Gopal Khaitan Vs The King

Court: Calcutta High Court

Date of Decision: May 9, 1949

Acts Referred: Evidence Act, 1872 â€" Section 145
Penal Code, 1860 (IPC) â€" Section 406

Citation: AIR 1949 Cal 597 : (1950) CriLJ 136 : (1950) 2 ILR (Cal) 88

Hon'ble Judges: Harries, C.J; J.P. Mitter, J

Bench: Division Bench

Judgement

Harries, C.J.
The appellant was convicted of an offence of criminal breach of trust and was sentenced to one year"s rigorous imprisonment

and a fine of Bs. 0,000. He was also convicted of an offence u/s 81 (4), Defence of India Bales and was sentenced to one year"s rigorous

imprisonment and a fine of us. 26,000. The sentences of imprisonment were made to run concurrently.

2. The appellant together with B, h. Bhartia and Maniklal Pal were tried by an Additional Sessions Judge sitting with a jury upon a number of

charges. All throe accused were charged with conspiracy to commit fraudulent breach of trust and offences under Rule, 81 (4), Defence of India

Rules, The appellant was also charged on three counts u/s 406, Penal Code, and on two counts under e. 81 U), Defence of India Rules. B. L,

Bhartia and Maniklal Pal were charged" on three counts for aiding and abetting offences u/s 406, Penal Code. They were also charged upon two

counts with offences under Rule 121, Defence of India Rules.

3. The jury returned a verdict of not guilty in the case of B. L, Bhartia and Maniklal Pal-in respect of all charges made against them. The learned

Additional Sessions Judge accepted this verdict and acquitted them of all charges. The appellant was found not guilty of conspiracy and also not

guilty upon two counts u/s 406, Penal Code, and on one count under B, 81 U), Defence of India Rules. He was however found guilty on one

count u/s 406, Penal Code, and on one count under Rule 81 (4), Defence of India Rules. The learned Judge accepted this verdict, convicted the

appellant u/s 406, Penal Code and Section 81 (4), Defence of India Rules and sentenced him as I have already indicated.

4. The appellant, S. Q. Khaitan, was the managing director of a company known as the Steel Products Limited having its factory at No. 96,

Garden Reach Road, Kidderpore and its-bead office at No. 9, Olive Street, Calcutta. B. L. Bhartia was a cousin of the appellant and used to

come to the factory and frequently transacted official business for the appellant in his absence. The accused Maniklal Pal was the Accountant at the

head office and used to attend the factory and sometimes collect sale proceeds of goods sold to outsiders.

5. One C. J. Hill was originally an accused person, he being the works manager o the factory of Steel Products Limited. Before the committing

Magistrate however Hill became an approver and eventually gave evidence in the ease against the accused persons, It was further alleged that one

Sarat Das, a store-keeper, was also concerned in the conspiracy with which the accused Bhartia and Maniklal Pal were concern. ed, but he was

not made an accused in this case and he did not give evidence.

6. During the last Great War, Steel Products Limited received large orders for the manufacture of articles required by the military authorities, and

amongst other orders they received from Government was an order for the manufacture of 75,ooo ""s"" brackets which were required by the

American Army. The material from which these ""S"" brackets were to be manufactured was to be supplied by Government and the manufacturers

were only entitled to charge the costs of manufacture. Any material left unused and scrap were the property of Government and the Steel Products

Limited wore not entitled under the contract to deal with that material without the authorization of Government.

7. Generally speaking, the charge against the appellant and his co accused was that they obtained large quantities of material from Government for

the execution of this contract and in executing the contract, used to a large extent inferior material and disposed of the material supplied by

Government to buyers on the blaok market at inflated prices.

8. Messrs Steel Products Limited were given 91.205 tons of 3/32 gauge plates by Government for the manufacture of these ""S"" brackets. The

allegation made by the prosecution is that the Steel Products Limited, an the instigation of the appellant, only made a third of these brackets from

3/32 gauge plates and manufactured the remaining " B"" brackets from 14 gauge material. According to the prosecution, of the 91.205 tons of s/32

gauge plates supplied by Government only 17& tons were used, 10 tons being used in the finished material and 7j tons being left as scrap. It ia said

that eventually there were some id or 20 tons found at the factory and the allegation was that roughly 5d tons had been disposed of wrongfully by

Steel Products Limited. In this 54 tons were included 20 tons alleged to have been sold to one Tapshi Prosad Gupta,

9. The charge upon which the appellant was convicted, namely, fraudulent breach of trust, was in respect of these steel plates entrusted to Steel

Products Limited for a specific purpose. It was said that the steel platea had not been used for that purpose and that they had been

misappropriated. The charge under the Defence of India Rules upon which the appellant was convicted was the charge of wrongfully selling 20

tons of these plates to Tapahi Prosad, There were-other charges as I have said, but we need not consider them, because the appellant and his eo-

accused were acquitted of all such charges,

10. The defence was that all the ""S"" brackets had been manufactured out of the steel plates-supplied by Government, and that what was left,

namely, 19 to 20 odd tons represented excess plates and there was also a quantity of scrap. In short it was alleged that the work had been done in

accordance with contract and what was left was the balance after making all the ""S"" brackets out of this steel, The defecee also alleged that this

prosecution had .been brought, particularly against the appellant, from enmity and serious allegations were made against the police in the conduct

of the investigation and in the conduct of these proceedings,

11. The main and indeed the only real evidence against the appellant upon theeo two charges was the evidence of Hill, the works manager, who

had turned approver and the evidence of Tapsbi Prosad, the latter being concerned only with the charge under the Defence of India Rules.

12. The evidence given by Hill in the exami-nation.in-chipf fully supported the case for the proseoation. He said that only a third of the 76,000 ""S

brackets were manufactured out of 8/32 gauge steel provided by Government. The remainder, according to the witnesa, was manufactured out of

14 gauge steel and the 3/32 gauge steel saved was wrongly disposed of by Steel Products Limited, When this witness was cross-examined,

however, his story broke down. He admitted that throughout the process of manufacture of these ""S"" brackets which were requited for the

American Army the work was supervised by an American Army representative and he practically made it dear that the ""S"" brackets-could not

have been made from anything but the material supplied by Government which was the material required by the American Army authorities.

Further, certain letters Mere put to Hill which were written by him. These letters tended to show that all the ""S"" brackets must have been made

from the material supplied by Government. There can be no doubt that the whole version given by Hill changed under cross-examination and the

effect of the cross-examination was to show that the ""S"" brackets were entirely made from the proper material.

13. At the end of the cross-examination the Public Prosecutor tendered Hill''s deposition before the Court of the committing Magistrate and the

order in the order sheet merely records that the Public Prosecutor put in Hill''s deposition before the committing Magistrate under fl. 288, Criminal

P.C. In that deposition Hill had supported the case for the prosecution as indeed he had supported it in his examination in chief.

14. It was strongly urged before us by Mr, N. K, Basil that this deposition of Hill taken in the Court of the committing Magistrate was inadmissible

and as it was the most important piece of evidence in the case its admis-6ion vitiated the verdict of the jury which could not possibly stand.

15. There can be no doubt that in a proper case a deposition of a witness taken in the Court of a committing Magistrate may be put in as evidence

at a sessions trial and if it is put in, it is evidence for all purposes subject to the provi-aions of the Evidence Act. Section 288, Criminal P.C., is in

these terms:

The evidence of a witness duly recorded in the presence of the accused under Chap. XVIII may, in discretion of the presiding Judge, if such

witness is produced and examined, be treated as evidence in the ease for all purposes subject to the provisions of the Evidence Act.

16. It will be Been that to make the deposition evidence it must be a deposition duly recorded in the presence of the accused under chap. 18,

Criminal P.C.

17. Mr. Basu urged that the deposition of Hill given in the Court of committing Magistrate was not a deposition duly recorded under chap. 15,

although it was duly rewarded in the presense of the accused.

18. There can be no doubt that when this ease was before the Magistrate, the Magistrate intended to try it and the case proceeded as a warrant

case under the provisions of chap. 21, It is clear from the order sheet that when all the evidence of the prosecution was concluded the case was

adjourned in order to allow the Public Prosecutor to frame draft charges and the draft charges framed are on the record. Those charges were

undoubtedly framed as charges which would be tried by the Magistrate, because the words ""within the jurisdiction of this Court"" appear in the draft

charges. However, as the Magistrate himself admits in the commitment order, he changed his mind and decided to commit because he thought he

could not give adequate punishment if he found the accused guilty. It is clear, therefore, that at a very late stage the Magistrate abandoned the idea

of trying the case himself and decided to commit. Mr. Basu''s argument is that until the point at which the learned Magistrate changed his mind the

proceedings could not possibly be said to have been carried on under the provisions of Chap. 18, Criminal P.C. which deals with enquiries and

committal proceedings. Mr. Basu concedes that when the Magistrate had decided to commit the proceedings from that point onwards could be

said to be under chap. 18, but not proceedings before the point of time at which the Magistrate changed his mind. There appears to me to be

considerable force in Mr. Basu''s argument, but unfortunately for him there is a direct authority on the point. A Bench of this Court in the case of

Abdul Gani Bhuya v. Emperor 53 cal. 181: A. I. R. 1926 Cal. 285 : 26 Cri. I. J. 1577, have held that where a Magistrate commenced a case as a

trial before himself, but at a later stage decided to commit it to the Court of sessions, the evidence so taken was duly recorded under chap. 18

within the mean-ing of Section 288, Criminal P.C. this case which is binding on u3 ia a direct authority for the contention of the Crown that the

deposition of Hill was duly recorded under the provisions of chap 18.

19. It will also be seen from the terma of Section 288, Criminal P.C. that the prosecution have no right to put in such deposition and such

deposition can only be admitted as evidence if the presiding Judge in the exercise of his discretion permits the deposition to go in as part of the

evidence.

20. Mr. Basu has contended in this case that there was no exercise of discretion by the learned Judge at all when this deposition was admitted in

evidence. As I have stated, all that the order sheet shows is that the Public Prosecutor put in the deposition u/s 288, Criminal P.C. In the order

sheet it is not even stated that the learned Judge permitted the document to be put in evidence. There is nothing to suggest that the learned Judge

ever considered the matter or ever thought that he had to decide whether the document should be admitted oc not,

21. It ia quite clear from the charge of the learned Judge to the jury that he had formed no view at all as to whether this deposition should be

admitted or not. He seema to have admitted it because the Public Prosecutor put the document in evidence and it is quite clear from the charge that

the learned Judge was not certain why the Public Prosecutor put the document in evidence. In the charge the learned Judge made this observation :

the evidence of Mr, Hill, Mr. K. P. De, T.P. Gupta and Mr. Therani recorded by the learned Magistrate baa been tendered by the prosecution,

and accepted by this Court u/s 238, Criminal P.C. It was evidently put in by the prosecution to show that most of the witnesses went to give a

different version here and so it is contended by the Public Prosecutor that in order to ascertain the real truth, the evidence of the lower Court

should be considered along with the evidence given in this Court.

22. All that the learned Judge can say was that it was evidently put in by the prosecution for a certain reason, though he does not seem to be

certain. However one thing is quite clear and that is that he did not consider the mutter and did not admit this evidence for any particular reason.

23. As I have pointed out, the admission of this evidence is at the discretion of the presiding Judge and such discretion must be exercised judicially.

If this evidence is put in as a matter of right by the prosecution without any consideration by the learned Judge, then it appears to me that the

evidence has not been put in and accepted in accordance with the provisions of Section 288, Criminal P.C. In the present case there was no

exercise of judicial discretion or indeed any discretion by the learned Judge, The deposition seems to have been put in merely because the Public

Prosecutor required that it should be but in evidence.

24. Further it appears to me that this discretion which is given to the trial Judge to admit a deposition taken in the Court of the committing

Magistrate is a discretion which must be exercised very sparingly and very carefully. It must be remembered that in the Court of the committing

Magistrate witnesses are rarely cross-examined and in the present case there was no cross-examination of Hill before the committing Magistrate.

The deposition therefore records evidence which was never te3ted and it appears to me that the prosecution must make a strong case for its

admission before a learned Judge should allow it to be admitted and thus become part of the substantive evidence in the case. Benches of this

Court have considered the exorcise of discretion under this section and I refer to an ob. servation of Edgley J. in the case of Emperor v.

Behanuddin Hondal I. L, R. (1943) cal. 381 : AIR 1944 Cal. 323 ; 46 Cri.L.J. 199. The learned Judge observed :

In our view, this section confers a discretion on the Judge which should be very carefully and sparingly oversized. The general scheme of the

Evidence Act and of the Code of Criminal Procedure with regard to criminal trials is that the evidence for Or against an accused person should

ordinarily be given in open Court and that a witness should be subjected to cross-examination in the ordinary way with regard to all statements

made by him. If a witness completely resiles from the evidence which he has given before the committing Magistrate or if the testimony which ho

gives at the . trial of an accused person U substantially different from that which he has given on soma previous deafen, it may be necessary for the

Judge to exercise his discretion u/s 288, Criminal P.C. fot the purpose of bringing the previous statement on the record.

25. With great respect entirely agree with the view expressed by Edgley J, It is a discretion which should be exercised most carefully and for very

good reason. Where, for example, as Edgley J. points out, a witness in the Court of Sessions resiles completely from his statement in the Court of

the committing Magistrate, such may well be a case where his earlier deposition can be put in evidence. The fact that be resiles from his earlier

evidence makes his evidence in the Court of Sessions suspect and therefore justice demands that his earlier desposition should be put in evidence.

26. Hill, however, did not resile from his earlier evidence when he gave evidence in chief before the learned Additional Sessions Judge and jury. It

is conceded that his evidence-in-chief follows closely the evidence which he gave before the committing Magistrate. It is only when he was cross-

examined that he gave a different version.

27. The Public Prosecutor appears to have thought that because a witness under the stress of cross-examination has had to abandon his evidence

in chief that would give the Court a right to admit the earlier deposition before the Court of the committing Magistrate. In my view a deposition

given before a committing Magistrate should very rarely be admitted where the difference in the evidence only becomes apparent on cross-

examination in the Court of Session. An untruthful witness may give evidence with safety before the committing Magistrate. In the Court of Session

he may do be when giving evidence in chief. But he is liable to break down completely under skilful cross-examination. Is the prosecution to have

the right to put in a deposition given in the Court of the committing Magistrate when cross-examination has shown clearly that the evidence in chief

in the Sessions Court which followed the evidence given in the Court of the committing Magistrate was false? To admit in such circumstances the

deposition taken before the committing Magistrate would be to admit evidence which had been demonstrated by cross-examination to be false.

28. However, there might be cases where a learned Judge could properly admit a deposition u/s 288 where the witness had given a different

version in the Sessions Court in cross-examination. If, for example, it-wag obvious that the witness was simply taking advantage of the cross-

examination to resile from his previous statement or, in other words, if the cross-examination showed that the witness had been won over, in such

Other possibly the deposition before the committing Magistrate could be admitted u/s 288, Criminal P.C. But it is not necessary for me to decide

that question because in the present case there ia nothing to show that the learned Judge was of opinion that the cross-examination was not a

perfectly genuine cross-examination which had resulted in the witness telling a very different story from what he had told earlier. This case appears

to me to be a case where a witness faced with certain letters which he had written could not maintain his earlier version, and that being so there

was in my view no ground whatsoever upon which the learned Judge could exercise his discretion and admit the deposition of Hill made before the

committing Magistrate. In any event, as I have said, the learned Judge never purported to exercise his discretion, but even if he had, I should be

bound to hold that he should not have done to in the circumstances.

29. In a comparatively recent case in this Court, Emperor Vs. Ajit Kumar Ghosh and Others, , a Bench emphasised the necessity of exercising this

discretion very carefully. At p. 343 Edgley J., who delivered the leading judge merit, observed :

The learned Judge does not appear to have applied all mind to the question whether it was really necesaary to place these depositions on the

record under H. 288 of the Code. He has allowed the whole of the depositions to be put in without marking the particular passages upon which

the prosecution rely. Thin procedure has resulted in the time of this Court being wasted in attempting to discover what these passages were, With

regard to the use which the learned Judge made of Section 288 of the Code we can only say that he failed to exercise any discretion at all within

the meaning of the section and it follows that these depositions must be exoluded from the record. In this connection, we draw the attention ol the

learned Judge to the observations of this Court in Rahenuddin Mnndal"s case I. L. R. (1943) Cal. 381 : A. I. K. 1914 Cal. 323 : 46 Cri.L. J.

199), with regard to the proper application of Section 288, Criminal P.C.

30. In that case the learned Judge, as in the present case, had not considered the matter at all and therefore the Court held that the admission of the

deposition taken in the Court of the committing Magistrate wa3 not in accordance with law. That is precisely what happened in this case and I

would go further and hold that even if the Judge had considered the matter and allowed The deposition to go id, it would not have been in the

circumstances a judicial exercise of his diacretion. this was not a case of a witness resiling from an earlier statement, but a case where a witness

was driven under the stress of cross-examination to depart from the original version, which he gave in the Court of the committing Magistrate and

in evidence in chief,

31. It was also urged by Mr. Basu that the deposition could not be put in evidence bacau3e it had not been put to the witness and the latter given

an opportunity to explain the difference between what he had said in the Court of the committing Magistrate and what ha was then saying in the

Court of Session.

32. It will be observed that u/s 288, Criminal P.C. the deposition when put in is to be treated as evidence in the case for all pur-posea subject to

the provision of the Evidence Act.

33. The argument is that if the earlier deposition was intended to contradict Hill"s evidence under cross-examination, then it could not be used

without Hill first being given an opportunity of explaining how he came to say what he stated in the deposition. The matter was considered by a Full

Bench of this Court in the case of Emperor v. Zaivar Bahman 31 Gal. 142 : l cri, L. J. 86 P. B.. It ia true that this-Full Bench case was decided

before Section 288 was amended and the deposition made evidence for all purposes. But even before that amendment The deposition was to be

treated as evidence-subject to The provisions of the Evidence Act. In the Full Bench case it was held that in a trial before a Court of Session,

counsel for the prisoner is not entitled to refer to the depositions given before the committing Magistrate for the purpose of contradicting the

witnesses-before the Sessions Court without drawing their attention to The alleged contradictions in their-previous depositions and giving them an

opportunity of explaining the same. Pinesap J. who was then officiating Chief Justice at p. 141-observed;

On the point referred to U3, I am of opinion that the course taken by the learned Counsel for the accused, in this ease, was not correct. Ha was

not competent to tender the entire record of the proceedings of the Magistrate"s Court, for the purpose of laying before the jury any statements

which might be contained therein as he thought proper, ""Unless the attention of a witness ia expressly directe. 1 to any particular statement

previously made by him, by reading it to him or allowing him to read it from the original deposition or &a authenticated copy of it, any previous

statement cannot be admitted in evidence in contradiction as to statement that he has subsequently made. And in admitting any statement shown to

be in contradiction to a statement made at a trial, that statement alone should be put in evidence and not the entire deposition. To allow any other

course would not be fair to the witness and would represent him as having made a contradictory statement or statements which ha might have

poasibly been able to explain if he had had a proper opportunity.

34. It appears to me that common fairness demands that a witness should be asked to explain the difference in the version contained in this

deposition before the Court of the commit, ting Magistrate.

35. As I have said the learned Judge was by no means certain why the Public Prosecutor in this case tendered this deposition as evidence but he

must have done so partly with a view to contradicting Hill"s evidence under cross-exami. Cr.L.J. 1950 Gopal Khaitan v. The King (Harries C. J,)

nation. If that was the purpose, then it appears to me that Section 145, Evidence Act clearly applies as pointed out by the Fall Bench case to

which I have made reference. A3 that section applies the previous deposition cannot be treated as evidence unless it had been put to Hill and the

latter given an opportunity of explaining it. This is clearly laid down in the two recent ca3ea of this Court to which I have made reference, namely,

Emperor v. Bahanuddin Mondal I. L. B. (1943) Cal. 381 : (A, I. R. 1941 Cal. 323: 46 Cri.L.J. 199) and Emperor Vs. Ajit Kumar Ghosh and

Others, In both these cases it was held that if a previous deposition was put in with an intention to contradict a statement of a witness in the

Sessions Court, then such was not admissible if the deposition or the statements in the deposition relied upon had not been put to the witness and

the latter given an opportunity of explaining the same. The deposition was not put to Hill in this case and therefore it appears to me that on the

authorities of this Court we are bound to hold that the deposition was not admissible in evidence.

36. For the reasons which I have given I am bound to hold that the deposition of Hill taken in the Court of the committing Magistrate was ""wrongly

admitted as evidence in this case.

37. The learned Judge in his charge to the jury has pointed out that the whole case turns on this deposition in the Court of the committing

Magistrate. The learned Judge observed:

If you think that Mr. Hill is speaking the real truth before the Court of Session, then the prosecution has really got no ease and in that case you

must acquit all the accused persona of all the charge1 against them. If you believe the evidence before the learned Magistrate and the surrounding

facts and circumstances, including the conduct of the accused persons, then it is for you to consider whether there ia sufficient evidence for a legal

conviction.

[88] Again the learned Judge refers to this aspect of the case in these words:

Regarding Mr. Hill if you believe big evidence in examination-in-chief arid cross-examination here, then also the prosecution has got no case, but If

you can believe his statement before the Magistrate, and con-eider the conduct of the Steel Products as unfair and believe Ex. 162, then only the

prosecution has got some case.

39. It will be seen from these observations that the learned Judge directed the jury that practically the whole of the case for the prosecution rested

on the deposition of Hill taken before the committing Magistrate together with a document, referred to as Ex. 162.1 have already held that the

deposition was inadmissible in evidence and it will be seen that Ex. 162 was also wrongly dealt with by the learned Judge,

40. There were in fact three documents, ExSection 160,161 and 162, which purported to show how certain materials had been disposed of.

These documents gave the names of the buyers and the quantity of materials, the rates and toe total amounts paid. Exhibit 161 contains the

following heading :

The following materials disposed from the Factory in 1944/45 by the instruction of Mr. S, G. Khaitan. Money has been collected by him and

sometimes paid through Munik Bahu.

41. All these three documents were said to be in the handwriting of the store-keeper Sarat Das, and though the latter was not called, evidence was

called to show that the documents were in his handwriting. The documents were admitted in evidence and the learned Judge in directing the jury

has proceeded on the assumption that the proof of the document was tantamount to proving the truth of the statements contained in the documents,

The evidence which proved that these documents were in the handwriting of Sarat Das merely proved that Sarat Das had written them. Whether

what he had written was true or not could not be proved in the absence of Sarat Das. There was no evidence at all proving these transactions

except possibly the evidence of Tapsi Prosad which I shall refer to later. the learned Judge treats ex. 162 as if the document proves the truth of the

statements contained in it,

42. Tapai Prosad gave evidence in support of the charge under the Defence of India Bules and he stated that he had purchased 20 tons of sheets

of 3/32 gauge from Steel Products Limited. If he had, clearly an offence would have been committed u/s 81 (4), Defence of India Rules by the

appellant Khaitan. The learned Judge, however, pointed out to the jury that Tapsi Prosad was a witness upon whom no reliance whatsoever could

be placed. Ha had, it appears, made three state-ments to the police wholly at variance with his evidence later. The learned Judge summed up his

evidence in these words:

I have discussed that the evidence o Tapsi Gupta (Tapsi Prosad) given in this Court is quite inconsistent with the story told before the police and it

ib not safe to rely on such ft witness.

In another portion of his charge he told the jury frankly that they should not rely upon Tapai Prosad,

43. It is, therefore, clear that to sustain these two charges the prosecution had to rely upon the evidence of Hill, the evidence of Tapsi Prosad and

Ex. 162 and ExSection 160 and 161. In the view of the learned Judge, and indeed it is clear, the appellant could never be convicted on Hill''s

evidence in the Sessions Court. He could only be convicted upon Hill''s evidence in the Court of the committing Magistrate. Once it is held that

Hill''s deposition taken in the Court of the committing Magistrate was inadmissible in evidence, then I can see nothing upon which the appellant

could be convicted of an offence u/s 406, Penal Code, All that was left was Hill''s evidence in the Court of Session and the learned Judge told the

jury that if they accepted that evidence, then the appellant was bound to be acquitted.

44. On the charge of an offence under the Defence of India Rules the evidence was the evidence of Tapsi Prosad Gupta and particularly these

ExSection 160, 161 and 102. The learned Judge was himself satisfied that the evidence of Tapsi Prosad was worth nothing at all and the

documents relied upon were not admissible to prove the truth of the statements in the documents, There was therefore no evidence at all upon

which the appellant could have been convicted of an offence under the Defence of India Rules,

45. It is to be observed that the Public Prolocutor had put in evidence Tapsi Prosad''s deposition given in the Court of the committing Magistrate.

But that deposition would be in. admissible for the reasons which I have given in dealing with Hill''s deposition. Further, the deposition would only

accentuate the difference between Tapsi Prosad''s earlier versions to the police and the later versions in Court. In any event his deposition is

inadmissible.

46. The result is that there is no evidence before this Court upon which the appellant could be convicted of either offence and clearly the verdict

and oonvictions and sentences based there. on must be set aside,

47. The question arises whether a new trial should be ordered in this case. But in my view the evidence available does not warrant this Court

ordering a new trial. Hill who was an approver is a witness whose evidence is suspect and whose evidence requires corroboration. Tapsi Prosad

Gupta ia a witaess who has contradicted himself in such a manner that no reasonable jury could ever accept evidence. It might be possible to

prove these ExSection 1G0, 161 and 162 but it would be difficult to do be in the absence of Sarat Das who, we are told, is being prosecuted in

another case. That being so, there is really no prospect of a prosecution succeeding even if we did order a new trial. That being so, I do not think

that we should order the case to be reheard.

48. For the reasons which I have given this appeal will be allowed. The verdict of the jury and the conviction and sentence which followed are set

aside and the appellant is acquitted on both the charges. He need not surrender to his bail and his bail bond is cancelled. If the fines or any part

thereof have been paid such must be refunded.

49. Mr. Basu informs the Court that a large number of papers were seized by the police in this case which have not been put in evidence. If those

documents are not required in any other proceedings against the appellant they must be returned to Steel Products Limited forthwith.

J. P. Mitter, J.

50. I agree.