Sardar Sardul Singh Caveeshar

Vs

State of Maharashtra (and connected appeals)

Criminal Appeals Nos. 67, 136 and 172 of 1959 and 82 and 83 of 1962

(K. Subba Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

18.03.1963

JUDGMENT

SUBBA RAO J. -

These appeals by special leave arise out of two judgments of the High Court of Bombay, one that of Vyas and Kotval JJ., dated March 31, 1958, and the other that of Shah and Shelat JJ., dated November 3, 1958, in what, for convenience of reference, may be described as the Empire Company Case.

At the outset it would be convenient to state briefly the case of the prosecution. One Lala Shankarlal, a political leader and Vice-President of the Forward Bloc and a highly competent commercial magnate, and his nominees held the controlling block of shares of the Tropical Insurance Company Limited, hereinafter called the "Tropical", and he was the Chairman and Managing Director of the said company. He had also controlling voice in another company called the Delhi Swadeshi Co-operative Stores Ltd. The said Delhi Stores held a large number of shares of the Tropical. In or about the middle of 1948, Sardar Sardul Singh Caveeshar, who was controlling the People's Insurance Co. Ltd. and other concerns in Lahore, and Kaul, a practising barrister, came to Delhi. During that year the former was the President of the Forward Bloc and Shankarlal was its Vice-President. Shankarlal, Caveeshar and Kaul conceived the idea of purchasing the controlling block of 63,000 shares of the Jupiter Insurance Company Ltd., hereinafter referred to as the "Jupiter", a prosperous company, in the name of the Tropical from the Khaitan Group which was holding the said Jupiter shares. But the financial position of the Tropical did not permit the said purchase and so they thought of a fraudulent device of purchasing the said Jupiter shares out of the funds of the Jupiter itself. Under an agreement entered into with the Khaitan Group, the price of the 63,000 shares of the Jupiter was fixed at Rs. 33,39,000/-, and the purchasers agreed to pay Rs. 5,00,000/- in advance as "black money" and the balance of Rs. 28,39,000/-, representing the actual price on paper, within January 20, 1949, i.e., after the purchasers got control of the Jupiter. After the purchase, Shankarlal Group took charge of the Jupiter as its Directors after following the necessary formalities, sold the securities of the Jupiter for the required amount, and paid the balance of the purchase money to the Khaitan Group within the prescribed time. In order to cover up this fraud various manipulations were made in the relevant account books of the Jupiter. There would be an audit before the end of the year and there was every likelihood of detection of their fraud. It, therefore, became necessary for them to evolve a scheme which would being in money to cover the said fraud perpetuated by the Directors of the Jupiter in the acquisition of its 63,000 controlling shares. For that purpose, Shankarlal and his group conceived the idea of purchasing the controlling interest in another insurance company so that the funds of that company might be utilized to cover up the Jupiter fraud. With that object, in or about September 1949, Shankarlal and 9 of his friends

entered into a conspiracy to lift the funds of the Empire of India Life Assurance Company Ltd., hereinafter referred to as the "Empire", to cover up the Jupiter fraud. This they intended to do by purchasing the controlling shares of the Empire, by some of them becoming its Directors and Secretary, and by utilizing the funds of the Empire to cover up the defalcations made in the Jupiter. The following were the members of the conspiracy : (1) Shankarlal, (2) Kaul, (3) Metha, (4) Jhaveri and (5) Doshi - all Directors of the Jupiter - and (6) Guha, the Secretary of the Jupiter, (7) Ramsharan, the Secretary of the Tropical, (8) Caveeshar, the Managing Director of the People's Insurance Co., (9) Damodar Swarup, a political worker who was later on appointed as the Managing Director of the Empire. (10) Subhedar, another political worker, (11) Sayana, a businessman of Bombay, and (12) Bhagwan Swarup, the nephew of Shankarlal and a retired Assistant Commissioner of Income-tax of the Patiala State. after forming the conspiracy, the controlling shares of the Empire were purchased in the name of Damodar Swarup for an approximate sum of Rs. 43,00,000/-. For that purpose securities of the Jupiter of the value of Rs. 48,75,000/- were withdrawn by the Directors of the Jupiter without a resolution of the Board of Directors to that effect and endorsed in the name of Damodar Swarup again without any resolution of the Board of Directors to that effect. Damodar Swarup deposited the said securities in the Punjab National Bank Ltd., and opened a Cash-credit account in the said Bank in his own name. He also executed two promissory notes to the said Bank for a sum of Rs. 10,00,000/- and Rs. 43,00,000/- respectively. Having opened the said account, Damodar Swarup drew from the said account by means of 8 cheques a sum of Rs. 43,00,000/- and paid the same towards the purchase of the said Empire shares. Out of the said shares of the Empire, qualifying shares of twenty were transferred in each of the names of Damodar Swarup, Subhedar and Sayana, and by necessary resolutions Damodar Swarup became the Managing Director and Chairman of the Empire and the other two, its Directors, and Bhagwan Swarup was appointed its Secretary. The conspirators having thus taken control of the Empire through some of them, lifted large amounts of the Empire to the tune of Rs. 62,49,700/- by bogus sale and loans, and with the said amount they not only recouped the amounts paid out of the Jupiter for the purchase of its controlling shares and also the large amounts paid for the purchase of the controlling shares of the Empire. After the conspiracy was discovered, in due course the following ten of the said conspirators, i.e., all the conspirators excluding Shankarlal and another, who died pending the investigation, were brought to trial before the Court of the Sessions Judge for Greater Bombay under s. 120-B of the Indian Penal Code and also each one of them separately under s. 409, read with s. 109, of the said Code : (1) Kaul, (2) Metha, (3) Jhaveri, (4) Guha, (5) Ramsharan, (6) Caveeshar, (7) Damodar Swarup, (8) Subhedar, (9) Sayana and (10) Bhagwan Swarup. The government of the charge against them was that they, along with Shankarlal and Doshi, both of them deceased, entered into a criminal conspiracy at Bombay and elsewhere between or about the period from September 20, 1950 to December 31, 1950 to commit or cause to be committed criminal breach of trust in respect of Government securities or proceeds thereof or the funds of the Empire of India Life Assurance Co. Ltd., Bombay, by acquiring its management and control and dominion over the said property in the way of business as Directors, Agents or Attorneys of the said Company. The details of the other charges need not be given as the accused were acquitted in respect thereof.

Learned Sessions Judge made an elaborate enquiry, considered the innumerable documents filed and the oral evidence adduced in the case and came to the conclusion that Accused 1, 2, 4, 5, 6 and 10 were guilty of the offence under s. 120-B, read with s. 409 of the Indian Penal Code and sentenced them to various term of imprisonment. Accused 6, i.e., Caveeshar, was sentenced to suffer rigorous imprisonment for 5 years, and accused 10, i.e., Bhagwan Swarup, to rigorous imprisonment for a period of 5 years and also to pay a fine of Rs. 2,000/- and in default to suffer rigorous imprisonment

for a further period of six months. He acquitted accused 3, 7, 8 and 9.

The State preferred an appeal to the High Court against that part of the judgment of the learned Sessions Judge acquitting some of the accused; and the convicted accused filed appeals against their convictions. The appeal filed by Caveeshar, Accused-6, was dismissed in limine by the High Court. The appeals filed by the other convicted accused against their convictions were dismissed and the appeal by the State against the acquittal of some of the accused was allowed by the High Court. Accused-7 was sentenced to 5 years' rigorous imprisonment, accused-8 to 3 years' rigorous imprisonment and accused 9 to 3 years rigorous imprisonment.

Accused 6, 7, 8, 9 and 10 have, by special leave, preferred these appeals against their convictions and sentences. We are not concerned with the other accused as some of them died and others did not choose to file appeals.

At the outset it may be stated that none of the learned counsel appearing for the accused questioned the factum of conspiracy; nor did they canvass the correctness of the findings of the Courts below that the funds of the Empire were utilized to cover up the fraud committed in the Jupiter, but on behalf of each of the appellants a serious attempt was made to exculpate him from the offence. But, as the defalcations made in the finances of the Jupiter and the mode adopted to lift the funds of the Empire and transfer them to the coffers of the Jupiter will have some impact on the question of the culpability of the appellants, we shall briefly notice the modus operandi of the scheme of conspiracy and the financial adjustments made pursuant thereto.

We have already referred to the fact that Shankarlal Group purchased the controlling shares of the Jupiter from Khaitan Group and that as a consideration for the said purchase the former agreed to pay the latter Rs. 5,00,000/- as "black money" and pay the balance of about Rs. 28,39,000/- on or before January 20, 1949. After Shankarlal Group became the Directors of the Jupiter, they paid the said amount from and out of the funds of the Jupiter. To cover up that fraud, on January 11, 1949, the Directors passed a resolution granting a loan of Rs. 25,15,000/- to Accused-6, on the basis of an application made by him, on equitable mortgage of his properties in Delhi : (see Ex. Z-22). They passed another resolution sanctioning the purchase of plots of the Delhi Stores, a concern of Shankarlal, for a sum of Rs. 2,60,000/-. It is in evidence that Accused-6 had no property in Delhi and that the said plots were not owned by the Delhi Stores. The said loan and the sale price of the plots covered by the said resolutions were really intended for drawing the money of the Jupiter for paying the Khaitan Group before January 20, 1949. But some shareholders got scent of the alleged fraud and issued notices; and the Directors were also afraid of detection of their fraud by the auditors during their inspection at the close of the year 1949. It, therefore, became necessary to show in the accounts of the Jupiter that the loan alleged to have been advanced to Accused-6 was paid off. For this purpose the Directors brought into existence the following four transactions : (1) a loan of Rs. 5,00,000/- advanced to Raghavji on November 5, 1949; (2) a loan of Rs. 5,30,000/- to Misri Devi on December 12, 1949; (3) a fresh loan of Rs. 5,30,000/- to Caveeshar, Accused-6 on November 5, 1949; and (4) a transactions of purchase of 54,000 shares of the Tropical for Rs. 14,00,000/- on May 25, 1949 and December 20, 1949. These four ficticious transaction were brought about to show the discharge of the loan advanced to Caveeshar, Accused-6. Further manipulations were made in the accounts showing that parts of the loans due from Raghavji, Misri Devi and Caveeshar and also the price of the Tropical shares were paid by Caveeshar. These paper entries did not satisfy the auditors and they insisted upon further scrutiny. It is the case of the prosecution that Shankarlal and his co-conspirators following their usual pattern conceived the idea of getting the controlling interest of the Empire, which had a reserve of Rs. 9 crores. Jupiter

securities worth about Rs. 45,00,000/- were endorsed in favour of Accused-7, who in his turn endorsed them in favour of the Punjab National Bank Ltd., for the purpose of opening a cash-credit account therein. On October 5, 1950, under Ex. Z-9, the controlling shares of the Empire were purchased from Ramsharan Group and the consideration therefor was paid from and out of the money raised on the Jupiter securities. The Directors of the Jupiter had to make good to the Company not only the amounts paid out of the Jupiter funds to purchase the controlling shares of the Jupiter, in regard to which various manipulations were made in the Jupiter accounts, but also about Rs. 45,00,000/- worth of securities transferred in the name of Damodar Swarup. Having purchased the controlling shares of the Empire, Shankarlal and his colleagues got their nominees, namely, Accused 7, 8 and 9 as Directors and Accused-10 as the Secretary of the Empire. On November 27, 1950, a resolution of the Directors of the Empire sanctioned the purchase of Rs. 20,00,000/- worth of Government Securities alleged to belong to the Jupiter. Though the securities were not delivered, two bearer-cheques dated October 26, 1950 and October 27, 1950 for Rs. 15,00,000/- and Rs. 5,00,000/- respectively were made out and cashed and the said moneys were utilized to cancel the loan alleged to have been advanced to Raghavji and for the purchase of the Tropical shares for Rs. 14,00,000/-. But the conspirators had still to make good the securities transferred in favour of Accused 7 and other amounts. The Directors again sanctioned 12 loans, the first six on November 27, 1950 totalling Rs. 28,20,000/- and the other six on December 18, 1950 totalling Rs. 42,80,000/- admittedly to fictitious loanees. 12 bearer-cheques for an aggregate of Rs. 71,00,000/- were issued by Accused-10 between December 19 and 23, 1950. This amount was utilized for getting 5 drafts for different amounts in favour of Accused 1 and 2, the Directors of the Jupiter, Accused-4, its Secretary, and Accused-5, the Secretary of the Tropical (see Ex. Z-230). The said drafts were sent to Bombay and one of the said drafts was utilized for paying off the loan of Misri Devi and the other Drafts for Rs. 57,00,000/- were paid into the Jupiter account in the Punjab National Bank Ltd., Bombay. This amount was utilized to cover up the loss incurred by the Jupiter by reason of its securities worth about Rs. 45,00,000/- assigned in favour of Accused-7 and also by reason of the securities worth Rs. 20,00,000/- alleged to have been sold to the Empire on November 27, 1950. It is, therefore, manifest, and indeed it is not disputed before us now, that Shankarlal and his co-conspirators, whoever they may be, had conspired together and lifted large amounts of the Empire and put them into the Jupiter coffers to cover up the loss caused to it by their fraud. Therefore in these appeals we proceed on the basis that there was a conspiracy as aforesaid and the only question for consideration is whether all or some of the appellants were parties to it.

Before dealing with the individual cases, as some argument was made in regard to the nature of the evidence that should be adduced to sustain the case of conspiracy, it will be convenient to make at this stage some observations thereon. Section 120-A of the Indian Penal Code defines the offence of criminal conspiracy thus :

> "When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy."

The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence : it can be established by direct evidence or by circumstantial evidence. But s. 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. The said section reads :

> "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it". It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.

With this background let us now take the evidence against each of the appellants and the contentions raised for or against him. But it must be stated that it is not possible to separate each of the accused in the matter of consideration of the evidence, for in a case of conspiracy necessarily there will be common evidence covering the acts of all the accused. We may, therefore, in dealing with some of the accused, consider also the evidence that will be germane against the other accused.

We shall first take the case of Accused-6, Caveeshar, who is the appellant in Criminal Appeal No. 82 of 1962. So far as this appellant is concerned the learned Sessions Judge found that he was a member of the conspiracy and the High Court confirmed that finding. It is the Practice of this Court not to interfere with concurrent findings of fact even in regular appeals and particularly so in appeals under Art. 136 of the Constitution. We would, therefore, approach the appeal of this accused from that perspective.

Learned counsel for this appellant argued before us that the said accused was convicted by the Sessions Judge for being a member of the conspiracy in the Jupiter case in respect of his acts pertaining to that conspiracy and therefore he could not be convicted over again in the present case on the basis of the facts on which the earlier conviction was founded; in other words, it is said that he was convicted in the present trial for the same offence in respect of which he had already been convicted in the Jupiter case and such a conviction would infringe his fundamental right under Art. 20(2) of the Constitution, and in support of this contention reference was made to certain decisions of the Supreme Court of the United States of America. The said Article reads :

> "No person shall be prosecuted and punished for the same offence more than once."

The previous case in which this accused was convicted was in regard to a conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter and that case was finally disposed of by this Court in Sardul Singh Caveeshar v. State of Bombay ([1958] S.C.R. 161.). Therein it was found that Caveeshar was a party to the conspiracy and also a party to the fraudulent transactions entered into by the Jupiter in his favour. The present case relates to a different conspiracy altogether. The conspiracy in question was to lift the funds of the Empire, though its object was to cover up the fraud committed in respect of the Jupiter. Therefore, it may be that the defalcations made in Jupiter may afford a motive for the new conspiracy, but the two offences are distinct ones. Some accused may be common to both of them, some of the facts proved to establish the Jupiter conspiracy may also have to be proved to support the motive for the second conspiracy. The question is whether that in itself would be sufficient to make the two conspiracies the one and the same offence. Learned counsel suggests that the question raised involves the interpretation of a provision of the Constitution and therefore the appeal of this accused will have to be referred to a Bench consisting of not less than 5 Judges. Under Art. 145(3) of the Constitution only a case involving a substantial question of law as to the interpretation of the Constitution shall be heard by a Bench comprising not less than 5 Judges. This Court held in State of Jammu & Kashmir v. Thakur Ganga Singh ([1960] 2 S.C.R. 346.), that a substantial question of interpretation of a provision of the Constitution cannot arise when the law on the subject has been finally and effectively decided by this Court. Two decisions of this Court have construed the provisions of Art. 20(2) of the Constitution in the context of the expression "same offence." In Leo Roy Frey v. The Superintendent, District Jail, Amritsar ([1958] S.C.R. 822, 827.), proceedings were taken against certain persons in the first instance before the customs authorities under s. 167(8) of the Sea Customs Act and heavy personal penalties were imposed on them. Thereafter, they were charged for an offence under s. 120-B of the Indian Penal Code. This Court held that an offence under s. 120-B is not the same offence as that under the Sea Customs Act. Das C.J., speaking for the Court, observed :

> "The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences."

This Court again considered the scope of the words "same offence" in The State of Bombay v. S. L. Apte ([1961] 3 S.C.R. 107, 114.). There the respondents were both convicted and sentenced by the Magistrate under s. 409 of the Indian Penal Code and s. 105 of the Insurance Act. Dealing with the argument that the allegations of fact were the same, Rajagopala Ayyangar J., rejecting the contention, observed on behalf of the Court :

> "To operate as a bar the second prosecution and the consequential punishment thereunder, must be for 'the same offence'. The crucial requirement, therefore, for attracting the Article is that the offences are the same i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of fact in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out."

This decision lays down that the test to ascertain whether two offences are the same is not the identity of the allegations but the identity of the ingredients of the offences. In view of the said decisions of this Court, the American decisions cited at the Bar do not call for consideration. As the question raised has already been decided by this Court, what remains is only the application of the principle laid down to the facts of the present case. We cannot, therefore, hold that the question raised involves a substantial question of law as to the interpretation of the Constitution within the meaning of Art. 145(3) of the Constitution.

In the present case, applying the test laid down by this Court, the two conspiracies are not the same offence : the Jupiter conspiracy came to an end when its funds were misappropriated. The Empire conspiracy was hatched subsequently, though its object had an intimate connection with the Jupiter in that the fraud of the Empire was conceived and executed to cover up the fraud of the Jupiter. The two conspiracies are distinct offences. It cannot even be said that some of the ingredients of both the conspiracies are the same. The facts constituting the Jupiter conspiracy are not the ingredients of the offence of the Empire conspiracy, but only afford a motive for the latter offence. Motive is not an ingredient of an offence. The proof of motive helps a Court in coming to a correct conclusion when there is no direct evidence. Where there is direct evidence for implicating an accused in an offence, the absence of proof of motive is not material. The ingredients of both the offences are totally different and they do not form the same offence within the meaning of Art. 20(2) of the Constitution and, therefore, that Article has no relevance to the present case.

The next question is whether this appellant was a party to the Empire conspiracy. He was a close associate of Shankarlal in the political field, he being the President of the Forward Bloc and Shankarlal being its Vice-President. That is how they were drawn together. There is also evidence that out of the 63,000 shares of the Jupiter that were purchased in August, 1949 by Shankarlal Group, 4475 shares were allotted to this appellant. It is, therefore, clear that Accused-6 though ex facie he was neither a Director nor an office-bearer in the Jupiter, had heavy stakes in it. We have already noticed that after the purchase of the said shares from and out of the Jupiter funds, a bogus loan in the name of Accused-6 for a sum of Rs. 25,15,000/- was shown in the Jupiter accounts and later on it was substituted by other manipulations. [His Lordship then proceeded to consider the evidence.]

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Both the Courts on the basis of the aforesaid evidence came to the conclusion that Accused-6 was a member of the conspiracy and we cannot say that there is no evidence on which the Courts could have come to the conclusion to which they did. There are no permissible grounds for upsetting this finding under Art. 136 of the Constitution.

As regards the sentence passed against this accused, the Sessions Judge sentenced him to undergo

rigorous imprisonment for a period of 5 years, whereas he sentenced Accused 7, 8 and 9 to undergo rigorous imprisonment for a period of 3 years only. We do not see any justification for this distinction between the said accused in the matter of punishment. Accused-6 had already been convicted and sentenced in the Jupiter case; and on the evidence it does not appear that he had taken a major part in the Empire conspiracy, though he was certainly in it. In the circumstances, we think that a sentence of 3 years' rigorous imprisonment would equally suffice in his case. We, therefore, modify the sentence passed on him and sentence him to undergo rigorous imprisonment for 3 years. Subject to the aforesaid modification, the appeal preferred by Caveeshar, Accused-6, is dismissed.

We shall now proceed to consider the appeal preferred by Damodar Swarup. Accused-7 i.e., Criminal Appeal No. 83 of 1962. Accused-7 was the Managing Director and Chairman of the Empire during the period of the conspiracy. On October 17, 1950 he was elected the Chairman of the Board of Directors of the Empire and appointed as Managing Director on a salary of Rs. 2,000/- per month for a period of one year. He was removed from the post of Managing Director at the meeting of the Board of Directors held on March 12, 1951. The misappropriation of the funds of the Empire, which is the subject-matter of the conspiracy, were committed during the period of his Managing Directorship i.e., between September 20 and December 31, 1950. The prosecution case is that Accused-7 was a party to the conspiracy, whereas the defence version is that he was a benamidar for Shankarlal, that he took part in the proceedings of the Board of Directors bona fide believing that there was nothing wrong, that the resolutions were implemented by Accused-10 under the directions of Shankarlal and that the moment he had a suspicion that there was some fraud, he took immediate and effective steps not only to prevent the rot but also to investigate and find out the real culprits. The question is which version is true.

It would be useful to have a correct appreciation of the evidence to know the antecedents of Accused-7. [His Lordship then proceeded to consider the evidence.]

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Learned counsel for Accused-7 contends that the following two important circumstances in this case established that Accused-7 was a victim of circumstances and that he was innocent : (1) Two prominent publicmen of this country with whom the accused worked gave evidence that he was a man of integrity; and (2) the accused took active steps to unravel the fraud and to bring to book every guilty person; if he was a conspirator, the argument proceeds, it was inconceivable that he would have taken such steps, for it would have certainly recoiled on him. We shall consider these two aspects now. [His Lordship then proceeded to consider the evidence.]

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The question is what is the evidentiary value of good character of an accused in a criminal case. The relevant provisions are s. 53 and the Explanation to s. 55 of the evidence Act. They read :

> Section 53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Explanation to s. 55. In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation, or disposition were shown.

It is clear from the said provisions that the evidence of general reputation and general disposition is relevant in a criminal proceeding. Under the Indian Evidence Act, unlike in England, evidence can be given both of general character and general disposition. Disposition means the inherent qualities of a person; reputation means the general credit of the person amongst the public. There is a real distinction between reputation and disposition. A man may be reputed to be a good man, but in reality he may have a bad disposition. The value of evidence as regards disposition of a person depends not only upon the witness's perspicacity but also on his opportunities to observe the person as well as the said person's cleverness to hide his real traits. But a disposition of a man may be made up of many traits, some good and some bad, and only evidence in regard to a particular trait with which the witness is familiar would be of some use. Wigmore puts the proposition in the following manner :

> "Whether, when admitted, it should be given weight except in a doubtful case, or whether it may suffice of itself to create a doubt, is a mere question of the weight of evidence, with which the rules of admissibility have no concern."

But, in any case, the character evidence is a very weak evidence : it cannot outweigh the positive evidence in regard to the guilt of a person. It may be useful in doubtful cases to tilt the balance in favour of the accused or it may also afford a background for appreciating his reactions in a given situation. It must give place to acceptable positive evidence. The opinion expressed by the witnesses does credit to the accused, but, in our view, in the face of the positive evidence we have already considered, it cannot turn the scale in his favour.

Learned counsel strongly relied upon the subsequent conduct of Accused-7 in support of his innocence. [His Lordship then proceeded to consider the evidence relating to subsequent Conduct and Considered as follows]

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We, therefore, hold that Accused-7 was a party to the conspiracy and that the High Court has rightly convicted him under s. 120-B of the Indian Penal Code. As regards the sentence passed on Accused-7, having regard to the evidence in this case, we think that this accused must be given a comparatively less punishment than his co-conspirators, for, though he took part in the conspiracy, at any rate from the end of December, 1950, for one reason or other, he took necessary proceedings to bring to light the fraud. We, therefore, think that it would meet the ends of justice if the accused was sentenced to rigorous imprisonment for a period of two years. We accordingly modify the sentence passed on him by the High Court and, subject to the aforesaid modification, we dismiss the appeal preferred by him.

Next we come to Criminal Appeal No. 136 of 1959 preferred by Subhedar, Accused-8. The defence of this accused is that he acted throughout in good faith and under the guidance of Accused-7, the Managing Director of the Empire, and that he did not know that any fraud was perpetrated in the Empire. Before joining the Empire he was an insurance agent and, therefore, it cannot be said that he was a stranger to the insurance business and he may be assumed to know how it would be conducted. On October 16, 1950 twenty qualifying shares of the Empire from among the shares purchased in the name of Accused-7 were transferred in his favour and thereafter at the meeting held on that day he was co-opted as a Director. He is also, therefore, one of the persons brought in by Shankarlal and made a Director for his own purpose. [His Lordship then proceeded to consider the evidence]

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We have no doubt that the aforesaid circumstances lead to only one reasonable conclusion that this accused became a Director of the Empire as a member of the conspiracy and helped to put through all the transactions necessary to transfer funds from one Company to the other. He was rightly convicted by the High Court. We do not see any reason to interfere with the sentence passed against him. In the result Criminal Appeal No. 136 of 1959 is dismissed.

Criminal Appeal No. 172 of 1959 is preferred by Sayana, Accused-9. He was a building contractor before he was appointed a Director of the Empire. His defence is also that he bona fide acted without knowledge of the conspiracy or the fraud. He was also one of the Directors inducted into the Company by the transfer of qualifying shares from and out of the shares purchased in the name of Accused-7. He was co-opted as a Director on October 17, 1950 under Ex. Z 206C. Though he was not present at the meeting of November 27, 1950, he was present at the meeting of December 18, 1950 and, therefore, with the knowledge that six loans amounting to Rs. 28,80,000/- were advanced without scrutiny of the securities, he was a party in sanctioning another six loans totalling to Rs. 42,80,000/-. He was also a party to the resolution of January 30, 1951 sanctioning a bogus loan to the chief of Bagarian. He was a party to the resolution dated February 9, 1951 when the said loan was confirmed and to the resolution authorizing Accused-9 to operate singly the accounts of the Company.

Evidence considered [omitted]

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It is, therefore, clear that he was a creature of Shankarlal, that he was a party to the diversion of the funds of the Empire to the Jupiter and that when Accused-7, for his own reasons, was taking steps to stop the rot, he, along with Accused-8, obstructed him from doing so and wholly supported Accused-10. The only reasonable hypothesis on the evidence is that he was a party to the conspiracy. It is said by learned counsel appearing for this accused that his subsequent conduct would not indicate any obstructive attitude on his part but would indicate only his desire to maintain the status quo till the matters improved. This is a lame explanation, for he, along with the other Directors, opposed every attempt of the scrutiny of the Company's affairs and this can only be because they were conscious of their part in their fraud.

In this context another argument of learned counsel for Accused 8 and 9 may be noticed. It is said that the High Court treated the Directors as trustees and proceeded to approach the case from that standpoint inferring criminality from their inaction. Even assuming that they were not trustees in the technical sense of the term, they certainly stood in a fiduciary relationship with the shareholders. The High Court's finding is not based upon any technical relationship between the parties, but on the facts found. On the facts, including those relating to the conduct of the accused, the High Court drew a reasonable inference of guilt of the accused. There is sufficient evidence on which the High Court could have reasonably convicted Accused 8 and 9 and in the circumstances, we do not see any case had been made out in an appeal under Art. 136 of the Constitution to merit our interference.

In the result Criminal Appeal No. 172 of 1959 is dismissed.

Finally we come to Criminal Appeal No. 67 of 1959 preferred by Bhagwan Swarup, Accused-10. The defence of this accused is that he acted throughout on the directions of Accused 7, 8 and 9, and

that as Secretary of the Company, he was bound to follow their directions. This accused is the nephew of Shankarlal. He is an M.A., LL. B. He had the office of Assistant Commissioner of Income-tax in Patiala State. He is the person who carried out the resolutions of the Board of Directors of the Empire through intricate channels to enable the large amounts misappropriated to reach the Jupiter Company. It is suggested that he was not well disposed to towards Shankarlal and therefore he could not have any knowledge of Shankarlal's fraudulent motives behind the purchase of the controlling shares of the Empire. If Shankarlal did not like him he would not have put him in the key position in the Empire. Indeed, the will of Shankarlal shows that this accused got the best legacy under it. He was the connecting thread passing through the web of conspiracy from beginning to end. Evidence Considered [omitted]

#x x x x x x x##

Learned counsel appearing for this accused could only argue that the accused was a subordinate of the Directors and that he had followed only loyally the directions given by the Managing Director without any knowledge of the conspiracy. This argument is an oversimplification of the part taken by Accused-10 in this huge fraud. Both the Courts below have held, on the aforesaid circumstances and other evidence; that Accused-10 was an active participant in the conspiracy. In our view, there is ample material to justify it. In the result Criminal Appeal No. 67 of 1959 is dismissed.

Cr. A. No. 82 of 1962 dismissed. Sentence modified. Cr. A. No. 83 of 1962 dismissed. Sentence modified. Cr. A. No. 136 of 1959 dismissed. Cr. A. No. 172 of 1959 dismissed. Cr. A. No. 67 of 1959 dismissed.##

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