(1916) 01 BOM CK 0010

Bombay High Court

Case No: None

Govind Balvant Laghate		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Jan. 13, 1916

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 343, 495
- Penal Code, 1860 (IPC) - Section 161

Citation: AIR 1916 Bom 229 : 34 Ind. Cas. 976

Hon'ble Judges: Shah, J; Batchelor, J

Bench: Division Bench

Judgement

Batchelor, J.

The arguments in this appeal have occupied us for more than three days. But so far from thinking that any part of that time was wasted, I am of opinion that the Court is indebted to the learned Counsel on both sides for the assistance which they have afforded us by their able and thoroughgoing arguments. In a case of this importance it is a matter of much satisfaction to feel sure that no point which could possibly be urged in the appellant"s favour has passed unnoticed.

2. The appellant is one Govind Balwant Laghate who, up to the time of his suspension in view of this prosecution, belonged to that excellent and deserving body of public servants, the Subordinate Judges. In that body he -held a distinguished position, being a Subordinate Judge of the first class and drawing a substantial salary of Rs. 800 a month-a salary which, unless his mode of life was very extravagant, must have been more than sufficient for his needs. He has now been convicted of being a corrupt Judge. In more technical language he has been convicted u/s 161 of the Indian Penal Code of receiving an illegal gratification, that is to say, a bribe in respect of the discharge of the duties of his office as Judge. According to the case for the Crown the bribe took the form

of the gift of a horse, which was presented to the appellant as a bribe by the witness Narayandas Kanhayalal, whose adoptive sister Mirabai had at the material times an important suit pending in the appellant''s Court. Amidst much controversy there is one point upon which both sides seem agreed, and it is convenient to notice it now. I mean the patient and careful trial which the appellant had in the Court of the learned Trying Magistrate, and the lucid and exhaustive judgment in which that Magistrate has discussed fully every point raised in argument and every material passage of the evidence on the record. In my opinion, if the merits of this case can be arrived at, and especially, if the evidence of Narayandas Kanhayalal can be fairly considered, this appeal is hopeless. Whether because that was recognized by the appellant and his legal advisers or for some other reason unknown to me, it is the fact that the defence largely, if not mainly, was based on preliminary points of technical objection. I call them technical, because their object, either confessedly or manifestly, was to stave off a consideration of the merits of the case. Speaking for myself, I should have thought that a Judge accused-and, as he asserts, falsely accused-of corruption would have welcomed an opportunity of meeting that accusation on its merits in a criminal Court, where the onus of proof was entirely on his accusers. That, however, is not the course which this appellant has elected to adopt. The course which he has adopted is a course perfectly open to him. But I will say candidly for myself that unless forced by law to a different view, I should be slow to allow in such a case as this any technical objection to stand between this Court and the decision of the important question whether this appellant has or has not been proved to be corrupt.

3. Now there were many points of technical objection raised in the Court of the learned Magistrate. Most of them have been abandoned, and I think wisely abandoned, in this Court. There remain, however, two which, since they were pressed by Mr. Velinkar, must be considered and decided by us.

4. Both these points arise upon the same set of facts which may be explained as follows:

The Government by Exhibit 3 on the record sanctioned the prosecution of the appellant u/s 161 of the Indian Penal Code or such other section as might be found applicable. By the order, Exhibit 7, Government appointed Mr. H. C. Coyajee and Khan Bahadur S.O. Davar, or either or both of them, to conduct this prosecution. In a schedule affixed to that order are get out the charges, upon which the trial was to proceed, and the first of those charges as appearing in the schedule referred to the appellant''s receipt of two distinct bribes, viz., the horse with which we are occupied in the present appeal, and two hundis for Rs. 55 and Rs. 50 with which this appeal is not concerned. At the trial the learned Magistrate, wisely as I think, decided that these two charges should be tried separately, and the case which he first took up was that in which the present appeal was lodged. The trial in this present case began on the 5th July and the evidence of Narayandas Kanhayalal began on the 6th July. Prior to that date Narayandas Kanhayalal equally with the present appellant had been an accused in respect of these offences of bribery. But, on the 6th July, Narayandas was a witness and was not an accused in respect of the

offence of bribery in regard to this horse. He still, however, remained an accused person to the bribery connected with the two hundis, and in that case he was not discharged from the position of an accused until the 17th July. I agree with Mr. Velinkar''s contention that when Narayandas Kanhayalal began his evidence as a witness on the 6th July, there had been given to him by the responsible authorities an impression or understanding that unless he told in this present case that which the Crown believed to be the truth, he was liable to be prosecuted on the charge connected with the hundis. In this state of the facts Mr. Velinkar urges that there has been by the Magistrate a violatation of Section 342, Clause 4, of the Criminal Procedure Code, inasmuch as, according to the argument, Narayandas Kanhayalal still occupied the position of an accused, so that no oath could be legally administered to him. That argument is admittedly based on the contention that Mr. Davar, who by the orders of Government was conducting the case for the prosecution, had no authority to withdraw from the prosecution as against Narayandas Kanhayalal. The argument is that Mr. Davar''s authority was limited to the prosecution of the present appellant, that consequently he had no authority to withdraw the case as against Narayandas Kanhayalal and that, therefore, the Magistrate''s order discharging Narayandas Kanhayalal upon Mr. Davar''s application was illegal. In my opinion, however, the very basis of this argument fails, because I think that the fair construction to put upon the orders of appointment of Mr. Davar is to regard them as appointing that gentleman u/s 495 of the Criminal Procedure Code as a Public Prosecutor for the whole case. If that is so, then Mr. Davar was certainly competent to withdraw as against Narayandas Kanhayalal, and in that event it is admitted that the order of discharge would be good and that Narayandas would in this respect be a competent witness.

5. I think further that the objection is bad, because Narayandas Kanhayalal cannot be regarded as "the accused" within the meaning of these words as they appear in Section 342, Clause 4. That section is devoted to laying down the manner in which the Court is to examine an accused person then before it as an accused person, and the words "the accused" in Clause 4 must, in my opinion, be read as referring to the accused then under trial and examination by the Court. That admittedly was not the position occupied by Narayandas Kanhayalal on and after the 6th of July. In support of the view which I take as to the scope of Section 342, Clause 4, I may refer to the decisions of this Court in Queen-Empress v. Mona Puna 16 B. 661, Empress v. Durant 23 B. 213 and Queen-Empress v. Hussein Haji 25 B. 422 : 2 Bom. L.R. 1095.

6. The second of these preliminary objections as to procedure turns upon Section 343 of the Criminal Procedure Code. That section provides that except as enacted in certain sections dealing with the tender of pardon to accomplices, no influence by means of any promise or threat or otherwise shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge." The section does not declare what would be the consequences if an accused person did make a statement under inducement. But I will assume for the purposes of the argument that such a statement would be wholly inadmissible. I am unable, however, to see that Narayandas Kanhayalal

is affected by this proposition, because, from what I have said before, it will be clear that, in my opinion, the inducement offered to Narayandas Kanhayalal was offered to him not as an accused in the hundi case, but as a witness in the present case. In that view the objection, invalid as to the admissibility of Narayandas''s testimony, would be quite good as an objection only to Narayandas''s weight or credit. And I agree that the objection is good so far as it refers to credit. That, I think, is a sufficient technical answer to this technical objection, though I note that in Queen-Empress v. Hussein Haji 25 B. 422 : 2 Bom. L.R. 1095, Mr. Justice Candy said that Section 343 evidently referred to the same accused person who had been named and described in Section 342. For the purposes of the present argument it is not necessary for me to commit myself to a formal agreement with Mr. Justice Candy''s opinion, though I must not be taken to suggest any dissent from it. It is enough for our present purposes to observe that Section 343 must incontestably be limited in some way or other. If A is accused of murder and B happens at the same time to be accused of an unrelated theft, and if some one interested on behalf of A in the murder case makes a promise to B to induce him to give evidence tending to exonerate A, and if all these things are proved at the time that B''s evidence is tendered before the Court on the trial of A, then it is my opinion that B would be a competent witness in spite of the inducement, though, of course, the inducement alleged would diminish the credit to be attached to him. This construction seems to me to be favoured by Section 118 of the Indian Evidence Act, which provides that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. This section suggests, what numerous Judges have observed, that in India the rule generally is in favour of the admission of evidence, though the weight to be attached to it will, of course, be a matter for the Court''s consideration. The Indian rule is, I think, certainly not less liberal as to the admission of evidence than the rule in England. And in England it appears to me, from such authorities as have been referred to before us, that Narayandas Kanhayalal would be held to be a competent witness. Upon this point reference may be made to Winsor v. Queen (1866) 1 Q.B. 390 : 7 B. & S. 490 : 35 L.J.M.C 161 : 12 Jur. 561 : 14 L.T. 561 : 14 W.R. 695 : 10 Cox. C.C. 327, where the woman Harris was accepted as an admissible witness, though she had been jointly indicted with the prisoner under trial, though she had pleaded not guilty, and though that plea of hers was at the time undisposed of. To this effect also the law in England is stated in Roscoe''s Criminal Evidence, 12th Edition, page 113. On these grounds I am of opinion that there is nothing in Section 343 of the Criminal Procedure Code which rendered Narayandas Kanhayalal incompetent or inadmissible as a witness.

7. I may mention, though not as a necessary part of the argument, that Narayandas''s evidence in this trial lasted from the 6th July to the 2nd August. He was discharged as an accused in the hundi case on the 17th July. Under the law which provides that the witness''s evidence should be read out to him when it is finished, his testimony as a whole must, I think, be referred to the date on which it was read out to him and accepted by him.

That would be the 2nd of August, a date on which he had already been discharged in the hundi case. I mention this not as essential to the removal of the appellant''s objections, but as a point worth noticing if only on the question of the credit of Narayandas Kanhayalal.

8. These preliminary points being thus overruled, we come to the question of the value or the worth of Narayandas Ka-nhayalal''s evidence. Upon that point I quite agree with the learned Magistrate that Narayandas is on general principles a bad witness. He was an accomplice in this offence of bribery, and though not, in my opinion, by any means the worst kind of accomplice, still undoubtedly an accomplice. Moreover, I believe that, when he gave his evidence, there was present to his mind an impression that if he deposed to what the Crown believed to be the truth, it would be advantageous to him in regard to his position in the connected hundi case. All that may be freely allowed, but in my judgment the worth of a witness is to be determined not by general principles in the abstract, but by general principles as applied to the particular facts of each case. Though much argument has been devoted to this topic and Mr. Velinkar endeavoured to disabuse me of the idea which I hold, I must still adhere to my view, in regard to the weight of Narayandas''s testimony, that the witness stands in no appreciably worse position than any other accomplice witness giving evidence under a conditional pardon. Now the assessment of the evidence of such witnesses is a familiar task to our Courts, and there is no reason to think that the assessment of Narayandas''s evidence presents any insuperable difficulty. In so far as he is an accomplice the law, as laid down in Sections 133 and 114, ill. (6), of the Indian Evidence Act, declares that while the Courts should ordinarily make a presumption against the credit of an accomplice, that presumption may be displaced by other circumstances, notably by sufficient corroboration of the accomplice on material points. I certainly have no wish to say anything calculated to induce any lower Court to believe an accomplice lightly. I entirely agree that an accomplice is a suspect witness, whose evidence must be received with great caution and should be materially corroborated before it is accepted. All that is true, but it is not, in my opinion, the whole truth. The scales must be held even; for, while it is essential that accused persons should be protected from conviction on the mere evidence of an untrustworthy accomplice, it is also, in my view, important that the requirements of the Legislature in this respect should not be exaggerated by the Courts as to offer a practical guarantee of immunity to persons guilty of grave offences which are in their very nature difficult of detection. It seems to me that when all legal precautions have been takenand all relevant considerations duly weighed, there remains the plain question whether the Judge or Magistrate does or does not believe the particular accomplice. That, I think, is a question which it is the Judge''s or Magistrate''s duty to answer. And, if after all cautions have been observed, the Judge or Magistrate is convinced that the accomplices evidence is true, I conceive it to be his duty to say so and to give effect to his mental conviction. This process, in my opinion, is in direct conformity with the definition of the word "proved", as that definition is given in the Indian Evidence Act. It may be, of course, that at the end of all things the Magistrate may still remain doubtful ï¿½whether he can believe the accomplice or not, and if Me does

remain doubtful, he must say so. But within my experience that attitude of mere hesitating doubt is not likely to occur usually where, as here, a vigilant and observant Magistrate has had an accomplice witness for many days before him under examination and cross-examination. I, therefore, approve of the manner in which the Magistrate has dealt with this part of the case, and it appears to me that great weight is due by this Court to the Magistrate''s appreciation of Narayandas''s testimony. For, the Magistrate has believed Narayandas not lightly or hastily but only after mature consideration of all the evidence and after allowing the fullest weight to the weaknesses and infirmities to which the witness''s testimony is inevitably subject.

9. [His Lordship then discussed the evidence and concluded:]

10. In my opinion, therefore, the conviction and sentence should be confirmed and the appeal should be dismissed.

11. Before parting with the case I desire to put on record my sense of the valuable services which the Police Officers concerned in this investigation have rendered to the cause of public justice.

Shah, J.

12. At the outset I desire to express my general agreement with the observations made by my learned brother as to the assistance which the Court has received from the full and clear arguments of the Counsel on both sides'', as to the patience and care which have been brought to bear by the learned Magistrate upon this trial, and as to the fair and efficient manner in which the investigation has been made in this case by the investigating Police Officer.

13. The appellant, Govind Balwant Laghate, was the first class Subordinate Judge at Nasik in September 1913, and it was on the 25th Sptember that his transfer from that District to the District of Nagar was gazetted. Before that time two cross-suits had been filed in the Court of the first class Subordinate Judge at Ahmednagar in which one Mirabai was concerned. That Mirabai is the adoptive sister of one Narayandas Kanhayalal. She is a widow and her case was managed by her brother. This Narayandas lives at Chandwad and is trading at Chandwad, Lasalgaon and Bombay in the name of Kanhayalal Benkatlal. The prosecution case is that he, being desirous of interesting and influencing the accused Laghate in favour of his sister with reference to her claim, went to the accused and saw him on the 4th of October. He repeated his visit to him on the 8th of October, and on that day it is said that he made a payment of Rs. 24 to the accused and an arrangement was entered into between them whereby he undertook to supply a new horse to him and to take his old horse from him. This is the first stage in the prosecution story. It is said that during the following Christmas holidays the accused, who was then working as a first class Subordinate Judge at Nagar, went with Narayandas Kanhayalal from Ahmednagar to Bombay, that the expenses of the trip were defrayed by Narayandas

and that when he was in Bombay, two hundis were given by Narayandas to him by way of further bribe; this is the second stage in the prosecution story. The third stage in the story is that during the Shimga holidays, in March 1914, the accused and Narayandas again went to Bombay when the accused made a demand of an annual payment of Rs. 300 for the benefit of his private temple of Ham at Poona.

14. During this time the suit of Mirabai was slowly progressing; but it was ultimately compromised on the 29th of June. It is not suggested in this case that any favour in fact was shown to Mirabai in the course of the suit, and I do not, therefore, consider it necessary to state in detail the progress of the suit daring this period.

15. In November 1914, in consequence of certain information received, the Criminal Investigation Department was asked to make investigation with reference to the allegations which were then made, and as a result, the Inspector, Mr. Girdharsing, lodged a complaint on the 19th February 1915 after the necessary sanction of the Local Government was obtained. On this complaint, an order was made u/s 202 of the Criminal Procedure Code authorizing the same officer, the complainant, to make further investigation. Then, on the 17th of May 1915, a further sanction was granted by the Local Government with reference to several charges of bribery against the present accused, and the charge with which we are concerned in this case is the very first charge mentioned in the schedule attached to that order. Then, on the 17th of June, there was a complaint made against the accused Laghate and two others, Narayandas and Jagannath, by the same officer with reference to the horse and hundis said to have been given as bribes to Laghate, with the result that both the complaints were sent for trial to the Additional District Magistrate, who ultimately tried the present case.

16. On the 5th of July, which was the day fixed for the trial of all the three accused on the charges mentioned in the complaint of 17th June, on the application of the prosecuting Pleader, Mr. Davar, the learned Magistrate decided to separate the trials with reference to the two heads of the charge against the accused. The result was that the case relating to the hundis was separated and kept aside, and the trial of the case relating to the giving of the horse as a bribe was proceeded with. After the trials were thus separated, an application was made on behalf of the prosecution in this case to withdraw from the prosecution of the accused Narayandas; and with the consent of the Court to the withdrawal, an order of discharge was made by the learned Magistrate as provided in Section 494 of the Criminal Procedure Code. Narayandas was examined as a witness in the case. His examination commenced on the 6th of July and his examination, before the charge was framed, was finished on the 15th of July and his further cross-examination was proceeded with, after the charge was framed, on the 30th of July and 2nd of August.

17. I have so far stated the prosecution case briefly, and the facts connected with the investigation which ultimately led to the present proceedings. On a consideration of the evidence of the case, including the evidence of Narayandas, the learned Magistrate has come to the conclusion that the charge is clearly proved against the appellant and has

accordingly convicted and sentenced him. It is against this order of conviction and sentence that the present appeal is preferred, which was originally filed in the Sessions Court of Ahmednagar and subsequently transferred to this Court.

18. It is urged by Mr. Velinkar for the appellant that the order of discharge made, u/s 494 is not valid, because Mr. Davar had no authority to withdraw from the prosecution of Narayandas, and that as there was no valid discharge Narayandas was, at the time when he was examined as a witness, an accused person in the case within the meaning of Section 342, Criminal Procedure Code, and therefore, not a competent witness.

19. The second argument urged by Mr. Velinkar is that when Narayandas was examined as a witness, he was an accused person in the hundi case which was then, pending, and as he was at the time of giving evidence under the * inducement of a prospect held out to him that the Crown would withdraw from the prosecution in the hundi case if he gave his evidence in this case properly, the provisions of Section 343 of the Code have been contravened; and it was suggested that the evidence taken contrary to the provisions of the section would not be admissible.

20. As regards the first contention it really depends upon the construction to be placed upon the order of the Government which was made on the 17th of May 1915. No doubt in that order it is stated that Mr. Coyaji and Khan Bahadur Davar shall conduct the prosecution of the accused, and at that date the only accused was Laghate. The complaint against the other accused was made subsequently. But it seems to me on a fair construction of this order that the appointment of these gentlemen is not with reference to a particular accused, but with reference to a particular case, That is the kind of appointment, for which provision is made in Section 492 as well as Section 495 of the Criminal Procedure Code; and if the appointment was for the case, it seems to me that if any other accused person came to be implicated subsequently, both of them would be competent to conduct the trial as against all the accused. It is clear that Mr. Davar, who withdrew from the prosecution of Narayandas, was really an officer specially appointed by the Local Government to conduct the trial in the lower Court within the meaning of Section 495. It follows that under the second clause of that section he would have power to withdraw from the prosecution as provided by Section 494. It seems to me, therefore, that the only objection urged against the validity of the discharge fails.

21. An objection was taken on behalf of the defence in the lower Court at the time this order of discharge was made that as the object of the prosecution was to secure the evidence of Narayandas as a witness, it would not be right for the Court to give its consent to the withdrawal and to make the necessary order of discharge. But having regard to the decision in Queen-Empress v. Hussein Haji 25 B. 422 : 2 Bom. L.R. 1095 it is clear that it is legally open to the Crown to withdraw from the prosecution of any particular accused, even if it be for the purpose of securing him as a witness in the case. Of course it is for the Court, whose consent is necessary u/s 494, Criminal Procedure Code, to exercise its discretion according to the circumstances of each case, and it is

open to that Court to give or withhold its consent. It follows that the order of discharge being valid, Narayandas ceased to be an accused person in the present case: and the only provision, which could prevent Narayandas from being examined as a witness contained in subsection 4 of Section 342, would have no application to him at the time when he was tendered as a witness. The accused" mentioned in that sub-section is the accused then under trial and examination and no other. This view has been taken in the case of Empress v. Durant 23 B. 213 and it also derives support from Queen-Empress v. Mona Puna 16 B. 661, in which it has been held that by the word accused" in Section 342 is meant a person over whom the Magistrate or other Court is exercising jurisdiction. This contention must, therefore, be dis-allowed.

22. The second contention which has reference to Section 343 of the Criminal Procedure Code, is based upon the allegation that when Narayandas commenced to give his evidence, he was under the influence of an inducement that he would be able to secure immunity from prosecution in the hundi case, only if he gave his evidence in the present case in a manner which the prosecution would believe to be true. It was urged with reference to this contention by Mr. Coyaji that really there was nothing to show that while giving evidence he. was under the influence of any such inducement.. But it seems to me that the evidence of the investigating officer and the letter which the District Magistrate wrote to Mr. Davar on the 5th of July 1915 and the statement of Narayandas taken together show that the witness Narayandas was an accused person in the hundi "case and that while that case was kept pending against him, an order of discharge in the present case was obtained, and it is quite a fair inference to draw that he was then under the belief that he would obtain his immunity from prosecution in the hundi case only if he gave his evidence in a truthful manner or under the circumstances, in other words, if he satisfied the prosecution.

23. Under these circumstances it seems to me that the contention of Mr. Velinkar that Narayandas, when examined from the 6th to the 15th of July, was under this inducement to earn his immunity in the other case which was pending against him, is made out; and it is obvious under the circumstances that it would really mean that Narayandas would have strong reasons to think that his immunity would largely depend upon his implicating the present accused, whom the prosecution believed to be implicated in this affair.

24. The question then arises, whether this kind of influence is within the prohibition in Section 343 with reference to the person in the position of Narayandas. It is urged by Mr, Coyaji that Section 343 has no application as, in the first place, it really refers to, and provides against, the influence being used by a Court and not by anybody, and, secondly, that the expression an accused person" in the section really refers to "the accused" referred to in Section 342, that is, to the accused then under trial and examination and to no other person. I do not desire in this case to express any definite opinion on the scope and meaning of Section 343, as it is not necessary to do so. But it does seem to me that there is a difficulty in accepting the limited construction suggested by Mr. Coyaji. There are no words in the section to show that the prohibition contemplated by the section

refers to the Court and not to any other person, and that an accused person, within the meaning of the section, is the accused under examination and trial. There is some force in the argument on the other side that Narayandas was undoubtedly an accused person in the hundi case, and that the fact that he was to be examined as a witness in the horse case would make no difference in his position as an accused in the hundi case. It is also urged by Mr. Velinkar that in this Chapter, which relates to general provisions as to inquiries and trials, there are several sections dealing with different and independent matters and that there is no necessary connection between Sections 342 and 343. It is not necessary, however, for the purposes of this case to express any definite opinion on the applicability of Section 343 to the circumstances under which Narayandas came to be examined in this case. I feel quite clear that, even assuming that Section 343 would apply to such inducement as must be deemed to have been held out to Narayandas in this case, the admissibility of the evidence of Narayandas as a witness in this case is not in any way affected. He remains a competent witness in this case, because he ceased to be an accused person in consequence of his discharge u/s 494, Criminal Procedure Code, and the only provision which would render him incompetent as a witness, viz.;
Sub-section 4 of Section 342, would have no application.

25. Whether the provisions of Section 343 have been contravened or not, it is clear that the circumstances under which Narayandas was examined as a witness must materially affect the weight to be attached to his evidence. It is not the evidence of an ordinary accomplice; but it is the evidence of an accomplice who, while giving evidence, is under the inducement of securing his own liberty in the connected case. It is not unfair to say that he is a witness whom even the prosecution were not prepared to trust to tell the truth without keeping the hundi case pending against him.

26. I desire to deal here with two arguments urged by Mr. Coyaji with reference to the weight to be attached to the evidence of Narayandas. It was urged by him that he would not be in any worse position than a pardoned approver. I am not able to agree with this contention. The difference between the two positions to my mind is that in the one case the pardon is given openly to the knowledge of the parties and subject to the statutory conditions and limitations. In the other case the fact of the inducement is known only to the party to whom the inducement is given and to the party who gives the inducement and not to all the parties, not even to the Court, before the evidence relating to the inducement is adduced in the course of trial. Besides, the approver''s liberty is subject to the control of the Court, whereas the liberty of the witness in the position of Narayandas, in the first instance, is in the hands of the party who is supposed to have held out the inducement.

27. The second argument is that though up to the 17th of July there may have been this inducement, still after the 17th of July when the order of discharge was made in the hundi case, there could be no such inducement operating on his mind. This argument is plausible but not sound; because it seems to me that the whole story was really given out at a time when the inducement would be operating on his mind and the fact that the

document ceased to exist subsequently would not materially affect the position. After his examination was finished on the 15th July, it was hardly open to him to go back upon his story in his further cross-examination on the 30th July and 2nd August as suggested by Mr. Coyaji.

28. [His Lordship then discussed the evidence and concluded;]

29. These are really the material points in the story of the prosecution, and it seems to me that even without the evidence of Narayandas the case for the prosecution, so far as the giving of the horse as an illegal gratification is concerned, is clearly proved; and I have no hesitation in saying that this conclusion is consistent with, and derives further support from, the evidence of Narayandas. It follows that the charge is established and that the conviction of the accused u/s 161, Indian Penal Code, is proper.

30. As regards the sentence, having regard to all the circumstances, I do not think it is excessive.

31. I, therefore, agree that the conviction and sentence must be confirmed and the appeal dismissed.