(1952) 04 OHC CK 0001

Orissa High Court

Case No: Govt. Appeal No. 3 of 1951

The State		APPELLANT
	Vs	
Minaketan Patnaik		RESPONDENT

Date of Decision: April 22, 1952

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 423
- Evidence Act, 1872 - Section 133, 145
- Penal Code, 1860 (IPC) - Section 109, 161

Citation: AIR 1952 Ori 267

Hon'ble Judges: Panigrahi, J; Narasimham, J

Bench: Division Bench

Advocate: Advocate General, for the Appellant; P.C. Chatterji and K.S. Jayarama Ayyar, for the Respondent

Final Decision: Dismissed

Judgement

Panigrahi, J.
This is an appeal against an order of acquittal passed by the Additional District Magistrate, Bolangir, in a case started against the respondent u/s 161 of the Indian Penal Code.

2. The accused was the Civil Supplies Officer at Bolangir on the day of occurrence. The case against him is that at or about 8-30 P.M., on the 5th day of March 1950, he accepted a sum of Rs. 200/- as illegal gratification with a view to facilitating the export of kudo from Kantabanji railway station, Bolangir District, to Bombay Presidency. Briefly stated the facts are that Purushottam (P. W. 1) who was acting as purchasing agent of the firm of Shiva-shankar Tricumjee, at Cuttack represented to Shivashankar on 18-12-49 that he had purchased 15,000 maunds of kudo for export and requested Shivshankar to obtain a permit for the same from the Supply & Transport Department, Cuttack.

On 28-12-49. the Under-Secretary to the Government of Orissa, in the Supply & Transport Department (Food), addressed a letter (EXT. D) to the District Magistrate, Bolangir, enquiring whether a stock of 15,000 maunds of kudo was available in the godown of Purushottam at Kantabanji for export at the instance of Shivashankar, and whether he would have any objection to an export permit for that quantity being granted. Before any reply was received from the District Magistrate, the Government of Orissa granted a permit to Shivashankar on 30-12-49 for exporting 15,000 maunds of kudo from Bolangir District.

The District Magistrate protested against the action of Government in granting the permit vithout waiting for his reply to their reference dated 28-2-49. An enquiry had, in the meanwhile, been made by the Civil Supply staff of the district to verify whether P. W. 1 had, in fact, 15,000 maunds of kudo with him for export, and the Supervisor of Civil Supplies at Bolangir reported that P. W. 1 had no stock on hand and recommended that no permit could be granted as prayed for, but that a permit for 4,000 maunds could be recommended. Ultimately, the permit issued by the Government of Orissa for export of 15,000 maunds of kudo was withheld, and a fresh permit for the export of 4,000 maunds was isssued in its place on 21-1-50.

It would appear that P. W. 1 then met the accused in his office at Bolangir on 25-1-50 and, it is alleged that at that interview the accused hinted to him that he would be in a position to facilitate further exports of kudo, in addition to the 4,000 maunds already permitted to be exported, if some money was paid to him. It is further stated that the accused visited Kantabanji on 12-2-50 and demanded a bribe from P. W. 1 when he was looking into his accounts at his shop. In fact, it is alleged that he not only demanded money but also asked P. W. 1 to get some sarees for him. Five or six days later, Shivashankar himself visited Kantabanji where P. W. 1 reported to him about the demand made by the accused, and Shivshankar informed the C. I. D. Inspector, Mr. M. N. Roy at Cuttack on 27-2-50.

On this information, the Inspector C. I. D. and Shivshankar together started for Kantabanji the same night and met P. W. 1 on 1-3-50 at his place. Thereafter, a trap was arranged by the Inspector on 5-3-50 and marked currency notes of the value of Rs. 200/- and four marked sarees were handed over to P. W. 1 for being offered to the accused at his residence. P. W. 1 accompanied by one Bhoramall (P. W. 3) another merchant of Kantabanji, went to the residence of the accused at about 8-30 P.M. and both P. W. 1 and P. W. 3 offered some sarees which were rejected by the Civil Supplies Officer. The sum of Rs. 200/-in marked currency notes was offered by P. W. 1 and it is said that the accused accepted it.

Within about half an hour of this incident, the C. I. D. Inspector and the then Additional District Magistrate, Bolangir, Mr. M. N. Dutta, who were waiting for the signal in the house of Mr. G. C. Sinha, Inspector of Schools a neighbour of the accused, went to the house of the accused and challenged him whereafter the money that was alleged to have been

received by the accused was produced by him from the inner pocket of a coat in his bedroom. These are the broad facts of the prosecution case.

3. The witness to the offer and acceptance of the money as bribe are Purushottam and Bhoramall who are respectively P. Ws. 1 and 3 Mrs. G. C. Sinha, the neighbour of the accused who was examined as P. W. 2 was present when the C. I. D. Inspector challenged the accused and when the money was produced by the accused. Shivshankar who was examined as P. W. 4 proved the conversation that he had with his agent, P. W. 1, at Bolangir on the 17th or 18th February, when the latter informed him about the demand for bribe made by the Civil Supplies Officer. He also proves the complaint made by him to Mr. N. N. Roy, the C. I. D. Inspector at Cuttack on 27-2-50.

Mr. N. H. Dutta, the then Additional District Magistrate, Bolangir, was examined as P. W. 5 to prove the trap that was laid for inducing the accused to accept the bribe and the incidents that took place after he went into the house of the accused in the company of the Inspector, (C. I. D.) Mr. N. N. Roy, and he proves the part that he played in the events leading up to the commission and detection of the offence and the later investigation into the case.

P. W. 6 proves certain documents exhibited by either side. P. W. 7 is the building Sub-Inspector of Police who prepared a map of the house occupied by the accused. P. W. 9 proves the seizure of certain documents from Shivshankar at Cuttack.

4. The learned Additional District Magistrate in a close analysis of the evidence held that the statement of Purushottam (P. W. 1) that he went to Bolangir and not the accused in his office on 25-1-50 was of doubtful credibility and he refused to accept that statement. He accordingly concluded that, on that day, P. W. 1 neither came to Bolangir nor met the Civil Supplies Officer; nor was there any demand for illegal gratification made by the Civil Supplies Officer. He also held that he "was unable to accept the prosecution story regarding the incidents of 12-2-50 at Kantaban-ji." He held that both Purushottam and Bhormall were decoy witnesses and the Shivshankar was a spy.

He refused to accept the prosecution version regarding the offer of bribe to the accused and believed the accused"s statement that P.W. 1 did not offer any sarees and that the sarees were introduced into the case as a second string to the bow, to make the trap more effective.

On this part of the case he held that the prosecution version had been made worse due to "lacuna, suppression of facts, and tainted evidence". While he accepted the version of the prosecution regarding the passing of the currency notes from the custody of P. W. 1 to the possession of the accused he held that the accused refused to accept any money as bribe and that the currency notes were "planted" under the inkstand. After considering the entire evidence on the point he came to the definite finding that the accused was the victim of a nefarious plot organised by the Inspector with the assistance of P. Ws. 1, 3

and 4. On these findings, the learned Additional District Magistrate held that he felt no hesitation in declaring that the accused was not guilty u/s 161 I. P. C. and acquitted him accordingly.

5. The power of the High Court to review at large the evidence upon which an acquittal is founded is doubtless unrestricted and no limitation can be placed upon that power. But in exercising that power, it has been held by the Privy Council in "SHEO SWARUP v. EMPEROR" (1884) 61 I A 398 (PC) that the High Court should, and will always, give proper weight and consideration to the views of the Trial Judge as to the credibility of the witnesses, the presumption of innocence in favour of the accused--a presumption certainly not weakened by the fact that he has been acquitted at his trial--the right of the accused to the benefit of any doubt, and the slowness of the appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

The rule is that when there is a conflict of oral evidence on any fact in issue the appellate court should not interfere with the finding of the Trial Judge on a question of fact, unless there is some special feature which may have escaped the notice of the Trial Judge. But if the evidence, as a whole, can reasonably be regarded as justifying the conclusion arrived at by the Trial Court, the view of the Trial Judge as to where credibility lies is entitled to great weight. This is all the more so when the presumption of innocence of a person accused of a criminal act is fortified by the finding of the Trial Court.

A charge of bribery is one which can easily be made, and often lightly made; and however difficult it may be to establish by direct evidence the commission of the offence of bribery, it would not relieve the prosecution of the burden of establishing it beyond all reasonable doubt. If, after everything that can legitimately be considered has been given its due weight, room still exists for taking the view that however strong the suspicion raised against the accused, every reasonable possibility of innocence has not been excluded, he is entitled to acquittal--see AIR 1944 66 (Federal Court) .

Whenever circumstantial evidence is relied on to prove a fact, the circumstances must be proved and not be themselves presumed. No single item of evidence can be singled out and given prominence nor accused"s theory of the case be withdrawn from consideration.

What constitutes bribery is a question of law; whether on the evidence, the crime has been committed is a question of fact. If, therefore, the evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly the presumption of innocence, the charge cannot be said to have been established. The Court must be. satisfied not only that the circumstances are consistent with the conclusion that the criminal act was committed by the accused, but also that the proved facts are such as to be inconsistent with any other rational conclu-1 sion then that the accused is a guilty person,

6. It is contended that the evidence of P. W. 1 and P. W. 3 should be discredited in the absence of corroboration as these two witnesses are no better then accomplices who took part in the perpetration of a crime. The evidence of P. W. 4 and 8 is open to attack as being that of "Agents Provocateurs".

The learned Advocate-General drew our attention to the case of "EMPEROR v CHATUR-BHUJ SAHU" 38 Cal 96 in which it was held that a person who makes himself an agent for prosecution, for the purpose of discovering and disclosing the commission of an offence either before associating with wrong-doers, or before the actual perpetration of the offence, is not an accomplice but a spy or decoy or detective, whose evidence does not require corroboration.

But as to whether the part played by a witness is no more then that of a decoy, or spy, or detective, that will depend upon the particular facts of the case. One, who as a decoy obtains information regarding a crime is not necessarily open to discredit, but one, who for that purpose has employed trickery or who has worked for hire in his investigation, or who in discharging his function as a police or detective or prosecuting officer has committed himself in a partisan manner may, in the circumstances, be open to the suspicion of bias or interest.

Though, in such a case, the testimony of a spy may not need corroboration as a rule of law it is entirely for the Judge of fact to decide what weight should be attached to this kind of evidence, the question depending upon the character of the witness. The view of the Calcutta High Court, has been followed by the Nagpur High Court in "GOVINDA BALAJI v. EMPEROR" AIR 1936 Nag 245 and in AIR 1947 109 (Nagpur) .

But where a spy suggests and instigates a criminal offence the action of the spy is not justified by any Exception in the Indian Penal Code, or by the doctrine which distinguishes a "spy" from an "accomplice". An illustration of this principle is afforded by "QUEEN EMPRESS v. JAVECHARAM", 19 Bom 363 where the principal witness was the first instigator of the offence and not merely a spy who, knowing of criminal doings, or doings which will culminate in crime, merely pretended to concur with the perpetrators. Jardine J., observed "Mere good intention does not ordinarily excuse a criminal act". Mohammed Ali was held to be an accomplice as the evidence disclosed that he first instigated the offence.

In "LAKSHMINARAYANA IYAR v. EMPEROR", 1917 M W N 831 Sadashiva Iyer J. observed that a person who instigates any person to do a thing is an abettor of the doing of that thing. The instigation consists entirely in actively suggesting and stimulating another person to act. The laudableness of the ultimate motive may be a ground for not prosecuting the abettor but it is not a ground for holding that he is not guilty of the offence of abetment at all.

Spencer, J., observed in the same case that as Sections 109 and 161 of the Indian Penal Code do not require as an ingredient of the offence that there should be any particular criminal intention in the mind of the giver, a superior official who set trap to catch a corrupt subordinate or a person who, acting under the order of a superior official, offered a bribe to a subordinate public servant, would be technically guilty of abetment of bribery.

Phillips, J., held that even if the plea of the accused be that he offered the bribe to the Sub-Magistrate not that he should exercise his judicial authority in favour of a particular person but merely in order that the Sub-Magistrate may commit an offence, and receive punishment for it. the petitioner would still be guilty of the offence of abetment. What his intention was is immaterial for he certainly intended that the offence of bribery should be committed, not by himself of course but by the Sub-Magistrate. He was accordingly held guilty of abetment of the offence of bribery.

In a more recent case of the same High Court reported in "IN RE KOGANTI APPAY-YA" AIR 1938 Mad 893 the same view has been taken. In that case, P. W. 5 was employed as a decoy by the C. I. D. for the purpose of detecting counterfeiting cases. Pandurang Row, J., said that the motive of the persons who. instigated is not the only determining factor in deciding whether his evidence require corroboration like that of an accomplice. Even if the object of the person who instigated another to commit a crime is to catch him in the act of committing the crime, the instigation by him nevertheless amounts to an abetment of the offence, and the abettor must be regarded as an accomplice when the object of the instigation is to make the offender commit the offence and the person who has instigated actually commits the offence.

The view taken in 38 Cal 96 has not been, followed by the Lahore High Court. In HAZURA SINGH v. EMPEROR" AIR 1929 Lah 436 it was held that the evidence of an agent provocateur is looked upon with suspicion and should be seldom relied upon in support of a conviction. In "EMPEROR v. ANWAR ALI" AIR 1948 Lah 27 which was a case similar to the present case, the court refused to rely on the evidence of a decoy witness in the absence of independent corroboration. So far as the Indian High Courts are concerned, the balance of authority appears to be in favour of insisting on corroboration of the evidence of a decoy or spy, before a court can act upon : it. I should not, however, be understood as denouncing the need for resort to police traps of any kind. Public interests may, and often do, require the employment of decoys or spies so that an offence which would otherwise go undetected may be brought to light. As Al-verstone C. J. remarked in "REX v. MORTIMER"(1911) 1 K B 70 it is only fair to remember that it is always impossible to detect the class of offence in any other way." But. at the same time

"it is not right that police authorities should instruct, allow, or permit detective officers or plain-clothed constables to commit an offence so that they can prove that another person has committed the offence."

Lord Goddard C. J. discontinued this practice of resorting to traps and encouraging the commission of offences in these trenchant words, in "BRANNAN v. PEEK" (1947) 2 All E R 572;

"I hope the day is far distant, when it will become a common practice in this. country for Police officers to be told to commit an offence themselves for the purpose of getting evidence against someone; if they do commit an offence they ought also to be convicted and punished, for the order of their superior would afford no defence."

This is the view that the learned Judge of the Madras High Court took in "LAKSHMINARA-YAN IYER"S CASE" cited above. The same view was taken by the Allahabad High Court in "EMPEROR v. DINKAR RAO"55 All 654.

In "PROULX v. LIQUOR COMMISSION Op QUEBEC"(1922) 70 D. L. R. 625the Superior Court of Quebec insisted upon the corroboration of an informer before a con-viction could be sustained. In "REX v. RO-GERS"(1926) 4 D. L. R.609 the question was whether the evidence of two spotters or spies who swore that they purchased beer from the accused be accepted without corroboration. The court observed that these men could not be called independent witnesses and that their reputation, as a class, showed that their testimony was unreliable.

"Men who will accept occupations of this kind" the Court observed "are quite as unreliable as accomplices..... specially when they induce the commission of the offence."

In "REX v. TOMMY" (1930) 1 D. L. R. 973 it was ruled that a police officer who invited or enticed another person to commit an offence stood in the same category as an accomplice. When, in their zeal or under a mistaken sense of duty, detectives suggest the commission of a crime and instigate others to take part in its commission, in order to arrest them while in the act, although the purpose may be to capture old offenders, their conduct is not only reprehensible but criminal, and ought to be rebuked rather then encouraged by the Courts : See(1893) 96 A S R. 295.

7. A review of these authorities leads me to think that the evidence of a spy or a decoy witness, though admissible in evidence and may be acted upon, the value to be attached to that evidence will depend upon the character of the person employed. Where, on the other hand, the spy or the police officer goes beyond the limit of collecting evidence and instigates or solicits the commission of a crime, he would be guilty of abetment. The Courts should, therefore, as a matter of prudence, require corroboration of their evidence like that of an accomplice. The line may be drawn thus :

If a police officer receives information that an offence has been committed or is about to be committed and engages spies to witness the commission, he acts as a mere detective; that may be necessary in the interests of justice to enable him to secure evidence. This can be justified only on the ground that he is engaged in the detection of a crime.

But if he suggests or induces the commission of a crime and instigates other offenders while in the act, he is no better then an agent provocateur. His conduct is not only reprehensible but criminal. His object is not detection but commission of a crime so that he may prefer a charge for the offence committed at his instigation. By inviting or inducing another to commit an offence he becomes an accomplice, for he participates in the commission of the criminal act.

Officers sworn to maintain law cannot shed their character as such and break the law, however laudable the motive may be. The end certainly does not justify the means. The path to crime may be paved with good intentions, it is none the less a crime. To encourage resort to doubtful means because the end is justified would be to defeat the purpose of the law, rather then promote it. In my judgment therefore, the evidence of P. Ws. 1, 3 and 4 would not by itself, and without corroboration. be proof of the fact that the money was offered and accepted as illegal gratification.

8. The learned Advocate-General would argue however, that the onus of proving that the money was received with an honest intention and not as a bribe, rested on the accused. He relied for this position on the language of Section 4 of the Prevention of Corruption Act. 1947 (Act II of 1947). That Section is in the following terms : --

"Where, in any trial of an offence punishable u/s 161 or Section 165 of the Indian Penal Code it is proved that the accused has accepted, or obtained, for himself or for any other person, any gratification (other then legal remuneration) or any valuable thing, from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward, such as is mentioned in the said Section 161."

This Section lays down that if the prosecution proves that the accused person has accepted, or agreed to accept, any gratification, it shall be presumed, "unless the contrary is proved", that he accepted or agreed to accept it with a corrupt motive. This raises a rebut-table presumption and the contrary may be proved to displace the presumption contained in the Section. The Section purports to lay down that the Court shall draw a particular inference from a particular proved fact. It is only an inference and not evidence, and may be overcome by evidence. It would be an outrage on commonsense and reason to infer that the presumption of innocence of the accused has itself been displaced and that the offence of bribery must be held to be established the moment the money passed into the possession of the accused without further proof that the money was "accepted" or "agreed to be accepted" for corrupt purposes.

When the law raises a presumption against the accused and calls upon him to prove the contrary, the quantum and degree of proof required to displace that presumption are just those required in a civil case; and the contrary can be said to be proved if the accused succeeds in establishing that the act attributed to him is capable of an interpretation other then that suggested by the prosecution. In such an event, the Court is bound to hold that

the prosecution has failed to displace the presumption of innocence beyond reasonable doubt.

In ''REX v. CARR-BRIANT'' (1943) 1 K. B. 607 a case under the Prevention of Corruption Act of 1916, the Court of Criminal Appeal in England held that in a case where, either by statute or common law, some matter is presumed against the accused, unless the contrary is proved, the burden of proof on the accused is less then that required at the hands of the prosecution in proving the case beyond reasonable doubt; and that that burden is discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish. That is the test which is applied in a civil proceeding, namely the preponderance of probability one way or the other. The Court further observed that the rebuttable presumption created by that section should be construed in the same manner as similar words or other statutes or similar presumptions at common law.

Where there are conflicting presumptions, the presumption of innocence will prevail as against the presumption of continuance of life, the presumption of continuance of things generally, and the presumption of sanity. Thus, where a man has not been heard of for over seven years the burden of proving that he is alive is on the person affirming it; and a person accused of an offence is presumed to be sane until the contrary is proved in a case where the defence of insanity is set up. It should be noted that in all these cases, the presumption of innocence still remains and the fact in issue Is determined by the degree of probability of the evidence on either side. I am, therefore, not prepared to accede to the extreme contention put forward by the learned Advocate-General that the mere proof of the passing of money from P. W. 1 to the accused is enough to displace the presumption of his innocence.

9. Section 4 of Act II of 1947 requires that the prosecution should prove that the accused accepted or agreed to accept the amount as a gratification. "Accept" means "to take or receive with a consenting mind". It is, therefore, upon the prosecution to prove not only the passing of the money into the hands of the accused, but also that he took it with a ''consenting mind''. This would necessitate proof of either an agreement to accept prior to the actual acceptance, or of his consent to accept the same as gratification at the time the money was offered. (After discussing the evidence, the judgment proceeded) :

After having gone through the evidence in detail and listened to a searching analysis of the same by counsel on either side, I have come to the conclusion that neither Purshottam nor Bhoramall can be accepted as a reliable witness and I would accordingly hold that the prosecution'' has failed to prove the demand of bribe by the accused. The mere passing of money from P. W. 1 to the accused, without proof that it was intended to be accepted as illegal gratification, would not be enough to establish the ingredients necessary for the offence u/s 161 I. P. C.

10. The version of the accused that the money was left under the inkstand may or may not be true, though not improbable in the circumstances. If Purushottam went determined

to implicate the accused, and if he refused to accept either the saree or the notes as a bribe, it is not at all unlikely that Purushottam would have been obliged to leave the currency notes under the inkstand, as has been suggested, so that the Inspector may at once pounce upon them. The accused says that he picked up the notes and kept them in his coat pocket with the intention of returning them the next day as according to him, Bhoramall was to meet him the next day in his office.

That the accused had fixed up an engagement with Bhoramall for a meeting on the next day in his office is corroborated by Bhoramall himself. He also speaks to the fact that both of them had a talk that day about a permit for the export of onions. In fact, the statement of the accused given to the Additional District Magistrate a short time after the trap (Ext. 9) is corroborated in almost all the details contained in it, except the taking of money as a bribe. It would, therefore, not be unreasonable to infer that the accused"s version regarding what took place in his office room is substantially true.

The presumption created by Section 4 of the Prevention of Corruption Act must accordingly be held to have been rebutted and the contrary proved. Proof of the contrary, need not be by evidence oral or documentary : The proof may be afforded, as in this case, by the statement of the accused himself or by the circumstances of the case. The evidence of Bhoramall is equally consistent with either of two versions, and, in my judgment, the presumption of innocence is not removed beyond reasonable doubt. The evidence of Shivashankar (P. W. 4) is that of a spy and does not materially advance the prosecution case.

The evidence of Purushottam (P. W. 1) and that of the C. I. D. Inspector (P. W. 8) is that of abettors, as the one instigated and the other aided the commission of a crime. The evidence of Bhoramall (P. W. 3) is that of an abettor either on the supposition that he knew and aided P. W. 1 in his nefarious design or that he himself attempted to bribe the accused. I refuse to place any reliance on the testimony of any of these witnesses uncorroborated as it js by any other independent evidence; and such attempt as has been made to corroborate it has failed.

11. I have no hesitation in agreeing with the view taken by the learned Additional District Magistrate that the accused has been the victim of a carefully laid plot, designed by P. W. 4, and that the prosecution has failed to bring the guilt home to the accused beyond reasonable doubt. This appeal must accordingly be dismissed.

12. Before parting with the case, however, I like to observe that if the accused is as strict and straightforward in the discharge of his duties as the papers exhibited in the case would seem to suggest, he was extremely foolish in admitting the two merchants P.W. 1 and 3 into his house at an unusual hour. If persons placed in the position of the accused try to remain immaculate they ought not to conduct themselves in a manner which will expose them either to temptation or to suspicion of their integrity.

Narasimham, J.

13. I have carefully gone through the judgment of my learned brother Panigrahi J. Though I do not wish to dissent from the order proposed by him I find myself (with great respect) unable to agree with his views both on questions of law and as regards the appreciation of the evidence.

14. The respondent was the Civil Supplies Officer at Bolangir on the 5th March 1950. On that day at about 8.30 p.m. trap was laid by the C. I. D. Inspector Sri N. N. Ray (P. W. 8) with the assistance of Sri N. N. butt, Additional District Magistrate of Bolangir (P. W. 5) and Sri Gopal Chandra Sinha (P. W. 2) Inspector of Schools, Bolangir. Marked currency notes of the value of Rs. 200/- were handed over to a merchant named Purushottam (P. W. 1) from whom, it is alleged that the Civil Supplies Officer had on two previous occasions demanded illegal gratification for granting permits for export of kudo grains. The merchant was given instructions to hand over the said currency notes to the Civil Supplies Officer at the latter''s residence as if they were being offered as illegal gratification as demanded. Another merchant of Kantabanji named Bhoramall (P. W. 3) also accompanied Purushottam when the said currency notes were handed over to the Civil Supplies Officer at about 8-30 p. m. The C. I. D. Inspector, the A. D. M. and Sri G. C. Sinha remained concealed in the house of Sri Sinha which is adjacent to that of the Civil Supplies Officer.

After the departure of the merchants Mr. Sinha first went into the house of the Civil Supplies Officer and kept him engaged in conversation and soon afterwards Mr. Dutt and Mr. Ray also entered his house. The currency notes were demanded and they were produced by the Civil Supplies Officer after having been taken out of the inside pocket of his coat kept in his bed-room. The explanation (Ext. 9) given by the Civil Supplies Officer was that he met the two merchants in his office room and that when one of them offered the currency notes he asked him to get out of the room and then he immediately left his office room and went into the inner apartment leaving the two merchants in the office room.

Some-time later when he came back to the office room for the purpose of closing the doors he found some notes below the inkstand. " He took out the notes and went out to call the two merchants; but could not find them. Then he closed the doors and kept the notes in his pocket with a view to return them next day when the merchants were expected to meet him in his office for some permits. He further stated that the merchant who offered the currency notes was unknown to him though his companion (referring to Bhoramali) was known to him from before.

15. On the other hand, the case as put forward by Purushottam and Bhoramali, if believed, would conclusively establish the guilt of the Civil Supplies Officer. Purushottam stated that on two previous occasions the Civil Supplies Officer had demanded illegal gratification from him for granting permits for export of kudo and that when he informed

his principal Sheosankar (P. W. 4) who is a prominent businessman of Cuttack, the latter in consultation with the C. I. D. Inspector Mr. Ray arranged to lay a trap and Purushottam agreed to be a decoy witness for that purpose. Bhoramali (P. W. 3) however pleads complete ignorance of the arrangements made for the trap.

He and Purushottam are residents of Kan-tabanji which is a business centre in Bolangir district at some distance from Bolangir town and they knew each other well from before. They both left Kantabanji by train on the 4th March, 1950 at night, and proceeded to Titla-garh Railway Station where after detraining they halted at a Dharmasala for the night. There they met each other and found out that both of them were proceeding to the same destination, namely, to meet the C. S. O. at Bolangir. Even then Purushottam did not take Bhoramali into confidence or inform him about the trap that was arranged to catch the C. S. O. They both reached Bolangir by the afternoon bus and purchased some Madrasi sarees from some dealers who travelled in the same bus with them from Titlagarh to Bolangir. There Purushottam met Seoshankar and Mr. Ray and the latter took him to the residence of Mr. Dutt where marked currency notes worth Rs. 200/- were given to him with instructions to hand them over to the C. S. O. Purushottam again met Bhoramali at about 8 p. m. that night and they both went to the house of the C. S. O., at about 8-30 p.m.

As regards the offer of the currency notes by Purushottam to the C. S. O. and the latter accepting the same, both of them give a fairly consistent version. Bhoramali has however added that at first the C. S. O. refused to accept the money but when pressed for the third time he accepted the currency notes offered to him by Purushottam. The sarees taken by these two witnesses were also shown to the C. S. O. who did not approve them and returned them to the merchants. Then the two merchants left the house leaving it to the C.I.D. Inspector and the A. D. M. to take necessary steps for recovery of the marked currency notes.

16. It is thus admitted that marked currency notes handed over to Purushottam by Mr. Ray, the C. I. D. Inspector, were found in the inner coat-pocket of the C. S. O. kept in his bed-room. His explanation is that they were planted under the inkstand in his office room after he had indignantly rejected the offer made to him by Purushottam and that subsequently when he noticed them there he kept them in his pocket with a view to return them to the merchant next day in the office. This explanation in my opinion is quite fantastic. If, as stated by the C. S. O., an utter stranger accompanied by Bhoramali (who was doubtless known to him) had offered the currency notes without saying a word as to why they were being offered, the C. S. O. would have been taken by surprise. His first reaction would be to question the stranger as to why the same were being offered.

Moreover, it is not likely that after refusing the offer he would have quietly gone into the inner apartment of the house leaving the two merchants in his room so as to facilitate "planting". The natural reaction of any honest offi-cer to such an offer would be to clear out both the merchants and close the doors or else to immediately hand them over to the

police, From the sketch-map it will be clear that the police station was only 400 feet away from the house of the C. S. O.

17. Secondly, the subsequent conduct of the C. S. O. when he noticed these currency notes bslow his inkstand in his office room is equally suspicious. He stated that finding them he went put and made a search for the merchants but did not find them. But his house was being carefully watched by Mr. Dutt and Mr. Ray from a room in the house of Mr. Sinha close by. Mr. Dutt stated that as soon as the two merchants came out of the house of the C. S. O. the streak of light that was coming from the office room of the C. S. O. disappeared.

The Inspector of Schools (P. W. 2) added that the disappearance of the streak of light was : due to the doors of the house of the C. S. O. being shut. If the C. S. O. had come back to the office room after the departure of the merchants and there noticed the currency notes underneath the inkstand, and had gone out in search of the merchants, these officers who were closely watching his office room from outside would have surely noticed the doors of the room opening out and the C. S. O. himself coming out and searching out for the two merchants. But they did not notice the C.S.O. coming out at all.

It was however urged that the light of the office room might have been switched off when the C. S. O. made the search for the merchants and that consequently the said officers who were watching the room from a neighbouring house could not notice the C. S. O. coming out of the room. A faint suggestion to that effect was sought to be made out during the cross-examination of P. W. 2 by eliciting the following answer.

"I cannot say if the light went off due to closing of the door or making the switch off."

This suggestion however is inconsistent with the explanation given by the C. S. O. himself. Unless there was light jn his office-room he could not have noticed the presence of the currency notes underneath the inkstand. Therefore, if his explanation is to be believed, it necessarily follows that sometime after the departure of the merchants he went back to his room where there was light, then noticed the currency notes, went out in search of the merchants and then went inside and closed the doors. This movement of his would surely have been observed by the three officers who were watching from outside.

18. Thirdly, the conduct of the C. S. O. when he noticed the currency notes planted underneath the inkstand is not what one expects of an honest officer. According to him, the offer of the merchant had been indignantly refused a few minutes before. Yet the latter had the temerity to keep the money underneath the inkstand of the officer in his office room. One would then expect the officer to immediately raise an alarm or at any rate to send intimation to the police who were so close by. I cannot understand how any honest officer would, under the circumstances, have quietly kept the currency notes in the inner pocket of his coat in his bed-room in the hope that he might conveniently return

them to the persons concerned next day in his office.

It was however urged that the explanation of the C. S. O. (Ext. 9) was given to the A. D. M., Mr. Dutt immediately after the recovery of the notes and that there was hardly any time for the C. S. O. to concoct a false defence. It is not difficult for clever persons to give plausible explanations as soon as they are caught and from mere fact that the explanation was given immediately after the seizure of the incriminating notes no inference that it must necessarily be true can be drawn. The contents of the explanation have to be carefully scrutinised and judged in the light of the probabilities and the ordinary course of conduct that one expects from an officer of his position. Judged by these standards, I have no hesitation in rejecting the explanation of the C. S. O. as nothing but an ingenious device to get out of the awkward situation in which he was placed by the recovery of the marked currency notes from his possession.

19. It is true that the falsity of the explanation given by the accused does not, in any way, absolve the prosecution from proving their case beyond reasonable doubt. As the recovery of the notes is admitted the sole point for consideration is whether they were offered as bribe by Purushottam. His evidence is supported by that of Bhoramall and the whole case thus rests on the acceptance or rejection of the testimony of these two witnesses. Puru-shottam''s evidence has been challenged on the ground that he is no better then an accomplice and that he has a motive in implicating the C. S. O. on a false charge because the latter was mainly instrumental in preventing Purushottam and his principal Sheosankar from obtaining permit for the export of 15,000 mds. of kudo under false pretence. I shall first examine whether Purushottam can be said to be an accomplice.

The case as made out by the prosecution is that on two previous dates (25-1-50 and 12-2 50) the C. S. O. hinted that Purushottam should also give him illegal gratification like other merchants so as to facilitate the grant of permits for export. This demand of the C. S. O. was conveyed by Purushottam to his principal Sheosankar who communicated the same to the C. I. D. Inspector at Cuttack Mr. Ray which eventually resulted in the laying out of the trap on 5-3-50. It will thus be seen that Purushottam neither instigated the commission of the offence of bribery by the C.S.O. nor did he engage in any conspiracy in the commission of the crime. It was however urged that he intentionally aided in the commission of the crime by offering currency notes to the C. S. O. and that consequently he was an abettor as defined in Section 107, clause (Thirdly) of the Indian Penal Code. Doubtless, if Purushottam can be an- abettor his position as an accomplice is established beyond doubt and his evidence cannot be accepted without adequate corroboration. But I am not satisfied that his action comes within the scope of any of the clauses of Section 107, I. P. C., defining the offence of abetment. Though the Indian Penal Code defined the offence of bribery u/s 161, it does not in a separate section define the offence of offering bribe to a public servant. But illustration (a) to Section 109, I. P. C. clearly explains the ingredients of that offence. That illustration is as follows :

"A offers a bribe to B, a public servant as a reward for showing A some favour in the exercise of B"s official functions. B accepts the bribe. A has abetted the offence defined in Section 161."

To a similar effect is illustration (a) to Section 161, I. P. C. dealing with a case where the public servant refuses to accept the bribe. From these two illustrations it follows that mere offer of money or illegal gratification to a public servant would not amount to an offence of abetment of bribery unless that offer is made "as a reward for showing that person some favour in the exercise of the official func-tions of the public servant." That is to say, there must be the necessary criminal intention on the part of the offerer. In the case of a trap witness engaged for the purpose of decoying a public official by offering him marked currency notes this essential criminal intention is wanting.

Purushottam did not offer the marked currency notes to the- C. S. O. as a reward for showing him some favour in the exercise of the C. S. O"s official functions. His sole object in offering the money was to entrap the C.S.O. so that the C. I. p. Inspector and other officials who were lying in wait outside the C. S. O"s house might be able to recover the money from the possession of the C. S. O. Therefore, the essential ingredient of the offence of abetment of bribery clearly explained in illustration (a) to Section 109, I, P. C. is wanting in this case and with great respect I am unable to agree that Purushottam can be said to be an accomplice.

When considering whether the giver of a bribe is guilty of abetment the definition of abetment given in Section 107, I. P. C. must be construed along with illustration (a) to Section 109. The importance of an illustration in construing a section of statute is so well-known that it is unnecessary for me to dilate on this point at length. The Privy Council laid down in "LALA BALLA MAL v. AHAD SHAH" AIR 1918 PC 249 that illustrations to an Indian statute are to be taken as part of the statute. In "SAADAT KAMEL HANUM v. ATTORNEY-GENERAL FOR PALESTINE" (1939) A. C. 508 (PC), it was further pointed out :

"The function of an illustration is to show how the principle already enunciated in the section of the enactment to which the illustration is appended is to be applied or how the particular facts of the case supposed by the illustration come under the principle".

In "MAHOMED SYEDOL ARIFFIN v. YEOH OOI GARK" (1916) 2 A. C. 575 (PC) the Privy Council emphasised the importance of illustrations in construing statutes in the following terms : --

".....it is the duty of a Court of Law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should, in no case, be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And, it would require a very special case to warrant their rejection on the ground of their

assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired".

20. The aforesaid view as, regards the abetment of bribery was explained in ''EMPEROR v CHATURBHUJ SAHU'' 38 Cal 96. Doubtless in ''LAKSHMINARAYANA AIYAR v. EMPEROR'', 1917 Mad W N 831, there are some observations which might support a contrary view though that case is clearly distinguishable on facts from the present case. But with great respect to the learned Judges who decided that case it appears that the full significance of illustration (a) to Section 109 was not considered in that decision. The Calcutta view has been followed in ''GOVINDA BALAJI v EMPEROR'' AIR 1936 Nag 245 AIR 1947 109 (Nagpur) .

21. Doubtless if the act of a spy or a decoy witness amounts to an offence either under the Penal Code or under any special or local law he is clearly guilty of that offence and may become an accomplice in some circumstances and his motive however laudable may be immaterial. In ''BRANNAN v. PEEK'' (1947) 2 All E R 572a police officer went inside a public house and made a bet on a horse which act itself amounted to an offence. Doubtless, the motive in making that bet was to defect the offence under the Street Betting Act, 1906, which was being committed by the accused. But as the police officer''s act amounted to an offence irrespective of his motive Lord Goddard C. J. felt it necessary to give a stern warning against the practice of sending a police officer to a public house to commit an offence. But where the object or intention is one of the essential ingredients of the offence and that object or intention is wanting those abservations of Lord Goddard C. J. have obviously no application.

In ''PROULX v. LIQUOR COMMISSION OF QUEBEC'' (1922) 70 D. L. R. 625the evidence of a bribed informer was held to be unacceptable unless corroborated. The fact that he was bribed was itself sufficient to discredit his testimony and that decision is no authority for saying that an informer is an accomplice. In ''REX v, REDGERS (1926) 4 D. L. R. 609 the spies were held to be accomplices because by purchasing liquor from an unlicensed vendor knowing him to oe unlicensed, they abetted the offence of selling liquor without a licence. Their motive in helping the detection of the crime was material. In ''REX v. TOMMY''(1930) 1 D.L.R. 973 the facts were similar.

In ''QUEEN EMPRESS v. JAVECHARAM''19 Bom 363though the instigator of the offence who was a police spy was held to be an accomplice the learned Judges observed-- "..... We are inclined, but ''not without doubt'', to hold him to be an accomplice."

Similarly in ''IN RE KOGANTI APPAYYA'', AIR 1938 Mad 893, the learned Judge felt some doubt about the legal position and observed :

"In any case even if these witnesses are not to be regarded as accomplices in the strict legal sense, nevertheless their conduct has been such that their evidence requires to be viewed with caution."

22. It will be seen that the question as to whether a spy or decoy witness is to be branded as an accomplice depends on the criminality of the acts done by him and the nature of the offence for the detection of which he was employed. In this case however, we are concerned with a very limited question namely, whether a person engaged by the police to give marked currency notes to a public officer with a view to detect the offence of bribery is an accomplice. I have already shown that he is not an accomplice because he lacks the necessary criminal intention. It will, therefore, be academic to discuss the larger question about the circumstances under which a police spy engaged to detect other offences may become an accomplice.

23. I am also unable to agree that the C.I.D. Inspector Mr. Ray (P. W. 8) became an abettor by his conduct in laying out the trap and executing the same. As pointed out in Emperor Vs. Kesri Chand, relying on the well-known observations of Lord Alverstone C J. in "REX v. MAR-TIMER" (1911) 1 K. B. 70a

" "trap" is nothing but the means of detecting crimes, by catching the criminal "flag-rante delicto." Just as a crime assumes protean shapes, so has the method of its detection to take countless courses and assume countless forms.....It is to be remembered that the offence of offering to or accepting bribe by a public servant cannot, ordinarily, be detected without laying a trap."

Mr. Ray had received information from Sheosahkar at Cuttack that the C. S. O. Inspector was attached to the Supply Department and it was clearly his duty to detect cases of corruption committed by the subordinate officials of that Department. He adopted the only course available for the detection of an offence of this type and sought the assistance of the A. D. M. of Bolangir, Mr. Dutt, so as to render the evidence of the recovery of the marked notes from the possession of the C. S. O. beyond challenge. Even in the Bombay case "QUEEN EMPRESS v. JAVE-CHARAM" 19 Bom 363it was recognised that the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice.

24. But though I am not prepared to hold that Purushottam is an accomplice, I would agree with my learned brother that the circumstances under which he and his principal Sheosankar attempted to obtain permit for 15,000 mds. of kudo falsely representing to the authorities concerned that they had in stock such a huge quantity is itself sufficient to render his evidence unsafe unless adequately corroborated. There seems no doubt that he and Sheosankar entered into a conspiracy to obtain permit under false pretences for such a huge quantity of kudo. Sheosankar had considerable influence in the Supply Department at Cuttack and was able to persuade the Supply Secretary to grant permit for such a quantity of kudo without awaiting report from the District Magistrate, Bolangir,

regarding the existence of such stock with his agent Purushottam at Kantabanji. These facts have been fully discussed in the judgment of the lower Court, and I would in agreement with it hold that Purushottam''s participation in such a shady transaction renders his evidence vulnerable. Consequently, his evidence regarding the circumstances under which the offer of money to the C. S. O. was made on the 5th March, 1950 cannot be accepted without corroboration.

25. Such corroboration however is found in the evidence of Bhoramall (P. W. 3) which stands on a different footing. There is no evidence to show that he was a party to the trap. (After discussing the evidence, the judgment proceeded) :

I am not therefore inclined to accept the view that Bhoramall was the collaborator of Purushottam in laying out the trap or else that his evidence also requires corroboration.

26. It was however urged that Bhoramail had a motive in deposing against the C. S. O. because his application for permit to export 2,000 mds. of kudo (Ext. A series) was rejected by the C. S. O. in January, 1950. This witness further admitted that he approached the District Magistrate also for the issue of the permit but was unsuccessful. From this admission, an attempt was made to show that this witness had some cause for enmity against the C. S. O. I am however unable to appreciate this argument. A public officer passes several orders in the course of his duties, either accepting or rejecting the prayers of several applicants. It will be too far-fetched to say that the mere fact that an applicant''s prayer was rejected by a public officer must necessarily lead to an inference that the applicant was ini-mically disposed towards the officer and that his evidence against him in any future case must be viewed as interested.

Doubtless if the officer had shown unusual zeal in turning down the prayer of Bhoramall there might be something to be said in support of the argument. But Ext. A series do not indicate that the C S. O. showed any unusual zeal for reacting the application of Bhoramall for a permit to export kudo. He passed an order in the usual course of his duties (though rejecting the recommendation of his subordi- nate) and I cannot accept the contention that on account of this order of the C. S. O., Bhoramall would become a party to perjure against him on such a serious charge as bribery.

Bhoramall''s evidence has been frank and straightforward and no attempt has been made to conceal any fact in favour of the accused. On the other hand, the following answer given by him in his cross-examination shows that he was favourably inclined towards the C. S. O. ''Purushottam told me that he had not met the C. S. O. before and wanted me to accompany him.''

This statement has great significance. It has been obviously elicited from this witness by the defence lawyer with a view to discredit Purushottam''s evidence in Court to the effect that he had met the C. S. O. on two previous occasions and the latter had demanded bribe on those two occasions.

Before asking Bhoramall about what Purushottam told him, the defence lawyer should have first confronted himself and asked him whether he told Bhoramall that he (Purushottam) had not met the C. S. O., before and wanted Bhoramall to accompany him. This is the principle laid down in Section 145 of the Evidence Act which makes it absolutely mandatory that before a witness can be contradicted by his previous statement his attention must be drawn to that statement so as to give him an opportunity of explaining the same. It is true that, in terms, Section 145 of the Evidence Act refers only to previous "written statements" of a witness. The Evidence Act makes no express provision regarding the mode of contradicting a witness by his previous oral statement. But there seems no difference in principle between a previous written statement and a previous oral statement and the procedure to be adopted for establishing such contradiction should be the same (see Wood-roffe"s Law of Evidence, 9th Edn., p. 1001 and Sarkar"s Law of Evidence in India, 7th edition, p. 1367).

This view ,is based on the observation of Patteson J. in "CARPENTER v. WALL" (1840) 113 ER 619 :

"I like the broad rule, that, where you mean to give evidence of a witness"s declarations for any purpose, you should ask him whether he ever used such expressions." (see also Taylor on Evidence, 11th Edition, Vol. II, Article 1451)."

The only Indian decision in point is "MUK-TAWANDAS v. EMPEROR" AIR 1939 Nag 13 where a slightly different view was taken and it was held that Section 145 of the Evidence Act should be strictly construed and limited to previous written statements of a witness only. But in that Nagpur decision also, it was pointed out that the Court might refuse to place any reliance on the previous statement of a witness proved through another witness on the ground that the attention of the former witness was not drawn to it so as to give him an opportunity for explanation. The Nagpur High Court was however not prepared to hold that the said statement was inadmissible for non-comuliance with Section 145 and in coming to this decision the learned Judges were mainly influenced by the fact that in terms Section 145 of the Evidence Act does not apply to oral statements.

But with great respect to the learned Judges of that Court, I may point out that Clause (3) of Section 145 of the Evidence Act applies both to previous oral statements and previous written statements of witness. There is no provision in the Evidence Act regarding the procedure to be adopted for contradicting a witness by his previous oral statement. Though the Evidence Act was intended to be a complete Code of the law of evidence in respect of matters expressly provided for in it, there are some matters in respect of which in the absence of any provision in that Act, the wholesome principle of English law of evidence as enacted in Section 145 of that Act may be applied.

27. I cannot believe that the defence lawyer was unaware of the necessity of putting that question to Purushottam first before attempting to contradict him by asking Bhoramall about the same. The cross-examination of all the prosecution witnesses has been done in

a careful and searching manner, and all points in favour of the accused have been brought out. For some mysterious reason no question was put to Purushottam in his cross-examination as to whether he told Bhoramall that he had not met the C. S. O. before, even though in his cross-examination he clearly stated that the C. S. O. knew him from before.

The aforesaid statement in the evidence of Bhoramall on which the learned lower Court and my learned brother also have relied much is inadmissible due to non-compliance with Section 145 of the Evidence Act. Even if the Nagpur view "MUKTAWANDAS AJABDAS v. EMPEROR" AIR 1939 Nag 13 is followed, no weight can be attached to it due to such non-compliance. But the way in which that answer was elicited from Bhoramall in cross-examination shows that the concerned parties knew that he would give such an answer in favour of the accused and the defence discreetly refrained from questioning Purushottam about it lest the prosecution should get notice of this manoeuvre. Therefore, the only legitimate comment that can be made against Bhoramall is that not only was he not inimically disposed towards the C. S. O. but he was somewhat anxious to save him and for that purpose was ready to make some statements in his favour in his cross-examination.

28. Bhoramall"s evidence was further impugned on the ground " that he went to the house of the C. S. O. to offer sarees as a bribe and as such he was an accomplice. Bhoramall stated that on a previous occasion he had met the C. S. O. and that the latter had asked him to bring some good Madrasi sarees with broad borders. It was in pursuance of this request of the C. S. O. that Bhoramall went to his house on 5-3-50 with some Madrasi sarees. Doubtless if his intention was to offer sarees by way of bribe so as to facilitate his obtaining permit for export of onions he may himself be guilty of abetment of the offence u/s 161, I. P. C. But there is no evidence to show that the sarees were intended to be given away as gift to the C. S. O. On the other hand the suggestion made to Bhoramall during cross-examination was "I do not remember if he (referring to the C. S. O.) said he would, pay the price when the sarees are brought" seems to indicate that the defence case was that the price of the sarees would be paid if the C. S. O. accepted them. Thus the defence itself took great pains to show that there was no intention of accepting the sarees without payment of their price. It will therefore be academic to consider whether Bhoramall would be an accomplice if he intended to give the sarees by way of gift to the C.S.O.

29. If this were an appeal against conviction I would, relying on the evidence of Bhoramall and the fantastic nature of the explanation given by the C. S. O. to account for his possession of the incriminating currency notes, have had no hesitation in holding that the C. S. O. accepted the sum of Rs. 200/-offered by Purushottam. It is true that Purushottam does not say that while offering the money he stated to the C. S. O. that it was being offered in pursuance of the demand made by him on two previous occasions. But as it is admitted that the said sum was not part of the legal remuneration of the C. S. O. as soon as the prosecution has proved that the C.S.O. accepted the sum the presumption u/s 4 of

the Prevention of Corruption Act, 1947 (Act II of 1947) would apply and, in the absence of any evidence on the side of the accused, it must be held that the sum was accepted as bribe. Doubtless if the evidence of neither Purushottam nor Bhoramall is believed and the explanation of the C. S. O. as given in Ext. 9 alone be taken as true it cannot be held (as pointed out by my learned brother) that there was "acceptance" of the sum of Rs. 200/-, But for the reasons already given I see no reason to disbelieve Bhoramall.

30. But this is an appeal against an acquittal and different considerations therefore arise. Moreover, my learned brother also has taken a different view. As pointed out in the recent decision of the Supreme Court in Surajpal Singh and Others Vs. The State, in hearing an appeal against an order of acquittal u/s 417, Cr. P. C. the High Court should bear in mind :

"that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

Though I am inclined to take a view different from that taken either by the trial court or by my learned brother, I cannot say that there are very "substantial or compelling reasons" for reversing the findings of the trial court especially when the presumption of in nooence of the accused is doubly reinforced partly by the order of acquittal passed by the trial court and partly by the view taken by my learned brother on the facts of this case. The alternative view on facts taken by the learned lower Court and by my learned brother may also be justified from the evidence on record, I do not therefore wish to express dissent from the order proposed by my learned brother dismissing the appeal, (see Government Appeal No. 11 of 1950 where Hon''ble Mr. Justice B. Jagannadhadas (as he then was) adopted a similar course under similar circumstances). But with great respect I cannot concur in the view that Bhoramall is a "finished liar" and that Bhoramall, Purushottam, Sheo-sankar and Mr. Ray are no better then accomplices. The C S. O. should consider himself lucky that he was acquitted by the trying Magistrate.