

Krishnabiharilal Vs. State

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SooperKanoon Citation : sooperkanoon.com/498517

Court : Madhya Pradesh

Decided On : Dec-08-1954

Reported in : 1956CriLJ233

Judge : Nevaskar, ;Chaturvedi and ;A.H. Khan, JJ.

Appellant : Krishnabiharilal

Respondent : State

Judgement :

Chaturvedi, J.

1. This is an appeal preferred by Krishna Biharilal a former clerk in the office of the High Court, Gwalior, who has been convicted under Section 161, I.P.C. and sentenced to one year's rigorous imprisonment by the learned Special Judge, Gwalior. The State has preferred an appeal against the order of the learned Special Judge under the impression that the learned Judge has constructively acquitted the appellant under Section 5 (2), Prevention of Corruption Act. A charge had been framed against Krishna Biharilal appellant under both these sections.

2. The case for the prosecution is that one Ismail Khan P. W. 6, paid a bribe of Rs. 110 to the appellant for the purpose of expediting the appeal against his daughter Zamila in file C. S. A. No. 46 of 1951 (Fazil Khan v. Zamila) which was at that time pending in the High Court. On behalf of Zamila in that file the witness Ismail had

engaged two Vakils and according to his own statement made in Special Judge's Court he had paid Rs. 26 to Mr. Ali Mazhar and had engaged Mr. Anand Bihari Mishra on Rs. 15 but had paid Rs. 10 only as he could not pay the remaining Rs. 5 to Mr. Mishra.

Now the sum of Rs. 110 alleged to have been paid to the appellant is made up of several items. Ismail Khan said that he could not locate where the file was, so he went to the High Court office and paid the appellant Rs. 2 for inquiry. The appellant asked him to come after three months and had demanded Rs. 100, so he came first time with Rs. 90 after three months, and gave that sum to the appellant. Then Ismail sent another Rs. 10 by Money Order at the home address of the appellant and this item is well proved as on 184-52 the Money Order of Rs. 10 had been received by the appellant Krishna Biharilal which was addressed to his home address.

It is alleged by Ismail Khan that he again came to Lashkar and then paid Rs. 10 for expediting the disposal of the file. As the file was not expedited he submitted an application to the High Court which led to the arrest and prosecution of the appellant and which ultimately resulted in this conviction.

3. Now the application filed by Ismail P. W. 6 in the High Court which had initiated the prosecution has not been produced by the prosecution in this case and there is no doubt that this application was important. Ismail contended in that application that he had mentioned that Rs. 110 were paid as bribe to the appellant. On behalf of defence it was argued that in that application it was mentioned that Rs. 110 were given to the appellant, for Court-fees and not as bribe for any work connected with the case.

In my opinion it was the duty of the prosecution to have produced the original application. Of course, a copy was produced in the trial Court and from that copy it is clear that the allegations of Ismail P. W. 6 were to the effect that the appellant had demanded Rs. 110 for Court-fees. This copy has been produced by the Prosecution and surely they cannot now turn round and say that this copy produced by them should not be taken into consideration.

Our attention was also directed to the statement of Sardarsingh P. W. 7 who is a petition writer in the District Court of Bhind and who had written the original application to the High Court on behalf of Ismail Khan P. W. 3, He also deposes that in that application it was mentioned that the appellant had taken Rs. 110 for the purpose of paying Court-fees. Surely if that was the case it was a case of cheating and not an offence under Section 161, I.P.C.

Now according to Ismail Khan's statement it is clear that he sent Rs. 10 by Money Order to the appellant, paid Rs. 90 to the appellant in cash and then paid Rs. 10 in cash again. It must be mentioned here that Ismail was 'challaned' in this case and was subsequently tendered pardon and made approver and then brought as a prosecution witness in this case. So his statement must be corroborated in material particulars.

It might be sufficient to say that the statement about cash payment of Rs. 90 on the one occasion and Rs. 10 on another occasion had not been corroborated in material particulars in this case, and, so the allegation of these payments has to be eliminated from consideration,

4. The question therefore remains only for the allegation in respect of payment of Rs. 10 for which a Money Order was sent. Several letters (Exs. P/1, P/2, P/4, to P/8 had been produced in this case which were alleged by the prosecution to have been in the handwriting of the appellant. This handwriting has not been proved. Trilok Chand P. W. 1 and Krishna Gopal P. W. 2 were produced to prove the signatures and handwriting of the accused in these letters.

Trilok chand, said only this that Ex. P/5 seems to have been written by the accused but that he could not say about other exhibits. Krishna Gopal P. W. 2 said definitely that Exs. P/1, P/2, P/4, to P/8 are not in the handwriting of, and do not bear the signatures of, the accused. If the prosecution thought that these post cards were in his handwriting and bore his signatures then some stronger evidence ought to have been produced. At least these letters ought to have been sent to the Government Handwriting Expert at Delhi or Simla, but nothing of that sort has been done in this case and the writing of these post cards remains unproved.

We will therefore have to exclude these letters also from consideration. Our attention was directed by the learned Government Advocate to the deposition of Ramnarain P. W. 8, at whose shop in Bhind, Ismail works as a tailor. Ismail does not know Hindi. It appears that he had requested Ramnarain to write his letters. The procedure employed was that Ismail used to give reply paid post card to Ramnarain and Ramnarain used to write on the post card whatever Ismail would request him to write and then on the reply paid post card he would write down his own address.

So these letters are addressed to Ramnarain and are written by somebody who signs as 'K. B. S'. This is no doubt the short form of the name of the appellant, or his initials, but as the appellant has denied his signatures and his handwriting on the post cards, we cannot take this into consideration till the handwriting of these post cards has been proved to be of the appellant. But Ramnarain has clearly mentioned that Ismail had also asked him to write letters to Krishna Biharilal and that he had in fact written some letters to Krishna Biharilal though, according to Ramnarain, these letters are not on the file.

Though we cannot take Exs. P/1, P/2, P/4, to P/8 into our consideration in this case nevertheless it is open to serious objection that a clerk of the High Court should be in correspondence with a litigant. In my opinion such a clerk does not deserve to be kept in service in the office of the High Court. This however has nothing to do with the question of his guilt under Section 161, I.P.C. which has to be determined on the legal evidence in this case.

5. The appellant admitted that he had received a Money Order from Ismail Khan P. W. 6 and he sought to furnish an explanation. His statement is that Ismail had engaged Mr. Anand Bihari Mishra but had not paid Rs. 10 to Ghan-shyamdas D. W. 5, clerk of Mr. Anand Bihari Mishra who was demanding the sum. As the appellant came in and asked them not to shout in the corridor, Ghanshyamdas requested the appellant to pay Rs. 10 as a loan to Ismail who would give him the money required.

The appellant says that Ghanshyamdas persuaded him to advance the loan and told him that if he himself would pay the money Ismail would never return the

money but that if the appellant would advance the money Ismail would return it. Therefore the appellant says that he complied with this request and paid Rs. 10 from his own pocket and asked him to send this money by Money Order. Ismail was directed to send the Money order to the appellant and Ghanshyamdas says that he had paid Rs. 10 to the appellant on that very day and that when the appellant received Money Order he had paid the money to Ghanshyamdas.

Now this statement of Ghanshyamdas D. W. 5 and Krishna Biharilal appellant, who himself went to the witness-box, is amply corroborated by two other witnesses. Ramnarain is a prosecution witness who says that Ismail had told him that the clerk of Anand Bihari Mishra got him a loan of Rs. 10 and therefore he was sending this Money Order. Gopaldas D, W. 2 who wrote this Money Order (Ex. P/13) has come as a defence witness and has deposed that Ismail at that time of sending this money had told him that the clerk of Anand Bihari Mishra got him a loan of Rs. 10 from some clerk of the High Court office and so he was sending the Money Order to that clerk.

There is nothing in the cross-examination either of Ramnarain or Ghanshyamdas or of Gopaldas which may indicate that their statements in any way have been shaken and I must take this evidence as telling heavily against the prosecution. Though the procedure of receiving Money Order from a litigant by a High Court clerk at his home is extremely objectionable and must be condemned from every aspect, yet It is not sufficient, under the circumstances stated above, for basing a conviction thereon, especially when the explanation furnished by the appellant is sufficiently convincing and has been supported by other witnesses.

6. The learned Government Advocate in the end drew our attention to Section 4, Prevention of Corruption Act which states that if it is proved that an accused person has accepted or obtained any gratification (other than legal remuneration) from any person it shall be presumed, unless the contrary is proved, that he accepted or obtained that gratification as a motive or reward such as is mentioned in Section 161, I.P.C. Mr. Mungre, contended that this presumption is sufficient for the prosecution and the accused must prove his innocence beyond reasonable doubt.

7. It may be sufficient to observe in this connection that Section 2, Prevention of Corruption Act of 1916 of England provided a similar presumption of guilt. This presumption came to be interpreted in - 'Rex v. Carr-Braint' (1943) 1 KB 607 (A). It was contended in that case that this presumption reversed the positions of the prosecution and the defence and that the accused has to prove his innocence beyond reasonable doubt, which is the measure of the burden ordinarily laid upon the prosecution in proving the guilt of an accused person.

The Court of Criminal Appeal repelled that contention and laid down that the onus on the accused is less than that and is only that which rests on a party in civil proceedings and that the Jury can acquit the accused if they are satisfied of the probability of the innocence of the accused. In - 'M. C. Mitra v. The State' : AIR1951 Cal524 it was observed that the rule of law stated in the above English case is applicable with equal force in India and that 'proof of the contrary' within the meaning of Section 4, Prevention of Corruption Act is proof according to Section 3, Evidence Act.

I respectfully agree with this opinion. Section 4 in fact raises a rebuttable presumption and the contrary may be proved to displace the presumption contained in the section. As was stated by Panigrahi J. (as he then was) in - 'State v. Minaketan Patnaik. AIR 1952 Orissa 267 (C), 8. 4 purports to lay down only that a Court shall draw a particular inference from a particular proved fact and so it is only an inference and not evidence and the inference may be overcome by evidence.

On the basis of the evidence in this case, in my opinion, the contrary has been proved in this case and the presumption contained in Section 4 is altogether displaced.

The learned Sessions Judge has not considered this aspect of the case and his judgment therefore lacks soundness. There is no doubt that the proof adduced by the prosecution, especially the Money Order at the home address of the appellant, raises grave doubts; but it is well settled that if the proof adduced tends to strong suspicion but falls short of the requisite standard, the Court is constrained to give at least benefit of doubt.

8. Considering the evidence as a whole I am clear in my mind that this is not a case in which-the conviction can be maintained. In this view of the matter this appeal will be allowed and the State appeal will be dismissed and it will not be proper to express any opinion on the point agitated in the State appeal.

9. We allow the appeal, set-aside the conviction and sentence, and, order that the appellant Krishna Biharilal be released forthwith from-Jail.

A.H. Khan, J.

10. The charge against the accused is that he accepted Rs. 110 from one Ismail in order to expedite a Civil Second Appeal No. 46 of 1951, which was pending against his daughter in the High Court. Out of Rs. 110 a sum of Rs. 100 is alleged to have been paid in person and Rs. 10 were sent by Money Order to the accused.

11. Out of Rs. 110 alleged to have been given, the payment of Rs. 110 is doubtful, but Rs. 10 are admitted to have been received by the accused. Regarding payment of Rs. 100 in person, Ismail, the complainant, in this case has deposed that the sum was paid to the accused to order to have the hearing of the appeal of his-daughter expedited. But it appears that Ismail, the complainant, at one time complained to the High Court that the accused obtained the amount, from him on the pretext to make up the deficiency in the Court-fees.

The original application has not been produced but the scribe of it (Sardar Singh) has been-examined by the prosecution. There is no doubt that Ismail is not speaking the truth and the-reason for his prevarication as suggested by the-learned Government Advocate is that Ismail thought that if he would say that he gave the amount as bribe, perhaps he would be hauled up himself.

Whatever may be the reason, I do not think that Ismail paid Rs. 100 to the accused, for the purpose of Court-fees, because his daughter was a respondent in the appeal and was not required to pay any Court-fees at all. The payment of Rs. 100 to the accused is not proved by any satisfactory evidence.

12. With regard to the payment of Rs. 10 the accused admits receiving it by Money Order. He, however, contends that he gave this amount to Ismail at the instance of Ghansham, the clerk (Moharir) of Mr. Anand Bihari Mishra Vakil and it was this money that was returned by Money Order. It is said that taking him aside, the Moharir said that Vakil Sahib had asked him to pay Rs. 10 out of his pocket in order to enable Ismail to present an application in the appeal referred to above, to get the hearing of it expedited.

The moharir also said that Ismail was an unreliable person and that if the accused advanced the sum of Rs. 10 for that purpose, Ismail was sure to return it to the accused.

This statement itself shows that an advantage was sought to be taken of the position of the accused as a clerk of the High Court. The object of lending this money was alleged to be to present an application for expediting the hearing of the case.

But Ismail has stated on oath that no application was given for the purpose. This clinches the matter and the alleged object for which the money was said to have been advanced is all an eye-wash.

13. According to Section 4, Prevention of Corruption Act, where an accused has accepted any valuable thing from any person (and here it is admitted that the accused received Rs. 10 from the complainant by Money Order) it shall be presumed, unless the contrary is proved, that he had accepted that valuable thing as a reward. It is obvious that a presumption under Section 4 of the Act is not conclusive but is rebuttable. I do not think that the accused has succeeded in explaining satisfactorily the receipt of Rs. 10 by Money Order.

14. My learned brother feels inclined to give him the benefit of doubt. But I am quite clear in my mind that the accused is guilty.

15. I should like to say a word about the manner in which the prosecution has been conducted. My learned brother has already commented upon the shortcomings. I would only add that the Prevention of Corruption Act is a special

measure designed to deal sternly with those found guilty of gross misconduct in the discharge of their official duty. As such the prosecution should bestow more thought and care on the evidence they rely upon and it should be properly produced.

16. In this connection I should like to refer to the prosecution witness Krishan Gopal, who is also a clerk of the High Court. This witness says that he does not know the handwriting of the accused and in the same breath he says that the accused daily submitted to him the list of cases. If, it is so, he must recognise the handwriting.

Not content with making a statement that does not stand the test of truth he goes on to say that the post cards, Exs. P/1 to P/8 (to prove which he was called in by the Prosecution) are not in the handwriting of the accused. After saying that he does not recognise the handwriting of the accused to depose that the post cards are not in the handwriting of the accused is nothing but a downright lie uttered to save and protect the accused.

Witnesses must remember that when they are put on the oath, they must rise above all mundane considerations and fearing God alone must state nothing but the truth. In this view of the matter, the behaviour of Krishna Gopal is condemnable and a copy of this judgment should be laid before the Hon'ble the Chief Justice for any action which he may like to take against Krishna Gopal, who is on the staff of the High Court.

17. Regarding the Government Appeal, it is enough to say that the accused having been found guilty under Section 161, I.P.C. and sentenced to one year's rigorous imprisonment, he cannot again on the same set of facts be tried and sentenced, under Section 5(2), Prevention of Corruption Act. The Government Appeal must, therefore, fail.

18. In result I would dismiss the appeal of the accused No. 5 of 1954 and also appeal No. 28 of 1954 filed by the Government. NEVASKAR J.:

19. Accused Krishna Biharilal was convicted under Section 161, I.P.C. by the Special Judge, Gwalior under Prevention of Corruption Act 1950 and was sentenced to one year's rigorous imprisonment.

20. Accused preferred an appeal to this Court and the case was heard by a Division Bench consisting of Abdul Hakim Khan and Chaturvedi JJ.

21. Chaturvedi J. was of the opinion that although there might have been some ground for suspicion against the accused the case falls short of requisite standard of proof required for a conviction in respect of a criminal charge although it might be a case under Section 161, I.P.C. to which Section 4, Prevention of Corruption Act applied. He therefore held that the accused ought to be acquitted. He in this connection relied upon the cases reported in (1943) 1 KB 607 (A); : AIR1951 Cal524 and AIR 1952 Orissa 267 (C).

22. On the other hand Khan J. thought that the circumstances proved on record justified the drawing of presumption under Section 4, Prevention of Corruption Act and that the accused has failed to rebut that presumption satisfactorily.

23. This case, therefore, on this difference of opinion between the learned Judges has been placed before me.

24. Facts which gave rise to the present prosecution according to the prosecution are as follows: According to them Krishna Biharilal is employed as a clerk working in the case branch of the High Court at Gwalior. It is said that an appeal was preferred against one Zamila in this Court. This appeal bore No. 46 of 1951. Zamila's father Ismail (P. W. 6) gave Rs. 110 to the accused in order to secure expeditious hearing of the appeal aforesaid. This sum is said to have been given in three instalments. First sum given was Rs. 90 and this was so given three months subsequent to the demand made by the accused.

At the time of making the demand, it is said, the accused had asked him to come after three months. Second was a money-order of Rs. 10 which was said to have been received by the accused on his home address on 18-4-1952. Last sum of Rs. 10 was given when Ismail had been to Lashkar some time later. When all these

payments failed to produce desired result Ismail submitted a petition to the High Court. This led to the arrest and present prosecution of the accused and Ismail both. Ismail was granted pardon as he turned approver.

25. According to the accused the only sum he received was the money-order of Rs. 10. This was to discharge a loan of Rs. 10 made by him at the instance of Mr. Anand Bihari's clerk.

26. The questions which, on these facts, arise for consideration are:

(1) Did the accused receive Rs. 90 in cash, Rs. 10 by money-order and Rs. 10 in cash from Ismail?

(2) Did he receive them as a motive or reward such as one mentioned in Section 161, I.P.C. from Ismail for expediting the hearing of Civil Second Appeal No. 46 of 1951 (Fazil Khan v. Zamila).

27. According to both the learned Judges of this Court there is no evidence regarding the alleged payment of Rs. 90 apart from the statement of Ismail. Ismail was put up for trial along with the present accused Krishna Biharilal to begin with but he turned approver and was granted pardon. Under these circumstances, in the absence of corroboration it is unsafe to act upon Ismail's statement alone and hold that this payment is proved.

28. Before considering the question whether payment of two sums of Rs. 10 each, one by money-order and the other personally in cash several months later, has been proved or not it will be necessary to consider the question whether certain post-cards said to have been written by the accused and intended for Ismail had been proved or not. These are Exs. P/5 to P/8. The Trial Court holds them to have been proved although he does not specifically discuss this question in detail.

Chaturvedi J. thought that the documents were not proved as none of the witnesses produced by the prosecution prove the same. The witnesses P. W. 1 Tilokchand and P. W, 2 Krishna Gopal were examined presumably on the assumption that they are acquainted with the handwriting of the accused as they belonged to the same office. But they failed to support the prosecution on that

point, P. W. 1 Tilokchand having stated that he was unable to identify handwriting of the accused went on to state that Ex. P/5 appeared to have been written by him.

In the cross-examination he admitted that he had only a few occasions to see the handwriting of the accused. Krishna Gopal flatly denies that 'Exs. P/1-2-3-4-5-6-7 and 8' are in the handwriting of the accused or bear his signatures. Questions put to D. W. Prahlad Das also did not bring out the desired effect. Therefore it may safely be assumed that there is no direct evidence to prove the handwriting of the accused with respect to letters Exs, P/5 to P/8. Accused admits his signature on the money-order coupon Ex. P/4 which is also otherwise proved by the evidence of Postman Durga Prasad.

29. But documents can be proved like any other fact by direct as well as circumstantial evidence although the circumstantial evidence must be of sufficient strength to carry conviction.

30. In - 'S. H. Jhabawala v. Emperor' AIR 1933 All 690 (D), Sulaiman C.J. at p. 704 says as follows: the execution or authorship of a 'document' is a question of fact and may be proved like 'any other fact. In such a case:

(a) A document may be 'proved' as defined in Section 3 when the Court considers its existence so probable that a prudent man ought, under the circumstances, to act upon the supposition that it was written by the person alleged to be its author even though no direct proof of his handwriting is given,

(b) thus a document may be proved both: (i) by the direct evidence, and (ii) by circumstantial evidence.

31. This question was considered earlier in - 'Barindra Kumar v. Emperor' 37 Cal 467 (E) where Carnduff J. held that execution and authorship of a document is a question of fact and can be proved like any other fact and that handwriting, in addition of usual methods of proof can be proved by circumstantial evidence under Section 67, Evidence Act which prescribes no particular kind of proof. Recently the aforesaid Calcutta case appears to have been followed in - 'Gover-dhan Das y. Ahmadi Begam' AIR 1953 Hyd 181 (F) by Palnitkar and Deshpande JJ. although

the report mentions - 'Ashutosh v, Nalinakshya' AIR 1937 Cal 467 (G).

32. Section 3, Evidence Act gives the definition of the term 'proved' as follows:

A fact is said to be proved when, after considering the matters before it the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.' Section 67, Evidence Act lays down:If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

33. Reading the two sections together it is clear that Section 67 does not lay down any specific mode of proof and circumstantial evidence, as a mode of proof of authorship or execution of documents, is not excluded.

34. What are the pieces of circumstantial evidence in this case to prove that the letters Exs, P/5 to P/8 are those of the accused and intended for Ismail?

They are:

(1) The internal evidence contained in these letters.

(2) Oral evidence of witnesses to prove other circumstances.

35. The letter Ex. P/5 is a post-card dated 27-7-1952. It purports to be signed by K, B. S. It mentions that the case of 'Khansab' had been included in the monthly list of August and that the actual date when it will be heard would be known on his arrival at Lashkar after 1-8-1952, The post card is one out of a pair of post cards sent to the sender by Ramnarain Ramkishan Sharrna of Freegunj, Bhind. This discloses that the case referred to as of 'Khansab' was pending in the High Court and the sender had something to do with sending cases to monthly list and therefore must be connected with case-branch of the High Court office.

36. Post card Ex. P/6 is dated 19-8-1952 and is from Lashkar and is one out of a pair of post cards initially sent to the addressee at Lashkar, The sender of pair of post cards, one blank and the other written, is the same viz., Ramnarain

Ramkishan, cloth Merchant, Freegunj, Bhind.

37. In this letter a reference is made to the letter from the addressee and it is explained that no reply was given thereto hoping that he would give intimation of the date fixed but in spite of efforts he could not get it included in the list of August too.

38. In the end the writer expressed that he was doing his utmost and prayed God to help him. This too bears signature K. B. S.

39. The third post card is Ex. P/7 dated 8-10-1952. This is also similar to earlier two letters similarly signed and addressed to the same person and is one of the pair initially received from the addressee.

40. In this it is stated that it is only after the cases of Samvat 2005, 1949 and 1950 aggregating to 200 cases are heard that No. 46 of 1951 would be reached.

41. The last post card Ex. P/8 dated 21,-1-1953 is also similar, similarly signed. Hope is expressed in this letter that the case could be fixed some time on 28th, 29th or 30th of January 1953 and a demand is made of money, Rs. 10. The sender threatened that in case it is not heard in that month then the case might go over to six months. In the end it is exhorted that the letter should be torn.

42. According to Ismail his case was Civil Second Appeal No. 46 of 1951. It is an admitted fact that the accused was working in the case-branch of the High Court office dealing with the files of Civil Appeals. It is also proved as well as admitted that accused signs as K B S

43. The addressee of these post cards, Ramnarain Ramkishan cloth Merchant of Bhind, is examined. According to him all these letters Exs. P/5 to P/8 were intended for Ismail and that they were received on his address and that he made them over to the latter. He further admits that he had occasion to write letters addressed to Krishna Biharilal (accused) at the instance of Ismail. He however does not remember whether the counter-part of Exs. P/5 to P/8 were addressed to the accused.

44. Ismail P. W. 6 states that all these letters were received by him from the accused in reply to the letters sent by him in pairs through Ramnarain.

45. Accused also admits that the case in which Ismail was interested was pending and that he wanted its expeditious hearing and that on that account a quarrel had taken place between him and Ismail in the High Court office in July 1953 on account of the fact that the case had not been included in the list.

46. Thus the contents of the letters, attending circumstances and the statements of Ram-narain, Ismail, accused and Prahladdas clearly connect the accused with these letters as the author of the same. They also purport to bear his signature. The close similarity in the admitted signature and those on these post cards too must have impressed the trial Court. I am, therefore, irresistibly led to believe the existence of the fact, relating to accused's authorship and signature on these documents, so probable that a prudent man ought to act on the supposition that it exists. The documents therefore, in my opinion, have been rightly held by the trial Court to have been proved by circumstantial evidence.

47. We next proceed to consider whether the payment of two sums of Rs. 10 each has been proved.

48. As regards Rs. 10 sent by Ismail by money-order the fact is proved beyond reasonable doubt by the statement of Ismail corroborated by the production of money-order coupon purporting to bear the signature of the accused Ex. P/4. It mentions accused as the payee and gives his correct address. Record from General Post Office, Lashkar is produced by Money Order clerk D. M. Kale P. W. 4. This is Ex. P/12. It mentions Durga Prasad as the Postman to whom this money-order was given for distribution. Durga Prasad P. W. 5 is also examined. He proves that he paid Rs. 10 to the accused of this money-order and obtained his signatures on Exs. P/4 and P/13.

49. Thus the evidence leaves no doubt whatever about this payment by Ismail to the accused on 18-4-52. Accused also admits the receipt of this sum and his signatures on Ex. P/4 and Ex, P/13.

50. The payment of this sum is therefore proved. What is the case of the accused with regard to this payment and how far it should be accepted we shall see hereafter.

51. As regards payment of last sum of Rs. 10 after the receipt of letter Ex. P/8 dated 21-1-1953, the evidence consists of the statement of Ismail corroborated by the post card Ex. P/8 which in my opinion is proved to be of the authorship of the accused. It is true that Ismail might have received that letter and yet might not have paid but from the circumstance that it was in April 1953 that he resorted to complaints indicated that at least in January he had not lost all hopes to have his case expedited through the agency of the accused and had not become desperate.

52. Any other evidence under the circumstances is not possible. I therefore believe that this payment too is established.

53. Next Question is did the accused receive these sums of Rs. 10 each as a motive or reward for securing expeditious hearing of Civil Second Appeal No. 46 of 1951?

54. Section 4, Prevention of Corruption Act lays down:

(1) Where in any trial of offence punishable under Section 161 or Section 165, Indian Penal Code it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain, for himself or for any other person any gratification (other than 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, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 165A, Indian Penal Code (Act 45-of 1860), it is proved that any gratification (other than legal remuneration) or any valuable thing, has been given or offered to be given or

attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he-gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 161, Indian Penal Code or, for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in Sub-section (1) and (2) the Court may decline to draw the presumption referred to in either of the said' sub-sections if the gratification or thing aforesaid is in its opinion, so trivial that no inference of corruption may fairly be drawn.

55. From this provision it is clear that the-moment it is proved that the accused has received these two sums of money from Ismail it shall be presumed 'unless contrary is proved' that he-accepted them as a motive or reward such as one-mentioned in Section 161. I.P.C.

56. This presumption being there the burden lies heavily upon the accused to prove to| the contrary.

57. It is material in this connection to mention what is 'contrary proof in criminal cases. There are two divergent views taken in cases on this subject. One line of cases takes the view that, when the law makes a presumption of guilt and throws upon the accused, the burden of proving his innocence, the burden is as heavy as-that on the prosecution in any criminal case. These cases proceed on, what is considered to-be, a specific and special provision contained in the definition of the term 'proved' in Section 3, Evidence Act. It is held in these cases that the principles applied in some of the English decisions in such cases cannot be resorted to.

58. The other line of cases follow the trend of English decisions and take the view that although a burden is cast upon the accused by reason of Section 4, Prevention of Corruption Act this burden is not so heavy as upon the prosecution in other cases where no such presumption arises but is akin to burden placed upon a litigant in civil cases and can be discharged by proving preponderance of possibilities.

59. Had it been material for the purpose of this case I should have preferred the latter view as laying down the correct law. In my opinion there is nothing in the definition of the term 'proved' contained in Section 3, Evidence Act which would exclude the possibility of acceptance of the-latter principle as the correct one.

60. That section is so worded as to provide for two conditions of mind - first that in which a man feels absolutely certain and secondly that in which though he may not feel absolutely certain about a fact he thinks its existence so extremely probable that a prudent man would under the circumstances act on the assumption of its existence.

61. Best in Section 95 of his famous work says: 'There is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former, a mere preponderance of possibility, due regard being had to the burden of proof, is a sufficient basis of decision; but in the latter, especially when the offence charged amounts to treason or felony, a much higher degree of assurance is required.

The serious consequences of an erroneous condemnation, both to the accused and society the immeasurably greater evils which flow from it than from an erroneous acquittal, have induced the laws of every wise and civilised nation to lay down the principle, though often lost sight of in practice, that the persuasion of guilt ought to amount to a moral certainty; or, as an eminent Judge expressed It, 'such a moral certainty as convinces the minds of the tribunal, as reasonable men, beyond all reasonable doubt'.

62. The reason for different standards being applied to civil and criminal cases arises by reason of the slowness of a prudent civilised man in preferring guilt to innocence.

63. This question came specifically for consideration in an English case (1943) 1 KB 607 (A) in connection with the presumption arising by reason of Section 2, Prevention of Corruption Act, 1916 (English). The term 'unless contrary is proved' as applied to a case under that Act was discussed in this case. Humphreys J. who delivered the judgment quoted with approval the words of Lord Reading C.J. in -

Rex v. Ward' (1915) 3 KB 696 (H), of Viscount Sankey L. C. in - 'Woolming-ton v. Director of Public Prosecutions' (1933) AC 462 (I) and of Lord Hailsham in - 'Sodeman v. R.' (1936) 2 All ER 1138 (J) and held as follows at p. 612:

In our Judgment, in any case where, either by statute or at common law, some matter is presumed against an accused person 'unless the contrary is proved', the jury should be directed that it is for them to decide whether the contrary is proved, that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish.

64. The principle is accepted and followed in : AIR1951 Cal524 by P. B. Mukharji and Das Gupta JJ. and later in AIR 1952 Orissa 267 (at p. 272, para 8) (C).

65. In - 'H. T. Huntley V. Emperor' AIR 1944 PC 66 (K) Zafrulla Khan J. with whom Spens C.J. and Varadachariar J. concurred held as follows:

A charge under Section 161, Penal Code, is one which is easily and may often be lightly made but is in the very nature of things difficult to establish, as direct evidence must in most cases be meagre and of a tainted nature. These considerations cannot however be suffered to relieve the prosecution of any part of the burden which rests upon it to establish charge beyond 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 an acquittal.

66. Seemingly different view taken in other cases cannot be accepted on principle.

67. Test, under both English and Indian law regarding probabilities of a fact, is that of a prudent man and it would be a strange result if such a test should differ in the case of an English and Indian citizen. In my opinion therefore, the view expressed in (1943) 1 KB 607 (A) quoted above ought to be applied in such cases.

68. We have therefore to see whether the accused has succeeded in rebutting the presumption in accordance with the test laid down above.

69. The case set up by the accused is that some time in the first week of April 1952 Ghanashyamdas clerk of Mr. Anand Bihari Mishra advocate was talking loudly with Ismail in the corridor in front of the chamber of Chaturvedi J. Accused, who had been to the office of the Deputy Registrar, approached them and asked them what was the fuss about. Thereupon, it is said, Ghanashyamdas took him aside and told him that Ismail wanted to apply for expediting his case but had not brought money for stamps, 'Munsiana'. and typing, Mr. Mishra had asked him to pay the same from his own pocket, but that Ismail had not paid his previous dues also.

He therefore requested the accused to pay Rs. 10 from his own pocket to Ismail as a loan and assured him that the money would be returned to him immediately after Ismail had left. By this device, according to him, Ismail would be induced to send the money. Accused accordingly gave Rs. 10 and he received back the amount a short while later. Ismail then sent Rs. 10 by money-order to the address of the accused and the latter on receiving the same paid them to Ghanashyamdas.

Some support is sought to be taken for this seemingly unnatural story from the statements of P. W. Ramnarain who proves the admission of Ismail that he had to repay a loan of Rs. 10 taken from a clerk and that of D. W. Gopaldas who too proves admission of Ismail to the same effect. This Gopaldas was the scribe of the money-order.

70. The story that Rs. 10 were paid by the accused on the persuasion of Ghanashyamdas, with whom, according to his own statement, he was not intimate in order to enable him to obtain Rs. 10 for making the application when accidentally he arrived there is not easily believable. If Ismail was not prepared to pay for making the application for expediting the hearing where was the hurry about it when vacation was approaching. Then after money was recovered no application seems to have been made for the purpose. At least none is proved to have been made ' out of the sum thus received.

In the statement of the accused under Section 342, Criminal P.C. all that is stated is that the sum of Rs. 10 by money-order was sent by Ismail in discharge of a loan from the accused. The complex story that the accused paid it to the clerk and the latter returned the same to the accused the same day and later he received Rs. 10 by money-order and returned the same to Ghanashyamdas is not set up in this reply.

71. The story apart from its unnatural character is inconsistent with the series of letters which were exchanged between Ismail and the accused between July 1952 and January 1953.

72. The admitted quarrel over non-inclusion of the case in the list of cases is also inconsistent with the story of an innocent loan transaction with a stranger whom the accused did not know from before.

73. The statement of Ramnarain and Gopaldas no doubt partly help the defence in proving an admission of Ismail supporting the theory of loan but the trial Judge who had the advantage of seeing the witnesses and noting their demeanour has not chosen to rely upon their statements on account of their worth as well as on account of the other circumstances of the case and unnatural and complex version set up by the accused.

I am inclined to hold that in so doing he cannot be said to have gone wrong, Khan J. too held that this was not believable. There is some evidence produced to prove an attempt on the part of the accused, who was formerly working as a clerk in Bhind Court, to tamper with prosecution evidence. Even rejecting that evidence as unworthy of reliance it is difficult to accept the loan theory in view of what is stated above.

74. Coming to the second item of Rs. 10 said to have been paid subsequent to 21-1-1953 the accused gave no explanation beyond denying it. The payment of this sum having been held by me to be proved the presumption arises under 8. 4 of the Act aforesaid that this was paid as a motive or reward such as one contemplated under Section 161, I.P.C. and the contrary is not proved.

75. As I have held that the contrary version set up by the accused regarding money-order of Rs. 10 is not believable no question of application of principle in 'Rex v. Carr-Braint (A)' arises. As regards second sum of Rs. 10 no question whatever arises as there is no rebutting evidence.

76. It is somewhat significant to mention that Chaturvedi J. though he held the documents Exs. P/6 to P/8 not proved could not get away from the impression that they emanated from a clerk in the High Court office. He observed in this connection.

Though we cannot take P/1, 2, 4 to 8 into consideration in this case nevertheless it is open to serious objection that the clerk of the High Court should be in correspondence with a litigant'

Reference to Ex. P/4 appears to be a slip as Ex. P/4 is admitted by the accused.

77. On the whole the accused has been rightly convicted.

78. As regards sentence I feel that conviction for a criminal offence of a man in his position is itself a serious penalty. I think therefore the interest of justice will be met by sentencing him to rigorous imprisonment for six months instead of one year as awarded by the lower Court.

79. The result is that the conviction of the accused under Section 161, I.P.C. ought to be maintained and he should be sentenced to six months' rigorous imprisonment instead of one year.

80. As regards appeal No. 26 of 1954 filed by the State it has not been pressed before me. Both Khan and Chaturvedi JJ. too held the same to be untenable.

81. The same, therefore, deserves to be dismissed.