occasion. In this, no doubt, his statement is in conflict with the other evidence on the record. He claims to have seen from his window, where he was reading, several boxes being taken down the lane to Bhujanga"s house. A good deal was said as to the impossibility of a person at the head of the lane seeing boxes being taken into Bhujanga"s house. The photographs which have been put in evidence prove beyond doubt that though the actual door of the house is not visible from the head of the lane inasmuch as it does not and cannot project from the wall, still a person standing at the head of the lane would be able to see another person entering that door, just as one can see a person turn a corner, though he cannot actually get a view of that person when he has gone round the corner.

11. If the evidence of these persons is to be accepted, it is admitted by all these three appellants that the case against them is proved. They have, therefore, devoted the greater part of their argument to endeavouring to shake this evidence and to persuade us that it cannot be accepted. The Magistrate to whose opinion we must give due weight, especially as he saw and heard the witnesses when giving their evidence, has accepted that testimoney. The main points which are urged against such acceptance are, first, that the evidence of the two coachmen is discrepant; secondly, that the coachmen themselves are suborned witnesses procured by some subordinate Police Officers, and, thirdly, that the identification by them of these three appellants is unsatisfactory and unreliable.

12. So far as the discrepancies between the evidence of Nur Mahomed and Sheikh Abdul are concerned, they do not appear to us to be matters of prime importance. The two stories do not tally in every single particular. If they did, these witnesses would at once have been stigmatised as having been tutored and having told a set story before the Court. The main discrepancies appear to be, first, as to their engagement. Sheikh Abdul, no doubt, says that he was standing near Harcutta Lane--a few yards north of the Bowbazar turning, when Nur Mahomed, whowas on the stand, beckoned to him. Nur Mahomed on the other hand, says that Sheikh Abdul was on the stand with his gharry just behind his (Nur Mahomed"s) gharry and that they were both taken from there. Their evidence is not quite clear upon the point for the simple reason that questions which would have gone to elicit the true facts were omitted. From certain statements of Sheikh

Abdul it would appear that he also was on the stand. He says that he took grass from Nur Mahomed''s gharry to feed his horse so that, at that point of time, he was probably next or quite close to Nur Mahomed''s gharry. It does not, however, appear to us to be a point which vitally affects the truth of their statements.

13. Then it is said that there is a discrepancy as to the arrangement for the fare. Each was paid 8 annas. As to that they both agree. The precise point of time at which it was arranged that 8 annas should be paid does not clearly appear. It may have been that Nur Mahomed accepted the arrangement for both on the stand and that some-thing further was said to Sheikh Abdul on the subject when he was down by Malanga Lane. He was undoubtedly engaged and told to wait orders, as he must have stood at the entrance of Malanga Lane for some 20 or 25 minutes.

14. Then a point was made of the meeting of the two carriages near the peepul tree. It was said that if Kalidas went, as the evidence denotes, from Jeliapara Lane to Malanga Lane, picked up the remaining boxes in Sheikh Abdul''s gharry, and then drove towards Panchanantola, Nur Mahomed, who had been discharged when Kalidas saw him paid at the head of Jeliapara Lane, must have got far beyond the peepul tree before Sheikh Abdul''s gharry arrived at that spot. No doubt this would be the case if Nur Mahomed at once left the head of Jeliapara Lane and drove directly and without stopping towards the Bowbazar stand. It is true that Nur Mahomed says "I then drove back to my stand." He does not, however, say, nor was he asked, whether he at once started back to his stand, or whether he waited for any time at the head of Jeliapara Lane, or at any other spot, before Wellington Street was reached. No question was put to him on this point in cross-examination. We do not think that it would be fair to draw the conclusion which the appellants ask us to draw on this point in the absence of any such questions which undoubtedly should have been asked if any such contention was to be put forward.

15. Then it was said that the Police were responsible for the production of the two witnesses and the stories which they have told. In this case, the several Counsel for the appellants have expressly refrained from making any charges of imporper conduct against the higher Police Officials; but they do not refrain from suggesting that these witnesses were procured by Mahadeo and Abdul Sobhan, the two Head Constables, and induced by them to give false evidence. How this could be done without detection by the higher Police Officials, who had conduct of the case, is not explained. It is after all only a suggestion and it was not put to the con-Stables that they had been guilty of any such conduct. We need only say that there appears to be no foundation in fact for that suggestion. The story as told by these two men does not appear to be a set story which might be expected from witnesses who had been suborned and who were, in fact, stating what never had taken place.

16. We do not think that any importance can be attached to the fact that Mahammad Ismail had 3 or 4 carriages working for hire while, on the 26th, he had only one subsisting license; nor is it a matter for adverse comment, so far as this case is concerned, that

Sheikh Abdul was using his brother''s license and had not a license of his own at the time. These may be offences against the Police regulations; but they do not really affect the credibility of these witnesses. It is probably a very common occurrence in Calcutta; and, if investigation were made on any one day, it would probably be found that there are many owners and drivers in the same position.

17. Then it was said that these people did not come of their own ''accord to the thana but were brought by the Police. The fact that they had been interviewed by the constables before the night of 31st August and told to see if they could recollect anything appears to us to be a fact in favour of, rather than against, the truth of their story. It is most unlikely that witnesses who had been suborned would admit such a circumstance as that. It was argued that they had not come to the thana of their own free will because of an answer which was made by Mr. Shevlin "on 31st August, Sobhan came with the coachman and owner at 9 p. m., and said he had found them at Eden Hospital Road Stables." It is perfectly clear on the evidence that Abdul Sobhan brought these two men to Mr. Shevlin on their arrival at the thana. He did not, in fact, come with them from the stables; but the differnce between the remark that he had found them at the stables and that they had come from the stables is so slight that Mr. Shevlin may very probably have misunderstood the exact statement of Abdul Sobhan. On the evidence, it is clear that Nur Mahomed came of his own accord; and, as he was -unwilling to come alone, his master Mahammed Ismail came with him. Mahammed Ismail does not appear to have said any thingor taken any part in giving the information to Mr. Shevlin at the thana. We, therefore, agree with the Chief Presidency Magistrate in the view that he has taken of the evidence of these two witnesses.

18. With regard to Chuni Lal Dey, it may be that his evidence cannot be accepted unless it is corroborated by other testimony. It appears that he has been guilty on several occasions of acts of violence which have brought him into contact with the Police and he has indeed been convicted on more than one occasion. But this does not necessarily mean that every word that he has stated here must be regarded as untrue. Coupled with the evidence of the two coachmen it leaves no doubt as to the arrival of these boxes at 3 Jeliapara Lane on 26th August.

19. We then come to the question of identification. In Court the witnesses have of course indentified these three accused. We do not forget that in the identification proceedings Narendra was identified only by Nur Mahomed and not by Sheikh Abdul. As to Kalidas, he was clearly identified by both, though Sheikh Abdul did not identify him until his shirt had been removed. It was urged that it was highly improbable that youths of the bhadralog class such as the present appellants would go about the town with their bodies bare. It appears to us that it is extremely probable that they would do so, if they were engaged in a transaction such as is now alleged against them. They would be anxious to avoid any appearance of gentility and to disguise themselves if possible in the garb of doolies. As to the identification of Bhujanga there is really no question Both the coachmen took the Police straight to his house and he was identified by both, the moment that he

came down the stairs.

20. After the case of these three apellants had been put before us, the learned Counsel for Narendra addressed some general remarks on the illegality of the charge framed. It was not easy to understand the argument as he did not very clearly enunciate what was the illegality of which he complained. But after listening to his remarks we gathered that what he said ultimately brought us back again to the question of fact. Undoubtedly there was a conspiracy and if these people did what they are said to have done, then they would be members of it, and so far as the conspiracy is set out in the charge, it is set out in a proper and sufficient manner, and no exception can be taken to the charge as drawn. The question resolves itself into this, were they members of the conspiracy or not.?

21. No doubt when the proof of a conspiracy depends upon proof of the participation of the accused in an overt act which itself amounts to an offence, it has been stated in England that the proper course is to put the accused on their trial for that offence. But the course adopted in the present case is not illegal [see O" Connell v. Queen (1844) 11 C1. F. 155 : 9 Jur 25 : 1 C. C.C. 413 : 65 R.R. 59 : 7 Ir.L.R. 26l : 5 St Tr. (N.S.) 1 : 8 E.R. 1061. It is not the case here that the evidence of receipt of the stolen arms is lacking in precision or definition. On the contrary we understand that a charge would have been framed on this basis in the Court below if it had not been thought that such a charge could not be legally tried along with the charges of conspiracy. The learned Magistrate convicted on the second of the two charges framed by him because he was satisfied that there was a conspiracy to gain unlawful possession of arms but was not satisfied that the conspiracy was also a conspiracy to gain possession of arms by theft.

22. With regard to Kalidas, he is shown to have consorted with suspects in April and May. His house was searched in May and books and documents were found there with which circumstances we have already dealt.

23. Between May and August there is undoubtedly nothing against him or indeed the other two appellants. But if this transaction with regard to the pistols and cartridges is proved, there can be no doubt whatever that it was in furtherance of a conspiracy which had been previously entered into by these persons to get possession of arms and ammunitions. With regard to the identity of the boxes removed on 26th August with the boxes of pistols and cartidges stolen from Messrs. Rodda & Co., we do not think that there can be any doubt whatever. They are proved to have been left at the Ironyard by Srish Chander Mitter, and to have been immediately removed from there by other Babus of whom Kalidas and Narendra are proved to be two. It is noteworthy that several of the accused and suspected persons live in that locality. Taking all the evidence against Kalidas, we think that the case has been proved against him and that his appeal must be dismissed.

24. With regard to Narendra, the evidence of association is, as we have said, much less. But if his complicity in the transportation of these boxes on 26th August is proved, there

can be no doubt also as to his complicity in the conspiracy.; His Counsel urged that his case was one of mistaken identity and that it was not shown beyond doubt that he was the Chokra Babu who had hired the gharries and taken the first box to Jeliapara Lane. It is true that he was identified only by Nur Mahomed; but we see no reason to think that that was not a good identification. It was urged on his behalf that he was of a good family and that he was, in point of fact, employed in the Post Office. It was complained that the prosecution did not prove that he was absent from his duties in the Post Office on the 26th August. We need only say that it was not incumbent on the prosecution to prove the negative. They have adduced positive evidence of the fact that he was engaged in this transaction on the afternoon of 26th August 1914. If he was not there and he was engaged in his duties at the Post Office, nothing could have been easier than for him to have shown that from the office records and to have proved an incontrovertible alibi. He was, we are told, though it does not appear from the evidence, engaged in the Railway Mail Service. It may very well be, therefore, that this 26th August was his off day when he did not go out on the train. It was, we think, for him to show that he was engaged in his duties if that was the fact. We think, therefore, that on the whole evidence the case against Narendra is also proved and his appeal must be dismissed.

25. Lastly, with regard to Bhujanga, though there is no evidence of previous association with political suspects or others except Kalidas, it is quite clear that these boxes were taken to his house on the evening of 26th August. He was there and aided in unloading them and receiving them into his house. His identity has been established with complete certainty. He may, therefore, be safely convicted of being a member of this conspiracy to have possession of arms. His appeal is also dismissed.

26. We then come to the appeal of Haridas Dutt, which stands on a totally different footing. Haridas Dutt is an Eastern Bengal man and does not usually reside in Calcutta. He admits that he is a political suspect. In April 1914 he was undoubtedly in Calcutta residing at the shop of Rajani Dutt at No. 46, Boithakkhana Road. He was seen there playing cards and he does not now dispute that that was his residence. He was one of the suspects who were watched in April and May 1914. He was seen in Wellington Square and other places in company with Anukul and others; more particularly he was seen at Sealdah Station on two occasions, and went from there up the line. We have it that at the end of April or the beginning of May, he worked in the Alexandra Mill under an assumed name; and it is suggested that he want there for the purpose of taking violent steps against Mr. O. Brien, who had been charged with assaulting a cooly in that Mill. There is however no proof of this; but the fact remains that he was there for a time in a false name. On be 17th April, the premises 46, Baithak-khana Road were searched by the Police, but nothing was found there to incriminate Haridas Dutt. In July, that is to say, Asarh or Sravan 1311 B.S., he was living at Dumka under another assumed name, i.e., Atul Chandra Nag. He appears to have remained there for a full month or more. It is suggested on his behalf that he was taking lessons in wrestling or that he went there for his health. It is more probable that he had gone there to keep out of the way as he was

subject, and knew that he was subject, to Police surveillance. There is, however, nothing whatever to connect him with the theft, of these arms and ammunitions or the transportation of them on the 26th August. The next that we hear of Haridas Dutt in this case is that on 27th September, he came to 34 Sikdarpara Lane, with another Babu to hire a godown which they said they required for the storage of utensils. This was taken by them for a month at Rs. 8. On 29th September certain boxes were brought there and deposited in that godown. These boxes were afterwards found to contain Mauser cartridges, and though Mr. Prike could not say if these were the identical Kynoch cartridges which had been stolen from his firm on 26th August, still from his and Mr. Tegart"s evidence it will appear that they must have been part of that consignment. After 29th September Haridas was seen by Umapada Chatterjee under somewhat suspicious circumstances at 18-2 Duttapara Lane. It is suggested that there he was making up boxes with others and transferring cartridges from the cases stolen to other cases. On 11th October, he came to 34 Sikdarpara Lane to remove some of the cases from that godown. By that time a constable in plain clothes, or at least in half uniform, had been placed on watch. Directly Haridas came inside the premises and saw the constable he ran away. He was pursued and arrested and, as we have said, the cartridges were found in the godowns which he had hired. That is shortly the evidence against him in this case. Assuming that it is true in every particular it does not, in our opinion, amount to proof of complicity in the conspiracy which is the subject of the charge. That conspiracy is said to have begun about 1st March and to have ended on 30th August, when Kalidas and others were arrested. The evidence of his association with any of the conspirators would not be enough by itself to convict him of being one of the parties to that conspiracy. Nothing incriminating was found on the search of his premises. He is proved conclusively to have been absent from Calcutta at the Alexandra Mill in April and May and at Dumka during July and possibly part of August. He does not come upon the scene or have any connection with the stolen cartridges until 27th September 1914 nearly a month after the conspiracy is said to have ended. It would be impossible to refer back his acts of 27th September and the following days to some date in August and infer therefrom that he was one of the conspirators.. A number of other possibilities arise in his case which would have to be eliminated before any such inference could be drawn. We do not wish to say more than is necessary with regard to the evidence against him of possessing this ammunition in September because he is now under trial on the substantive charge in that connection. All that we., need say is that, assuming what has been proved in this case to be true, it does not necessarily follow from that that he was a member of the conspiracy charged in this case.

27. We think, therefore, that his appeal must be allowed. The conviction and sentence upon him are set aside.