

Tribhuvan Nath

Vs

The State of Maharashtra

Criminal Appeal No. 119 of 1969

(J. M. Shelat, G. K. Mitter, H. R. Khanna JJ)

28.03.1972

JUDGMENT

SHELAT, J. -

1. This appeal, by special leave, is directed against the summary dismissal by the High Court of Bombay of the appeal filed by the appellant against the order of conviction and sentence passed against him by the Sessions Court, Greater Bombay. Since the appellant's appeal was rejected in limine, there were two alternatives before us, either to remand the case to the High Court with a direction that it should decide the appeal on merits or to decide it ourselves. We decided to follow the latter course in view of the fact that a long time has already elapsed since the trial of the appellant together with the other accused commenced, and a remand to the High Court would result in still further delay.

2. Sadiq Hussain Shah (original accused 1), Tribhuvan Nath (original accused 2 and the appellant herein), Umesh Pandurang and Rusi Mistry (original accused 3 and 4) were tried before the Additional Sessions Judge, Greater Bombay on charges under Section 120-B, read with Sections 381, 411, 419 and under Section 467, read with Sections 471 and 420 of the Penal Code. The allegations on which the said charges were based were that the four accused and one Yaralikhan (absconding) entered into a criminal conspiracy between June 1, 1964 and September 25, 1964, at Bombay, of which the object was to commit theft of postal articles in the course of their transmission, to commit forgery of negotiable instruments contained in them, to cheat by impersonation and by fraudulently opening false bank accounts and to obtain through such bank accounts cash process under the said forged drafts and other negotiable instruments. The postal articles said to have been stolen in the course of their transmission contained bank drafts drawn on different banks in favour of different parties, the modus operandi of the conspirators being first to obtain by theft the said negotiable instruments, and then to open false bank accounts in the names of the drawees therein and to appropriate the proceeds thereof from the said banks by forging false endorsements in the names of the drawees.

3. Prior to July, 1964, witness Narottam Kristi was a postal sorter at the Mandvi Post Office in Bombay. In or about July, 1964, Kristi was introduced to Sadiq Hussain Shah (accused 1) by one Savant when accused 1 proposed that Kristi should hand over to him certain postal envelopes which would come to him in the course of his duties and for which accused 1 would pay him a certain amount for each of such envelopes. Kristi was, however, said to have refused to do so. In May, 1963, Tribhuvan Nath (accused 2 and the appellant herein) approached witness Rustam Elavia with a request to open a bank account in a fictitious name to enable him to deposit therein sums of "black money", which he said he had received in course of his dealings in textile goods and sugar. Elavia

was said to have agreed to do so. On June 1, 1964, the appellant brought to Elavia an account opening form of Sangli Bank Ltd. with all the particulars therein already filled in, the name of the proposed account-holder mentioned therein being Sanghvi Keshrimal Kantilal, Mills Stores and Spare Parts Suppliers, 121, Modi Street, Fort, Bombay-1. The form also bore the purported endorsement of S. P. Diwakar for P. Kashi Nath and Co. Elavia went to Sangli Bank Ltd. with this form, there met the agent of the bank, witness Gharpure and told him that he wanted to open an account in the said name of Sanghvi Keshrimal with an initial cash deposit of Rs. 200/-. The account was opened with the said initial deposit, but Gharpure did not at once deliver a cheque book as he wanted to verify the signature of the introducer and asked him to come the next day for the cheque book. On coming out of the bank, Elavia narrated to the appellant, who had waited outside the bank, as to what had taken place between him and the bank agent. Accordingly, Elavia and the appellant went to the bank the next day. But the agent told Elavia that the introducer was out of Bombay and that he should collect the cheque book after 3 or 4 weeks. In the meantime, Gharpure made enquiries from Swastik Textile Mills Ltd. in which S. P. Diwakar was a partner. He was told that the signatures purporting to be of Diwakar in the said account opening form and of the account holder Sanghvi Keshrimal, were both forged signatures.

4. In 1964, accused 3 and witness Puransingh were friends. Accused 3 took Puransingh to the residence of accused 1 at Nagpada on the pretext of having Puransingh's trousers darned free of charge. The room where they went had the name plate of S. M. Shah on its door. At that time accused 1 and the appellant were present in the room. Accused 1 requested Puransingh to open a bank account either in his name or in some fictitious name. The pretext for the request was that accused 1 had certain contracts with a mill, which used to pay him in cheques and such an account would be useful to him for encashing those cheques. Puransingh's case was that he was at first reluctant to comply with the request of accused 1, but at last agreed to do so under the pressure of accused 1 and 3 and the threats given to him by accused 1 and the appellant. On his agreeing to do so, accused 1 placed before him a bank account opening form which was already filled in with the purported signature of one R. H. Shenoy, the agent of the Mulund Branch of the Syndicate Bank Ltd. and Puransingh was made to sign that form as an account-holder in the name of Balwantrai Chaturvedi as instructed by the appellant. According to Puransingh, the appellant then made some tick marks with a red pencil to show as if that form had been scrutinised by a bank official and the appellant and accused 3 thereafter made some writing on that form. That done, Puransingh was made to write two endorsements under the name of Balwantrai Chaturvedi on the reverse of two bank drafts, Exs. 72 and 75. The appellant and accused 3 took those drafts from him and then wrote something on them. Thereafter accused 1, accused 3 and the appellant and two unknown persons took Puransingh in a taxi to the North Kanara Goud Saraswat Brahmin Co-operative Bank Ltd., situate in a lane off Lamington Road. The appellant gave Puransingh the said form and Rs. 100/- in cash with which to open the account and asked him to obtain a cheque book from the bank. Witness Wagh, the secretary of the Bank, examined the opening form given to him by Puransingh and seeing the introducer's signature thereon, namely, the signature purported to be that of Shenoy, the agent of the Syndicate Bank at Mulund, accepted the form and asked the relevant bank official to open an account. Puransingh then filled in a paying-in-slip for Rs. 100/-, previously given to him by the appellant, under the name of Balwantrai Chaturvedi. The account was thus opened and Puransingh was given a cheque book and a paying-in-slip book by the bank official. They all then went to a restaurant nearby and had food. According to Puransingh, he asked the accused persons to allow him to go, but they said that there were some cheque to be signed by him. Puransingh at that time saw a bus coming toward them, he jumped into it while it was still running and made his escape.

5. On July 23, 1964, a demand draft (Ex. 72), dated July 16, 1964, drawn by the Andhra Bank Ltd.,

Nizamabad, drawn on its branch at Bombay, for Rs. 5,500/- in favour of P. D. Doshi and Co. was presented at the said bank with a paying-in-slip (Ex. 73). Ex. 72 at that time had an endorsement on it, namely, "pay to Balwantrai Chaturvedi for P. D. Doshi and Co. P. D. Doshi, Proprietor, dated July 22, 1962." There was also a second endorsement on it under the purported signature of Balwantrai Chaturvedi. When examined in the court, Wagh could not say who had presented at his bank the said draft. But his bank had accepted the draft and made an endorsement to credit the amount of the draft, namely, Rs. 5,500/- in the newly opened account in the name of Balwantrai Chaturvedi. When, however, the bank sent the draft to the Andhra Bank, Bombay for collection, the latter refused to pay on the ground that the endorsement of P. D. Doshi and Co. required confirmation. The same morning, a draft (Ex. 75) for Rs. 2,000/-, drawn by Canara Bank Ltd., Nizamabad, in favour of Senaji Sabhaji and Co. was presented by someone at Wagh's Bank. Wagh accepted it as it had an endorsement on it purporting to be in the name of Senaji Sabhaji and Co. and in favour of Balwantrai Chaturvedi. When sent for collection, the Canara Bank, Bombay refused to pay with the remark that the signature of the first payee, that is, of Senaji Sabhaji was irregular. Feeling suspicious about the two drafts, Wagh made inquiries from the Syndicate Bank at its Mulund branch and learnt that bank had no account-holder by the name of Balwantrai Chaturvedi. His letters of inquiries addressed to Balwantrai Chaturvedi at the address given in the said account opening form came back undelivered with the endorsement 'left'. The evidence showed that the two drafts (Exs. 72 and 75) were duly issued and despatched to the payees therein mentioned but those payees never received them as they were stolen during transmission.

6. In September, 1964, witness Deshpande was the agent of the Bank of Maharashtra at its Parel Branch. A few days before September 11, 1964, accused 3 went up to him and giving his name as Daulat Ram his name as Daulat Ram inquired from him about the procedure for opening an account. On September 11, 1964, accused 3 opened an account, signing the requisite form in the name of Daulat Ram. The form he produced bore the signature of H. R. Gadiar, the agent of the Syndicate Bank, Mulund Branch as the introducer. He deposited Rs. 301/- as the initial deposit and obtained thereupon a paying-in-slip book and a cheque book. Accused 3 then presented four drafts, Exs. 59, 61, 63 and 65, dated September 7, 1964, September 8, 1964, September 7, 1964 and September 8, 1964, respectively, drawn by different banks at different places in favour of Daulat Ram, Parduman Khimji, M/s. Rs. 1,600/- and Rs. 4,000/- respectively. Accused 3 endorsed the first draft in the name of Daulat Ram, while the other three drafts had already on them endorsements purporting to be by the payees in favour of Daulat Ram. Deshpande then endorsed all these drafts by writing on them "first payee's endorsement confirmed" and "second payee's account credited." Accused 3 had made endorsements purporting to be by the second payee in the name of Daulat Ram in Deshpande's presence. The four drafts were sent in due time for collection and a total amount of Rs. 12,600/- was collected thereunder by Deshpande and credited in the said new account in the name of Daulat Ram. These four drafts had been duly made and issued to the first payees therein mentioned but never reached those payees and were in fact stolen during their transmission by post.

7. On September 12, 1964, Accused 3 went to Deshpande and expressed his desire to withdraw the entire amount of Rs. 12,600. Deshpande refused to pay saying that the signature of the introducer had yet to be verified. Thereupon Accused 3 insisted that at least some amount should be allowed to be withdrawn. Deshpande agreed to the withdrawal of Rs. 301, which was the initial deposit in cash. Accused 3 produced a self and bearer cheque for the amount signed in the name of Daulat Ram. The appellant was present as he had accompanied Accused 3 to the bank along with witness Mosin Burmawallas. It was actually Mosin who cashed the cheque and obtained Rs. 200. Mosin then came out and handed over that amount to the appellant.

8. On September 14, 1964, Accused 3 once again went to Deshpande and presented a cheque for Rs. 12,400 for encashment. Deshpande once again refused to pay saying that the introducer's signature had not yet been verified. On the same day, witness Satnarain Agarwal, a representative of Girdharlal Prahladrai saw Deshpande and informed him that the draft (Ex. 65) presented to him was stolen property. Deshpande then realised that the account in the name of Daulat Ram was a fraudulent one. Satnarain that day also went to the C.I.D. office where he lodged a complaint to the effect that the draft (Ex. 65) had been stolen during transit.

9. On September 14, 1964, accused No. 3 managed to open a bank account with the Greater Bombay Co-operative Bank, Wadala Branch with an initial deposit of Rs. 151. The account was opened in the name of Jokhiram Prahladrai. On September 15, 1964, Accused 3 deposited a bank draft (Ex. 41), dated September 12, 1964, issued by the Baroda Bank, Nagpur Branch in favour of Jokhiram Prahladrai, Bombay, for Rs. 6,565.32P. drawn on its branch at Bombay. On the same day, Accused 3 also presented a cheque (Ex. 43) for collection along with a paying-in-slip. The cheque was drawn on the Maharashtra State Co-operative Bank Ltd., Bombay, in favour of Shah Fattelal Mishrilal for Rs. 1,000/- and bore on its reverse the endorsement in favour of Jokhiram Prahladrai. The amounts under the said draft and the said cheque were collected by the bank and credited in the said account of Jokhiram Prahladrai opened as aforesaid by Accused 3. On September 16, 1964, Accused 3 withdrew Rs. 6,000 from the said account by a cheque drawn by him. On September 17, 1964, a person calling himself Abdeali Gulam Hussain presented a bearer cheque for Rs. 1,600 drawn by Jokhiram Prahladrai and obtained that amount from the Greater Bombay Co-operative Bank Ltd., Wadala Branch. According to the prosecution, the cheque was encashed by witness Mosin Burmawalla posing as Abdeali Gulam Hussain. The cheque was given to him by Accused 1 for encashment. The appellant had gone along with him to the bank and Mosin handed over the amount of the cheque after cashing it to the appellant.

10. The third fraudulent account was opened by Accused 3 on September 22, 1964, with the Maharashtra State Co-operative Bank, Prabhadevi Branch, Bombay, with a cash deposit of Rs. 500. Accused 3 posed at that time as Jevraj Agarchand and obtained the paying-in-slip book and the cheque book from witness Parab, the agent of that branch. The next day Accused 3 deposited two drafts (Exs. 12 and 13) one drawn on the Canara Bank, Visnakhapatanam for Rs. 4,500 in favour of Jevraj Agarchand on its branch in Bombay and the other was drawn by the Baroda Bank, Nandurbar, for Rs. 2,000 in favour of Keshavlal Mohanlal Wakanerwala. The latter draft when deposited bore the endorsement purporting to be by Wakanerwala for payment to Jevraj Agarchand. Similarly, on September 24, 1964, Accused 3 deposited in the said account a third draft (Ex. 17) drawn by the State Bank, Damoh for Rs. 1,500 in favour of one Lachhmandas. The draft had on it at that time an endorsement purporting to be that of Lachhmandas in favour of Jevraj Agarchand. The said amount was collected by Parab and credited in the said account of Jevraj Agarchand. By that time Parab had become suspicious about the said account, and therefore, when Accused 3 presented on September 24, 1964 a cheque for withdrawing Rs. 6,000 from that account, he refused to cash it saying that the moneys under the drafts deposited by accused 3 had not yet been collected. On the same day, he lodged a complaint with the police, in consequence whereof the police kept a vigil at the bank for the arrival there of Accused 3. On September 25, 1964, Accused 3 and 4 came there and when Accused 3 presented a cheque for Rs. 7,000 purported to have been sign by the Jevraj Agarchand, Parab got them both arrest by the police.

11. With the arrest of Accused 3 and 4 the police commenced their investigation in the course of which S. I. Patwardhan, who was in-charge of it, found a withdrawal of Rs. 1,450 by the appellant from his bank account on September 28, 1964. On November 6, 1964, Patwardhan received

information from the bank of Maharashtra, Bombay Central Branch, that the appellant had drawn a cheque for Rs. 600 (Ex. 147) in favour of one Sardar Singh Ahuja of Gandhi Nagar, Delhi, that the said Sardar Singh had deposited that cheque for collection in the Punjab National Bank, Delhi and that bank, through its Bombay Branch, had sent that cheque to the Bank of Maharashtra for collection. On this information, Patwardhan sent Constable Naik to Delhi to trace the appellant through Sardar Singh. Naik obtained the address of the appellant from Sardar Singh and was able in consequence to arrest both the appellant and accused I from Premsha Building, Kolhapur Road at about mid-night on November 9/10, 1964. At the time of his arrest, the appellant had on his person the cheque book of the Bank of Maharashtra, Bombay Central Branch. On November 14, 1964, Patwardhan obtained the statement of account in respect of the appellant's account in the Bank of Maharashtra, Bombay Central Branch. That statement disclosed that the account had been operated between July to September 21, 1964 and had thereafter remained dormant. It also revealed that after July 1964, the only two deposits made therein were of Rs. 1,500 and of Rs. 500 respectively on the 16th and 17th September, 1964, exactly the dates when two sums of Rs. 6,000 and Rs. 1,600 were withdrawn from the account in the name of Jokhiram Prahladrai with the Greater Bombay Co-operative Bank Ltd. by cheques Exs. 146 and 148.

12. The police thereafter recorded the statements of the various persons under whose names the said bank accounts were opened and the payees, in whose favour the said drafts had been issued and which had been deposited in the said accounts with their purported endorsements in favour of account-holders of those accounts and who had not received them though drawn in their favour and despatched to them through post.

13. According to the prosecution the investigation revealed that the four accused and the said Yaralikhhan had entered into a conspiracy to get hold of the said drafts during their postal transmission for criminally obtaining various amounts for which they had been drawn and in furtherance of that conspiracy had got hold of the drafts and collected moneys thereunder by opening false accounts in different names with false introductions therefor and in fact had operated upon those accounts and collected the moneys under the said stolen drafts. On these facts the accused were placed for trial before the Additional Sessions Judge, Greater Bombay.

14. The case of appellant at the trial was one of total denial. He characterised the evidence of witnesses Elavia, Puransingh and Mosin Burmawalla as totally false and asserted that he had no knowledge whatsoever about the opening and operation of the account in the name of Balwantrai Chaturvedi with the said N.K.G.S.R. Co-operative Bank. Likewise, he maintained that the evidence of witness Mosin Burmawalla about the opening of the account in the name of Daulat Ram with Bank of Maharashtra, Parel Branch, Bombay was also false. He also denied any Knowledge as regards the opening of the account in the name of Jevraj Agarchand with the Maharashtra State Co-operative Bank, Prabhadevi Branch or with regard to the opening account in the name of Jokhiram Prahladrai or the deposit of the drafts therein operation. He, however, admitted having an account with the Bank of Maharashtra, Bombay Central Branch, of having withdrawn therefrom Rs. 1,450 on September 28, 1964 through the cheque (Ex. 146), of their being only a balance of Rs. 54 left in it thereafter and of having issued the cheque (Ex. 147) for Rs. 600 in favour of one Sethi, who had promised but ultimately failed to procure a loan for him for Rs. 600 from the said Sardar Singh. Regarding the arrest from Premsha Building, his case was that he had left Bombay as early as September 25, 1964 for Delhi for collecting certain sale-proceeds of textile goods which he had sold. According to him, he was staying in a dharamshala at Chandni Chowk from where he was arrested by Naik and that he had no Knowledge about the arrest of Accused 1 or the place from which he was arrested. His case further was that both Elavia and Puransingh gave false evidence

against him on the pressure of Patwardhan who had kept pending certain criminal cases against both of them.

15. The prosecution examined a number of witness representing the various concerns who had despatched the drafts Exs. 59, 61, 63, 65, 41, 12, 14, 17 and the cheque Ex. 43 to various parties by post after having obtained them from different banks as also witness to whom they been sent. Each one of the latter class of witnesses deposed that he or his concern had not received those instruments. The conclusion from this evidence could only be that those negotiable instruments during the course of their postal transmission had been intercepted and stolen and were therefore not received by the respective payees thereunder. There could, therefore, be no difficulty in coming to the conclusion that these negotiable instruments came into the possession of Accused 3, particularly as that fact was concerned by him. His case, however, was that they were handed over to him by the appellant but that he did not know that they were stolen or otherwise dishonestly obtained. According to him, on the representations made to him by Accused 1 and the Appellant and by the said Yaralikhan, he believed that the said drafts and the cheques represented proceeds of some genuine transactions entered into by Accused 1 and the appellant, that they did not want to deposit them in their accounts owing to certain Income tax difficulties, and therefore, wanted bank accounts to be opened through him in different names. For the help he would render in opening such bank accounts wherein the said drafts and cheques would be deposited and their proceeds collected, he was promised a share in a partnership which was to produce a film with the help of those cash proceeds.

16. Accused 3 also admitted having opened the said bank accounts in names other than his own and for that purpose using the account opening forms Exs. 54, 37 and 7, obtaining paying-in-slip books and cheque books thereafter and presenting the said drafts and getting their proceeds credited in those accounts. Despite his denial of Knowledge that the said opening forms were forged documents, there was ample evidence to establish that they were in fact fabricated documents. The evidence of witness Gadiar, of Berulal, a partner in Kucheria Brothers and of Lachhmansingh clearly showed that the account opening forms used for opening accounts with the Bank of Maharashtra, Parel Branch, the Maharashtra State Co-operative Bank, Prabhadevi Road Branch and at Wadala Branch were forged documents. There was also ample evidence of the payees under the said drafts showing that the endorsements purported to have been made in the names of the said account-holders, namely, Daulat Ram, Jokhiram Prabladrai and Jevraj Agarchand were forged endorsements. On the evidence and the admission made by Accused 3 himself, there was no room for any doubt that these endorsements were made by him.

17. The dates of issuance of these instruments and the evidence as to their presentation by Accused 3 at the said three banks for having their proceeds credited in the accounts opened by him showed that they were presented shortly after the various drawers of those instruments had despatched them. The case of accused 3, however, was that he was misled into believing them into genuine documents by Accused 1 and the appellant, and therefore, he had no knowledge that he was using them as genuine instruments which were in fact forged. The absence of such knowledge on his part was sought to be shown by the fact that he used to hand over the cash proceeds thereunder to the appellant and that he, Accused 3, was merely a tool in the hands of Accused 1 and the appellant. His plea was, however, discarded by the Trial Judge since Accused 3 had at one time served in a bank for about three years prior to 1960, and therefore, must know from that experience the true nature of what he was doing. Besides, his version that he did all things on the promise that he would be taken up as a partner in the film producing venture by Yaralikhan to be financed by Accused 1 and the appellant was altogether unbelievable especially as his maternal uncle was concerned with a film

business and he himself knew that business as he was working in that business with his said maternal uncle. There was thus ample evidence against Accused 3 for the conclusion that he did the various acts alleged against him with full culpable knowledge and intention.

18. The question next was whether the accused had entered into a criminal conspiracy, and if so, whether all these acts of Accused 3 were done in pursuance of the objects of that conspiracy. For establishing the conspiracy, the prosecution relied on the evidence of five witnesses, namely, Accused 3, Puransingh, Mosin Burmawalla, Elavia and Narottam Kristi. Of these, Accused 3 and Puransingh were admitted by the prosecution to be accomplices. Could the remaining three witnesses also be said to be accomplices ?

19. As regards Mosin Burmawalla, there was clear evidence that he encashed the cheque Ex. 48 at the instance of Accused 1 and the appellant, and as admitted by him, obtained from them Rs. 150 as reward for doing so. He was aware that neither Accused 1 nor the appellant was Daulat Ram, in whose favour the cheque was drawn. The cheque which he encashed had on the back of it an endorsement purporting to be by Daulat Ram and from that fact he must obviously have realised that the cheque was not a genuine document. The Trial Judge on these facts held him to be an accomplice. As against Elavia, the evidence was that on September 1, 1964, the appellant gave him Rs. 200 and an account opening form Ex. 134 with which to open an account in the name of Sanghavi Keshrimal. He went with the appellant to the bank and got an account opened, though the bank did not then issue to him any cheque book. In view of this evidence Elavia too was held by the Trial Judge to be an accomplice. So far as Kristi was concerned, the Trial Judge refused to treat him as an accomplice as the only evidence against him was that the postman Sawant in presence of Accused 1 asked him to hand over to him certain postal envelopes but he declined to do so. Thus, of the five witnesses relied on by the prosecution, four were held to be accomplice witnesses.

20. Regarding Puransingh, the Trial Judge was of the opinion that his version of being coerced into opening the bank account with the N.K.G.S.R. Co-operative Bank was unbelievable and that he could not have done so as innocently as he tried to make out. He was also satisfied that there were discrepancies between his evidence and that of Wagh, the manager of that bank, in certain particulars with regard to the opening of that account. There were also improvements made by him while giving evidence. And lastly, there was the fact that a police complaint against him under Sections 419 and 420 of the Penal Code in the matter of opening of the said account was pending, the prosecution whereof had been stayed until he gave evidence in this case. That fact would constitute an inducement to him to give evidence in favour of the prosecution.

21. Having regard to these infirmities in Puransingh's evidence, the Trial Judge summed up his conclusion thus :

"After duly considering all the above said criticisms, in my opinion, the position is that on that account the credibility of Puransingh as a witness cannot be said to be demolished in its entirety. In my opinion, apart from the false version which he has attempted, the other portions of his testimony including those relating to the forming of a conspiracy by accused Nos. 1 and 2, would have to be duly considered in the light of the other material adduced on record, in other words, the necessity of corroboration to the said portions of his testimony, arises in the present case."

22. The evidence of Mosin Burmawalla directly involved the appellant in the matter of encashing the two cheques Exs. 67 and 48 and his handing over the cash proceeds thereof to the appellant, and

of the appellant working in respect thereof in close association with Accused 1. But there were certain circumstances brought out in his evidence which rendered it not readily acceptable. He was aware that encashing the said two cheques was not innocent and that it would land him in being prosecuted therefor. He had also been involved in an offence under Section 471 read with Section 467 for encashing a forged cheque in 1962. He was also convicted in 1961 under the Prohibition Act and in 1966 was arrested in connection with the encashment of a forged cheque for Rs. 3,200. He admitted that in 1968 he was arrested and kept in judicial custody and that he was in such custody when he gave evidence in this case. The defence argument on these facts was that in the matter of encashment of the two cheques Exs. 48 and 67 the witness was aware that he was liable for prosecution and that in these circumstances there was every temptation for him to give evidence as desired by the police. Further, according to his own admission, the appellant had paid him Rs. 150 as a reward for encashing the said two cheques. With all these deficiencies in his evidence, coupled with the fact that he was also an ex-convict convicted for using a forged document, the Trial Judge, after considering his evidence in the light of the other evidence on record and the circumstances of the case, was of the view that he would not discard his evidence altogether but that he would demand adequate corroboration before acting on it.

23. So far as Elavia was concerned, the Trial Judge was of the view that his evidence was totally unworthy of acceptance and rejected it out right. He, however, relied on the evidence of Puransingh, Mosin Burmawalla and the evidence of Accused 3 which he gave as a defence witness, since he found (1) that their evidence could not be discarded totally, and (2) that it was corroborated in sufficient particulars as regards the existence of the conspiracy and the several acts done in furtherance of it and the active part played by the appellant therein. In other words, despite the part played by each one of these witnesses and being aware that it was not innocent, their evidence passed both the tests of credibility and corroboration.

24. In that connection there was first the evidence of Deshpande, the agent of the Parel Branch of the Bank of Maharashtra, to whom Accused 3 had gone to encash the cheque Ex. 67 and in whose presence Accused 3 had written out the signature in the name of S. M. Shah on the reverse of that cheque. Deshpande's evidence was that Accused 3 was accompanied by the appellant and that Accused 3 told him at that time that he had to pay the amount of that cheque to the appellant. There was no specific challenge to the veracity of Deshpande's evidence except for the contention that he might be mistaken about the person who was at that time with Accused 3. Deshpande undoubtedly had no occasion thereafter to see the appellant again before he identified him in court and no identification parade was held for him in respect of the appellant, a precaution which the investigating agency ought to have taken. But the omission to do so would not render Deshpande's identification untrustworthy in the peculiar circumstances of the case. Though a number of customers attend a bank every day, the manager does not have to see and talk to all of them. It is only in unusual cases, where some difficulty arises, that a manager interviews a customer. In this case Accused 3 had simultaneously deposited on September 11, 1964 four drafts of the aggregate value of Rs. 12,600/- in the account opened on that very day and had insisted the very next day on withdrawing the entire amount, a somewhat unusual thing for a new account-holder to do. Deshpande was aware that the signature of the introducer for opening of that account had not yet been verified, and therefore, must have realised that it was not safe to allow Accused 3 to withdraw the proceeds of those drafts. He, therefore, allowed Rs. 200 only which was the initial cash deposit made by Accused 3 when the account was opened to be withdrawn. Apart from the conversation he had face to face with Accused 3, his suspicion had been aroused by the manner in which Accused 3 insisted on withdrawing the entire amount and he had, therefore, made inquiries with the Syndicate Bank with regard to the genuineness of the introducer's signature. In these circumstances, it was not

surprising that he would remember Accused 3 and the appellant who was with him at the counter particularly as Accused 3 had told him that he had to pay the amount of the cheque to the appellant. Considering, therefore, the nature of the withdrawal, the unusual demand by Accused 3 to withdraw the entire amount in the account, the reluctance of Deshpande to permit him such withdrawal and his ultimate consent to pass the cheque only for the amount of the initial cash deposit, it is not possible for us to disagree with the acceptance by the Trial Judge of Deshpande's identification of Accused 3 and the appellant in the court as the persons who had come to his bank for encashment of the said cheque.

25. The next piece of evidence, which furnished corroboration, was the appellant's leaving Bombay, his being arrested from Premsha Building from where Accused 1 was also arrested at about the same time, and his dealings with his personal account with the Bank of Maharashtra, Bombay Central Branch. As already noticed earlier, the whereabouts of the appellant in Delhi were discovered through the cheque for Rs. 600 which he issued in the name of Sardar Singh. The facts regarding his leaving Bombay on or about September 28, 1964, the discovery of his whereabouts in Delhi and his ultimate arrest from the same building from where Accused 1 was also arrested were furnished by the evidence of S. I. Patwardhan and Constable Naik, deputed to effect the arrest of the appellant. The reason given by the appellant for having left Bombay for Delhi, namely, to collect the sale proceeds of certain textile goods sold by him and his statement that he had given the said cheque for Rs. 600 for a loan to be given to him were rejected by the Trial Judge and in our opinion rightly in the absence of any evidence in support of it.

26. The statements of account, Exs. 144 and 150, of his said personal account with the Bank of Maharashtra showed that whereas he had regularly operated that account from July to September 28, 1964, those operations stopped altogether after September 28, 1964. Indeed, after July 1964 only two deposits were made therein, of Rs. 1,500 in cash on September 16, 1964 and Rs. 500 on September 17, 1964. It is significant that these two deposits were made on the dates when Accused 3 encashed the two cheques Exs. 46 and 48 from the Greater Bombay Co-operative Bank Ltd. for Rs. 6,000 and Rs. 1,600 respectively in the account in the purported name of Jokhiram Prahladrai. The contention of the prosecution was that on September 28, 1964, the appellant coming to know of the arrest of Accused 3 and 4 left Bombay after withdrawing Rs. 1,450 from his said account leaving only a balance of Rs. 54 therein and drew a cheque for Rs. 600 after going to Delhi in favour of Sardar Singh although he must have known that his account had only the meagre balance of Rs. 54. These statements of account corroborated the evidence of Accused 3 and witness Mosin Burmawalla that after they had withdrawn the said amounts of Rs. 6,000 and Rs. 1,600 on September 16 and 17, 1964, they had handed over those amounts to the appellant and that the two deposits made by the appellant in his account on those very dates represented his share in the said two amounts.

27. The explanation of the appellant regarding these statements of account was that on September 15, 1964, he had arranged with one K. K. Shah for a loan facility up to Rs. 2,000/-. In pursuance of this arrangement he took a loan from K. K. Shah of Rs. 1,400/-. On November 20, 1964, he took Shah to the bank and there paid back to Rs. 1,400/- and Rs. 50/- as interest thereon. Regarding the cheque for Rs. 600/-, his explanation was that he had given that cheque as security for a loan to be given to him but as no such loan was made to him he made no arrangement to deposit in his bank account sufficient money to honour that cheque. As regards the two deposits of Rs. 1,500/- and Rs. 500/-, his explanation was that they were the sale proceeds of cloth sold by him to different parties in the course of business carried on by him in the name of Ramnarain Mahavirprasad. No effort, however, was made by him to establish the facts relating to these explanations and indeed there was

not a title of evidence on record to prove the truth of any one of them. He, no doubt, produced a pass book of an account with the Bank of Baroda, Ex. 151, which stood in the name of Ramnarain. But it is significant that the aforesaid two deposits of Rs. 1,500/- and Rs. 500/- were not made in that account but in another account with the Bank of Maharashtra which stood in the name of T. N. Khanna and not in a name of Ramnarain in which name he said he was carrying on business in cloth. With regard to the account with the Bank of Baroda, the evidence of S. I. Patwardhan was that there were two complaints of cheating against the appellant and the prosecution in respect of them was pending.

28. Thus, besides the evidence of Accused 3, Puransingh and Mosin Burmawalla, there was considerable circumstantial evidence showing that the appellant was not only a party to the conspiracy to forge stolen negotiable instruments, to use them as genuine and thereby cheat the banks and obtain the proceeds under those instruments, but that he had also taken active part in several overt acts in furtherance of that conspiracy and obtained at least two amounts, namely, Rs. 1,500/- and Rs. 500/-.

29. The first question is whether the Trial Judge was right in using the evidence given by Accused 3 which he gave as a witness in his defence? The position with regard to such evidence is that when a person, accused along with others, voluntarily steps in the witness box as a witness in defence, he is in the same position as an ordinary witness. (See Peoples Insurance Co. Ltd. v. Sardar Sardul Singh Caveeshar, (AIR 1962 Punj 101) and Jibachh Shah v. The State, (AIR 1965 Pat 331) and is therefore, subject to cross-examination by the prosecution counsel and evidence brought out in such cross-examination can be used against his co-accused. (See The King v. James Paul, ((1920) 2 KB 183 at 185)). If such a witness incriminates his co-accused, the other accused, jointly tried with him, has the right to cross-examine him if he wants so to do. (Rex v. Hadwen, ((1902) 1 KB 882 at 887-888)). This has been the position in England after 1898 when accused persons were made competent witnesses. The same consequences must also flow after accused persons have been made competent witness for the defence under Section 342-A of the Code of Criminal Procedure. As counsel for the appellant informed us, since Accused 3 volunteered to enter the witness-box as a witness in his defence, he was in fact cross-examined not only by the prosecution but also by counsel for the other accused. Of course, an accused person cannot be compelled to give evidence as a prosecution witness in view of the expression "in disproof of the charges" in Section 342-A. But once his evidence as a witness for the defence is on record, under Section 10 of the Evidence Act, 1872, evidence, as to the communications between one conspirator and the other during the time that the conspiracy is going on and relating to implementing that conspiracy, is relevant evidence. The statements by one accused to another and the evidence as to the acts done by him disclosing participation by the other accused in the conspiracy are relevant. As to whether they merit reliance or not is another question depending upon their credibility.

30. As aforesaid, the evidence of Puransingh, Elavia and Mosin Burmawalla was held by the Trial Judge as accomplice evidence in that each of them had in one way or other helped the accused in furthering their objectives. In such a case the duty of the Court appraising the evidence clearly is to apply the double test as laid down in Sarwan Singh v. State. (1957 SCR 953). The Court, therefore, has first to see whether the evidence of an accomplice is reliable, and secondly, even if it is so, whether it is corroborated in material particulars by other independent evidence, direct or circumstantial. As Sarwan Singh's case (supra) points out, the test of reliability is the same as the one applied to all witnesses. Therefore, it does not mean that an accomplice's evidence cannot be relied upon unless it is totally and absolutely blemishless. In majority of cases such is not the case and in spite of some discrepancies and other such infirmities, courts have often found it safe to act

on the evidence of such witnesses. A case illustrating this proposition is to be found in *Saravanabhavan v. Madras*, (AIR 1966 SC 1273) where the evidence of the approver contained certain discrepancies and was also contradicted by the testimony of another witness and yet that evidence was held to pass the test of being credible and was accepted as it was also corroborated by other evidence. Regarding the second test, that is of the necessity of corroboration, such corroboration need not, on one hand, be of every particular given by an accomplice, and on the other hand, of only minor particulars. The corroboration must be adequate enough to afford necessary assurance that the main story testified by the accomplice can be reasonably and safely accepted as true. (*Ramanlal v. The State*. (AIR 1960 SC 961)).

31. Reading the evidence given by these witnesses, as also the evidence of Accused 3, there were undoubtedly not only discrepancies in their evidence but each one of them was trying to make out that his acts were innocent and without the knowledge that he was furthering the culpable objects of the accused. A perusal of the very elaborate judgment of the Trial Judge shows, however, that he had kept in the forefront of this mind this fact and then had considered as an initial step the question whether their evidence, notwithstanding the aforesaid infirmities, was credible in the sense that things which they had deposed were true. It is impossible, for instance, to discard their version about the drafts and cheques having been illegally intercepted during their postal transmission, the opening of fraudulent bank accounts on the strength of forged introduction forms, deceiving bank employees into opening false accounts by false impersonation and ultimately obtaining cash proceeds under the said stolen negotiable instruments. There is also no doubt that this version found sufficient corroboration not only in the evidence of the payees to whom the their constituents had sent those instruments and who never received them, but also in the evidence of the managers and agents of the different banks who were deceived by one or the other accused. In these circumstances, it is not possible to say that the Trial Judge acted on the accomplice evidence without applying the double test laid down in *Sarwan Singh's case* (supra).

32. So far the appellant was concerned, the accomplice evidence against him was not only corroborated by the evidence of *Deshpande* and his identification of the appellant, but also by circumstantial evidence, his association with Accused 1 during the material period, his presence in the Bank of Maharashtra on September 12, 1964, when Accused 3 encashed the cheque for Rs. 200/-, his receiving that amount from him, the circumstance of his arrest from the same building from where Accused 1 also was arrested at about same time, the two deposits of Rs. 1,500/- and Rs. 500/- on the 16th and 17th September, 1964, when Accused 1 and *Mosin Burmawalla* withdrew from the bank the two sums of Rs. 6,000/- and Rs. 1,500/-. These were circumstances which lent considerable acceptability to the accomplice evidence. That being position, it is impossible to accept the contention that there was not enough credible evidence justifying the conviction of the appellant.

33. In the view aforesaid, we find no reason to warrant any interference with the order of conviction and sentence passed against him. The appeal, consequently, must fail and is dismissed.

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