

V. C. Shukla

Vs

State (Delhi Administration)

Sanjay Gandhi

Vs

State (Delhi Administration)

And

State (Delhi Administration)

Vs

V. C. Shukla and Another

Criminal Appeals Nos. 492 to 494 of 1979

(Syed M. Fazal Ali, P. S. Kailasam JJ)

11.04.1980

JUDGMENT

FAZAL ALI, J. –

1. The appellant, V. C. Shukla (hereinafter referred to as 'A-1') in Criminal Appeal 494 of 1979 has been convicted by the Sessions judge, Delhi under Section 120-B read with Sections 409, 435, 411, 414 and 201, Indian Penal Code and also under Section 409, Indian Penal Code in respect of the positive print and negative and other material of the film 'Kissa Kursi Kaa'; under Section 411 read with Section 109, Indian Penal Code; under Section 414 read with Section 109, Indian Penal Code; under Section 435 read with Section 109, IPC; and under Section 201 read with Section 109, IPC. The appellant, Sanjay Gandhi (hereinafter referred to as 'A-2') in Criminal Appeal 493 of 1979 has been convicted by the Sessions Judge, Delhi under Section 120-B read with Sections 409, 435, 411, 414 and 201 of the Indian Penal Code and has been further convicted under Sections 435, 411, 414 and 201, IPC in regard to the negative and other material of the film 'Kissa Kursi Kaa'; as also under Section 409 read with Section 109 of the Indian Penal Code. Appellant 1 was sentenced under Section 120-B read with Sections 409, 435, 411, 414 and 201 to two years rigorous imprisonment; under Section 409 regarding the negative and other materials to two years' rigorous imprisonment and a fine of Rs. 20,000 and in default further 6 months' rigorous imprisonment; under Section 409 regarding the positive print of the film to two years' rigorous imprisonment and a fine of Rs. 5,000 and in case of default further rigorous imprisonment for three months; under Section 411 read with Section 109 to rigorous imprisonment for one year; under Section 414 read with Section 109 to rigorous imprisonment for one year; under Section 201 read with Section 109 to rigorous imprisonment for one year; and under Section 435 read with Section 109 to rigorous imprisonment

for one year and 6 months. The appellant 2 was sentenced under Section 120-B read with Sections 409, 435, 411, 414 and 201 to rigorous imprisonment for two years; under Section 435 to rigorous imprisonment for one year and six months and a fine of Rs. 10,000 and in case of default further rigorous imprisonments for four months; under Section 411 to rigorous imprisonment for one year; under Section 414 to rigorous imprisonment for one year; under Section 201 in regard to the negative, etc., to rigorous imprisonment for one year; under Section 201 in regard to 13 trunks, etc., to rigorous imprisonment for one year and under Section 409 read with Section 109 to rigorous imprisonment for two years. The aforesaid sentences of imprisonment were ordered to run concurrently in the case of both the appellants.

2. The learned Sessions Judge has given full and complete details of the prosecution case against the appellants and has divided the allegations against them in several parts. On being convicted by the Sessions Judge, Delhi, the appellants filed appeals before the Delhi High Court against their convictions and sentences, indicated above, and were released on bail pending the hearing of the appeals. Meanwhile, the Special Courts Act of 1979 came into force and by virtue of a declaration made under Section 7 of the said Act, the appeals stood transferred to this Court and were placed for hearing before us. As the learned Sessions Judge has given all the necessary details of the prosecution case against the appellants, it is not necessary for us to give all the facts but we purpose to give a bird's eye view of the substratum of the allegations on the basis of which the appellants have been convicted, dwelling particularly on those aspects which merit serious consideration. We have heard learned counsel for the parties at great length both on the constitutional points involved in the appeals and the facts. By an order dated December 5, 1979, we disposed of the constitutional points which were in the nature of preliminary objection to the maintainability of these appeals and overruled these objections. The reasons for the said order have been given by us which would form part of this judgment.

3. Coming now to the facts, shorn of unnecessary details, the story begins with the production of a film called 'Kissa Kursi Kaa' by Shri Amrit Nahata, PW 1, under the banner of Dhvani Prakash. PW 1 was a member of Parliament and had produced the film in the year 1975. The film, according to the prosecution, was a grotesque satire containing a scathing criticism of the functioning of the Central Government and was open to serious objections which were taken even by the Central Board of Film Censors (hereinafter to be referred to as the 'Board'). After the film was ready for release, PW 1, Amrit Nahata, applied for certification of the film on April 19, 1975 before the Board. The film was viewed on April 24, 1975 by an examining committee of the Board and while three members were of the opinion that certificate for exhibition, with drastic cuts, should be given, another member and Mr. N. S. Thapa, the Chairman, Disagreed with the opinion of their colleagues and accordingly referred the matter to the revising committee. The revising committee after viewing the film agreed by a majority of 6 : 1 for certification of the film, the dissent having been voiced by Mr. Thapa, the Chairman and accordingly under Rule 25(ii) of the Cinematograph (Censorship) Rules, 1958, a reference was made to the Central Government on May 8, 1975. In this connection, a letter was addressed to PW 6, Mr. S. M. Murshed, who was at the relevant period Director in the Ministry of Information and Broadcasting, incharge of Film and T.V. Projects and was appointed Joint Secretary on May 1, 1975. The correspondence in this regard is to be found in the file Ex. PW 6/A. Before making his comments PW 6 saw the film sometime in the middle of May 1975. Meanwhile, PW 1, Amrit Nahata, was directed to deposit the positive print of the film comprising 14 reels of 35 mm. with the Films Division Auditorium, situate at 1, Mahadev Road, New Delhi (hereinafter to be referred to as the 'auditorium'). In pursuance of these directions, PW 1 deposited the positive print and an entry thereof was made by the Librarian-cum-Projectionist of the auditorium which is Ex. PW 17/A. PW 17, K. PW Sreedharan, who was a Technical Officer-in-

charge also inspected the reels and found them in order.

4. Although Murshed, PW 6, after seeing the film agreed with the opinion of the Chairman of the Board that the film may be open to objection on the ground that it was full of sarcasm and contained criticism of the political functioning of the governmental machinery yet he was personally of the opinion that certification for exhibition should not be refused. The witness accordingly recorded a note and submitted it to Mr. A. J. Kidwai, the then Secretary, Minister of Information and Broadcasting. The matter was then examined by Mr. I. K. Gujral, the then Minister of Information and Broadcasting but no final decision was taken. Meanwhile, PW 1, Amrit Nahata, filed a writ petition in this Court which is Ex. PW 1/D. On June 23, 1975, a notice was issued by the Ministry of Information and Broadcasting to PW 1, Amrit Nahata, to show cause why certification to the film be not refused. The notice was made returnable by July 9, 1975. Thus, it appears that the Ministry of Information and Broadcasting had taken a tentative decision to refuse certification to the film because of its objectionable and offensive nature. We might state here that so far, neither A-1 nor A-2 was anywhere in the picture. In fact, the position is that the film faced rough weather even at the initial stage of consideration by the Board as a result of which the matter was referred to the Central Government where the question of refusal of certification was seriously considered and ultimately a notice was issued under the directions of the ministry. We have particularly highlighted this aspect of the matter because the learned Sessions Judge was largely swayed by the consideration that A-1 took a very prominent part in banning the film and in getting the positive print and other material in his personal custody in order to destroy the same with the aid of A-2. On the other hand, the facts disclosed by the prosecution ex facie show that objections to certification of the film had been taken at the very initial stage and the ultimate order was passed during the time when A-1, Mr. Shukla had taken over as Minister, which was merely the final scene of a drama long in process.

5. Continuing the thread from where we left it, Emergency was proclaimed on the night between June 25 and 26, 1975 and soon thereafter A-1 took charge as the Union Minister of Information & Broadcasting and he was of the opinion that the film should be banned. On July 5, 1975, in pursuance of the decision taken by the Central Government, the coordination committee directed seizure of the film and that its negatives, positives and all other materials relating to it be taken in the custody of the Central Government vide Ex. PW 6/D. On July 10, 1975, A-1 directed that the film be banned from screening under the Defence of India Rules, vide Ex. PW 6/E-4. Finally, on July 11, 1975, PW 6, Murshed, passed an order that no certification was to be given to the film for public exhibition which was followed by a letter dated July 14, 1975, forfeiting the film to the government. In pursuance of the decision taken by the Central Government, PW 39, S. Ghose, Deputy Secretary, incharge of the Films Division, wrote a letter to the Chief Secretary, Government of Maharashtra for seizing of all the positives and negatives of the film as also other related materials. In pursuance of this order, the Bombay police seized the entire film on August 1, 1975 and deposited the same in the godown of the Board. As, however, a final order had been passed by the government banning the film, PW 1, Amrit Nahata, filed a petition for special leave in the Supreme Court on September 6, 1975. This petition was heard on October 29, 1975 and this Court directed the government to screen the film on November 17, 1975 in the Auditorium for being shown to the Judges constituting the Bench. In pursuance of the order of this Court, intimation was sent to the Ministry concerned and PW 62, Mr. S. M. H. Burney, who was then Secretary, Ministry of Information and Broadcasting, directed that immediate action be taken to implement the orders of the Supreme Court, and that arrangements should be made to book the Auditorium for November 17, 1975. By a letter dated November 5, 1975, Ex. PW 2/A-2, the Supreme Court was also informed regarding the steps taken which, according to the prosecution were the prelude to the conspiracy between the two appellants leading to the seizure, disposal and destruction of the film.

6. Sometime thereafter, PW 2, L. Dayal, took over as Joint Secretary (Films Division) in place of Mr. Murshed.

7. We might emphasise at this stage that there is absolutely no evidence to show that there was any meeting of minds between A-1 and A-2 nor is there any material to indicate that A-2 played any role in the banning of the film. The decision to ban the film appears to have been taken by the ministry headed by A-1, on the merits of the cases. No motive is attributable to A-1 at this stage because even the Chairman of the Board, PW 8, Mr. Thapa, who was an independent witness, was of the view that the film should not be certificated for public exhibition. Similarly, the steps taken by the officers of the ministry in pursuance of the banning of the film, namely, the seizure of the film at Bombay and its transfer to Delhi appear to be in the nature of routine to see that the decision taken by the government was implemented. As no stay had been obtained by PW 1, Amrit Nahata, from the Supreme Court, the government was not bound to stay its hands. On the other hand, as soon as the ministry received the orders of this Court for screening the film on November 17, 1975, immediate steps were taken to comply with the orders of this Court.

8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under Section 120-B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the prosecution had turned hostile and refused to support its case. Despite these difficulties, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. We, therefore, propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove some sort of a connection of the appellants with the alleged destruction of the film.

9. In this connection, we propose to deal with the evidence in three separate parts : (1) the deposit of the positive print in the auditorium and its alleged transfer to the personal custody of A-1;

(2) the arrival of thirteen trunks containing negatives and other material related to the film at New Delhi from Bombay in pursuance of the orders of A-1 and their transfer to 1, Safdarjung Road, then to the Maruti complex; and

(3) the actual orders alleged to have been given by A-2 for burning the film in the

premises of the Maruti complex which operation, according to the prosecution, was carried out by the approver, PW 3, Khedkar, and other witnesses between November 10 and 24, 1975.

10. Although there are other elements on which prosecution has adduced evidence which is by no means very convincing or consistent but even if we assume those elements to be proved, if the three aspects indicated above, are not proved the prosecution is bound to fail.

11. We now proceed to deal with the first part of the case.

(1) The deposit of the prints at the Auditorium and its alleged transfer to the personal custody of A-1

12. In the Auditorium, PW 17, Sreedharan screened the film in order to show the same to PW 6, Murshed, on May 22, 1975 and again on the next day at the instance of the Ministry of Information and Broadcasting. Some private shows were also screened at the instance of PW 1, Amrit Nahata, though this was not permissible under the rules. It was also the prosecution case that PW 39, Ghose and PW 61, C. K. Sharma met PW 17, Sreedharan and PW 18, Bhawani Singh and examined the prints which were then kept in the green room. Ghose then rang up Sreedharan and told him that he was coming to the auditorium to take delivery of the prints. Accordingly, PW 39, Ghose is said to have arrived at the auditorium and the fourteen reels contained in cans were put on the back seat of his car. PW 39, Ghose then went to Shastri Bhavan and put the cans in the dicky of the staff car of A-1 in the presence of the driver, Babu Ram, PW 33. Thereafter, when A-1 came, Babu Ram took the car to 1, Safdarjung Road where the cans were unloaded and kept in the office of R. K. Dhavan, Additional Private Secretary to the then Prime Minister. In support of this part of the case, the prosecution examined PW 18, Bhawani Singh, PW 33, Babu Ram; PW 61, C. K. Sharma; PW 57, V. S. Tripathi; PW 60, R. L. Bandlish and PW 39, Ghose. So far as PWs 39, 57, 60 and 61 are concerned, they did not support the prosecution case regarding the transfer of the prints to the custody of A-1 as alleged by the prosecution. So, the only witnesses to prove the factum of transfer were PWs 17 and 33. The prosecution also examined some other witnesses PW 1, Amrit Nahata; PW 2, L. Dayal and PW 62, Burney to show that the transfer of the positives of the film to the custody of A-1 was carried out at the oral instruction of A-1. PW 62, however, did not support the prosecution and thus, on this point, the only witnesses worth considering are PWs 1 and 2.

13. We would first refer to the evidence of PW 1, Amrit Nahata. He stated that he was directed to deposit the positive print of the film to the Films Division Auditorium at Mahadev Road and consequently he complied with the direction on May 17, 1975, and obtained a receipt. The witness goes on to state that one of the factors which weighed with him in withdrawing the writ petition he, however, admitted in his cross-examination that the process of persuasion and pressurisation and threats was carried out not on one but on several occasions. He then went to the extent of saying that the minister (A-1) used to talk to him in this connection in Parliament, in his office and sometimes even at Shastri Bhavan. He further stated that even in the Central Hall of Parliament he did not hesitate from threatening him. The witness admitted that he never filed any written application before the Supreme Court alleging the threats given to him by A-1. He further admits that after the Janata Government took over in March 1977 while he had written to Mr. L. K. Advani, who succeeded A-1, regarding the film, he made no mention of any such conversation between him and A-1 about the threats, etc. Finally, he admitted that no one was present in the office when he talked

to Mr. Shukla. In view of these statements, we find it difficult to believe the witness. The entire version given by him is inherently improbable, firstly, because of his failure to draw the attention of the Supreme Court to the threats, etc. Secondly, it is impossible to believe that after the Janata Government came to power and he wrote a letter to Mr. Advani regarding the film, he would not mention that he had been pressurised or threatened by A-1 when he was undoubtedly very much interested in his film being exhibited and bore a serious grouse and animus against A-1 because he had refused certification for exhibition of his film. In these circumstances, we are unable to place any reliance on the testimony of this witness so far as the allegation of threats, pressurisation, etc., made by A-1 concerned. Thus, if his evidence is rejected on this point, then excepting the testimony of PWs 2 and 63, there is no evidence to show that A-1 had any connection or link with the transfer of the positive print of the film.

14. This brings us to the consideration of an important witness PW 2, L. Dayal, on whom great reliance has been placed by the learned Sessions Judge. So far as PW 2 is concerned, he states that sometime in the first week of November, A-1 called him and said that he had decided to keep all material relating to the film in his personal custody and that detailed arrangements for the delivery of the material would be made by his personal staff and the work would be done by a respectable (sic responsible), officer. The witness further states that PW 57, V. S. Tripathi, was also present at the time when this conversation between the witness and A-1 took place. He further states that he had apprised PW 62, Burney, the Secretary, of the talk he had with A-1. Both PW 57 and PW 62 have not supported the witness on these points and have denied the same. The witness had also stated that he had called PW 39, Ghose and apprised him of the instructions of the minister for carefully and confidentially putting all material in the personal custody of the minister. Ghose, however, in his evidence does not support the story of instructions by the minister and denies having been told anything of the kind by the witness. Of course, all the three witnesses, namely, Tripathi, Burney and Ghose had been declared hostile. The witness further goes on to state that he had called PW 4, Khandpur, who happened to be in Delhi and had told him that all the film material pertaining to the film 'Kissa Kursi Kaa' lying at Bombay had to be carefully and confidentially collected and sent to Delhi. PW 4, however, clearly admits in his evidence that the instruction which he had received was to send the material to the Ministry of Information and Broadcasting. As we shall show, PW 2 appears to be deeply interested in the prosecution. In these circumstances, even Mr. Jethmalani, appearing for the State, frankly conceded that he would not ask the court to rely on this witness unless he was corroborated by some other independent evidence. In fact, far from there being any independent evidence to corroborate the version of the witness in regard to the instruction given by A-1, the persons to whom the witness mentioned these facts, viz., Tripathi, Burney and Ghose, have not supported him. Thus, so far as the role played by A-1 on the first part of the case is concerned, this is all the evidence produced by the prosecution and if this evidence is rejected, then it is not proved at whose instruction the film cans were transferred from the auditorium to 1, Safdarjung Road nor has it been established that this was done with the knowledge of A-1.

15. Coming back now to the evidence of the transfer of the positive print from the auditorium into the car of Ghose and therefrom to the staff car of A-1 at Shastri Bhavan and finally to 1, Safdarjung Road, the evidence led by the prosecution consists of Pws 17 and 33. The other witnesses examined on this point have not supported the prosecution case. From the evidence of PW 17, it appears that PWs Ghose, C. K. Sharma and Bhawani Singh met him and examined the prints and then the prints were kept in the green room. Later, the same day Ghose rang up the witness to inform him that he was coming to take the positive print of the film which should be kept ready. Thereafter, Ghose arrived and the prints were brought from the green room and placed in the back seat of the car of Ghose. Ghose thereafter drove the car but gave no receipt for taking the film. Half an hour later,

according to the witness, there was a telephone call from Tripathi to enquire if the film had been delivered to Ghose. The witness informed him that this had been done. It was also stated by the witness that a letter (Exs. PW 17/E and E-1) was got written by Ghose before he took the film in his car. It may be noticed here that prior to the filing of the FIR an inquiry had been held by PW 40, Narayanan, into the manner how the prints of the film were missing and in that inquiry PW 17, Sreedharan, did not say at all that Ghose had taken away the film. In this connection, the witness deposed as follows :

Q. You did not tell Shri Narayanan that S. Ghose had come to you in his car and you had delivered the film to him in his car and he had taken in away ?

Ans. No. I did not tell him like this (vold :- It was so as S. Ghose had asked me to say differently to Shri Narayanan and I stated as advised by S. Ghose).

Q. You know that enquiry had been ordered by Shri L. K. Advani, Minister for Information and Broadcasting ?

Ans. Yes.

Q. And yet you deliberately told a lie before Shri Narayanan ?

Ans. Yes, because of S. Ghose.

16. Thus, the witness admitted that he spoke a lie before Narayanan merely because of Ghose. Further, even in his statement before the police, the witness did not state that Ghose had come to him for taking away the film on the same day, i.e., the day on which Ghose had telephoned that he would be coming to take the film. So far as PW 39, Ghose is concerned, he has totally denied having told the witness to keep the positive prints ready or that he ever took delivery of the prints from the witness and put the same in his car. Thus, even the prosecution case relating to the transfer of the positive prints through PW 39, Ghose, to 1, Safdarjung Road becomes doubtful, Even so, assuming that Ghose did take delivery of the positive prints that does not conclude the matter because the prosecution has further to prove that the prints were taken away from the auditorium at the instruction of A-1 and then kept in the staff car of A-1 and taken to 1, Safdarjung Road with the knowledge of A-1. On this point, the evidence of PW 17 is absolutely silent and he says nothing about it nor was he competent to say the same. The only other witness PW 33, Babu Ram, states that sometime in the winter of 1975 PW 61, C. K. Sharma, called him and told him that there was some luggage (saaman) of Minister Saheb which was to be kept in his car and asked him to bring the minister's car close to where Ghose's car was parked. The witness found 10 to 12 round boxes which were transferred to the dicky of the staff car. Thereafter, according to the witness, PW 60, Bandlish, had a talk with Ghose and after the minister had come, the car was driven to 1, Safdarjung Road. On reaching 1, Safdarjung Road, the minister went out of the car and a person came and took away the saaman. Thereafter, the witness drove A-1 to other places. In his statement before the police, the witness did not state that PW 61, C. K. Sharma had told him that the saaman of Minister Saheb (emphasis being on Minister Saheb) was to be transferred to the dicky of the staff car. Both Bandlish and C. K. Sharma have not supported the version of this witness and have denied everything. Even talking the version of this witness at its face value, there is nothing to show that when A-1 boarded the staff car at Shastri Bhavan he was told either by the driver or by anybody that the film cans had been placed in the dicky and were to be taken to 1, Safdarjung Road or that they had been brought from the auditorium. Even when the car reached 1, Safdarjung Road, Babu Ram

never informed the minister about the boxes having been kept in the dicky nor is there any evidence to show that the boxes were unloaded from the dicky of the minister's car either in his presence or to his knowledge. Thus, all that has been proved is that the cans were transferred from the auditorium to 1, Safdarjung Road. Taking the evidence of PW 17 and PW 33 as also PW 18, Bhawani Singh at its face value, no connection between A-1 and the transfer of the film has been established. Thus, the prosecution has failed to prove that the positive prints of the film were transferred from the auditorium to the personal custody of A-1 or that the said transfer was done in accordance with his instruction or to his knowledge.

(2) The transfer of negatives and other material related to the film from Bombay to Delhi and to 1, Safdarjung Road and from there to Maruti complex at the orders of A-1

17. So far as this part of the prosecution case is concerned, the evidence is wholly insufficient to attribute any knowledge or ulterior motive to A-1 in directing the negatives to be sent from Bombay to Delhi. Some evidence has no doubt been adduced by the prosecution to show some amount of criminality on the part of A-1 but that evidence, as we shall show, is not very reliable.

18. To begin with, according to PW 6, Murshed, A-1 said that there was some sort of an informal discussion between A-1, Mr. A. J. Kidwai, the then Secretary in the Ministry of Information and Broadcasting and the witness when A-1 directed that the film be banned and seized, but that no action was taken by the witness until the file reached him. The witness added that on July 7, 1975 there was another meeting attended by Sarin and other officers which was presided over by A-1 and in this meeting a final decision was taken that the film should be taken over and mention was made that the Defence of India Rules should be pressed into service. The witness further stated that ultimately in the coordination committee meeting which was held on July 10, 1975, and was also presided over by A-1, the earlier decision taken by the government was reiterated. The witness then goes on to state that he passed the order Ex. PW 6/A-9 on July 11, 1975 which directed that the certificate for public exhibition was refused and the said order was communicated to PW 1, Amrit Nahata. This was followed by another order Ex. PW 6/A-10 which forfeited the film 'Kissa Kursi Kaa'. Both these orders were approved by the minister which had to be done in consequence of the decision taken by the government. After the film had been banned and forfeited, the seizure of the film material at Bombay became a necessary consequence and accordingly a letter dated July 14, 1975 was issued under the signatures of PW 39, Ghose of the Chief Secretary, Government of Maharashtra for seizure of the film material relating to the film and requiring him to deposit the same with the Board.

19. The next question that arises is as to why the negatives and other material of the film were directed to be sent to Delhi. It is obvious that once the film was banned and forfeited and action under the Defence of India Rules had to be taken, it was in the nature of a routine operation that the negatives and other material of the film should be placed in the custody of the Ministry of Information and Broadcasting. This appears to us to be the main reason why A-1 directed that these materials may be sent from Bombay to Delhi. In order to incriminate the minister the prosecution urges that this was done by A-1 to get the negatives, etc., in his personal custody so that he would be in a position to destroy the same. On this, there does not appear to be any clear evidence and even the Sessions Judge has based his findings largely on speculation.

20. To begin with, L. Dayal, PW 2, who has then attached to A-1 as Joint Secretary (Films) states that on November 6, 1975, A-1 told him in the presence of Tripathi, PW 57, that A-1 had decided to

keep all material relating to the film in his (A-1's) personal custody, that detailed arrangements for the delivery of the material would be made by A-1's personal staff and that work had to be done by a responsible officer. The witness adds that he conveyed the decision to the Secretary and to Section Ghose, PW 39, and then called PW 4, Khandpur, Chief Producer, Films Division, Bombay who happened to be in Delhi and asked him that all the material pertaining to the film 'Kissa Kursi Kaa' lying at Bombay had to be carefully and confidentially collected and sent to Delhi. At the time when this talk took place Ghose and Tripathi were present, according to PW 2, who then rang up Vyas (Chairman of the Board) and gave him similar instructions in the presence of Ghose and Tripathi. However, neither Tripathi nor Ghose supports PW 2 on the point that he had asked Khandpur to collect the material of the film 'carefully and confidentially' which particular words were attributed to A-1 to show his criminal intent. In this connection, Ghose, PW 39, who was declared hostile to the prosecution, stated :

As I was coming out of the room of Shri Burney, I dropped in Shri Dayal's room which was in the same corridor with a view to inform him that I had gone to the auditorium and checked the film and had found the film intact. I also told him that I had informed Shri Burney accordingly. I found Shri K. L. Khandpur also sitting in the room of Shri Dayal. Shri Dayal asked me to take my seat. After a few moments I found Shri V. S. Tripathi walking into the room of Shri Dayal. He also took his seat. When I entered the room Shri Dayal was already conversing with Shri Khandpur. Looking at us, namely, myself and V. S. Tripathi and Shri Khandpur, Shri Dayal generally enquired where the filmic material was lying at Bombay. Shri Dayal also gave direction to Shri Khandpur for collecting the filmic material at Bombay with a view to transporting it from Bombay to Delhi. I do not recall Shri Dayal taking the name of the minister or the secretary at the time of the discussion. I also do not recall whether he mentioned word secretly during this discussion. My feeling was that the entire responsibility for the collection and transportation of the filmic material from Bombay to Delhi was felt with Shri K. L. Khandpur.

21. The stand of Tripathi. PW 57, who was also allowed to be cross-examined by the prosecution was as follows :

Shri Dayal gave instructions to Shri K. L. Khandpur in my presence and that of Shri Section Ghose to shift the negative material of film 'Kissa Kursi Kaa, from Bombay to Delhi. At the request of Shri Khandpur, Shri Dayal also spoke to late Shri V. D. Vyas about this matter and told him on telephone that the negative material was to be shifted from Bombay to Delhi and that the transportation arrangement would be explained by Shri Khandpur to him on his return to Bombay. Roughly this is all that I remember and in addition that it was early in the afternoon.

22. The witness was specifically asked whether in his presence A-1 gave instructions to L. Dayal, PW 2, that he (A-1) wanted the positives and negatives of the film in his own custody immediately and confidentially. He denied the correctness of the assertion and was confronted with the following portion ('E' to 'E') of his statement made on April 25, 1977, to K. N. Gupta, Deputy Superintendent of Police, C.I.A., New Delhi :

Later, sometime in the afternoon, the minister called me inside his room. Shri Dayal was also inside and I noted that discussion was going on about the film "Kissa Kursi Kaa". The then Minister of Information and Broadcasting, gave instructions to Shri

L. Dayal, Joint Secretary (Information) in my presence that he wanted the positives & negatives etc. of the film, "Kissa Kursi Kaa" to be handed over to him, in his custody immediately and confidentially. The minister also said that the arrangements for transportation will be made by him and Shri Dayal should get in touch with the personal staff for this.

The witness also denied the correctness of the assertion that in his presence later on Shri Dayal, PW 2, had told Shri Khandpur, PW 4 that the film should be brought from Bombay to Delhi "very carefully without telling anybody about it". He was confronted with portion 'F to F' of his said statement to the police where the assertion appears.

23. Even Khandpur, PW 4, who has fully supported the prosecution has not said anything in his evidence to indicate that PW 2 had said that the materials should be 'carefully and confidentially' collected and sent to Delhi. On the other hand, PW 4 says thus :

I was called by L. Dayal, the Joint Secretary in his office. I was asked to make arrangements for collecting all material pertaining to film 'Kissa Kursi Kaa' available at Bombay and to send the same to Delhi I have seen file CFD/51 shown to me, Ex. PW 4/E. It is named "Confidential Material Received from C.B.F.C. and sent to Ministry of I.& B. in November 1975". This file pertains to Films Division Bombay. This file pertains to the film materials of 'Kissa Kursi Kaa'. Another file pertaining to this film is the one which contains Exs. PW 4/A to PW 4/C.

The file Ex. PW 4/E was labelled as 'Confidential' and shows that the film material was sent to the Ministry of Information and Broadcasting in November 1975. But there was nothing to indicate in the file or in the evidence of PW 4 that the materials and negatives, etc., were to be sent to the personal custody of the minister. As the film was banned and forfeited, there was nothing incongruous about the transfer of the materials to Delhi being treated as an official and confidential matter and even if PW 2 had told PW 4 that the film material should be dispatched "carefully and confidentially" that would not show any criminal intent on the part of A-1.

24. In order to show that A-1 took a somewhat unusual interest in the dispatch of the negatives and other material of the film from Bombay to Delhi, it is further the case of the prosecution that Tripathi who was Special Assistant to A-1 was sent expressly to receive the materials at New Delhi Railway Station and make arrangements for their transport. But Tripathi categorically stated that he never went to the Railway Station for the purpose of receiving the film material, etc. On the other hand, PW 2 states that on November 9, 1975, PW 4, Khandpur informed him on telephone from Bombay that the film material was being sent from Bombay to Delhi by Western Express and would be reaching Delhi on the next day and that two officers, one of them being Kane, PW 5, were accompanying the material. PW 2 adds that he then rang up Ghose and asked him to get in touch with Tripathi for making the necessary arrangements for transport and delivery of the material. The witness goes on to state that on November 10, 1975, PW 39, Ghose, came to him and reported that the film material had arrived and had been brought in tempos arranged by A-1. Ghose, however, has not supported this witness on this aspect of the mater. Reliance was, therefore, placed on the evidence of PW 5, Kane, to show that when he reached Delhi along with the film material, Tripathi was there to receive the same. It is not disputed that Tripathi was not known to PW 5, Kane, before the 10th and that by the time the witness saw him at the New Delhi Railway Station he had seen him

only once in Bombay. The witness does state that his pointed attention was drawn to Tripathi because he had asked him to settle the payment of charges to the coolies and that put for this his attention would not have been drawn to Tripathi. He, however, admits that in his statement before the Central Bureau of Investigation, he did not mention the fact that Tripathi had asked him to settle the matter of the payment of charges to the coolies. Thus, the existence of the only circumstance on the basis of which the witness could have identified Tripathi becomes doubtful and in view of the categorical statement of Tripathi that he never went to New Delhi Railway Station on November 10, to receive the film, it is difficult to accept the evidence of PW 5 that Tripathi was the person present at the station. The possibility that the witness committed some mistake in identifying cannot be ruled out. Moreover, the identification of Tripathi by the witness for the first time in the court without being tested by a prior test identification parade was valueless. Besides, the witness admits that in the note Ex. PW 4/E-2 he did not mention Tripathi or any other person along with Ghose to have been present at the New Delhi Railway Station. Thus, even on the question of the arrival of the material of the film at New Delhi no direct connection with A-1 has been established by the prosecution. In fine it is not proved by the prosecution that Tripathi was present at the Railway Station to receive the film and hence it cannot be said that A-1 took an unusual interest in seeing that the film is properly brought from Bombay to Delhi and placed in his custody.

25. Coming back to the evidence of PW 2, there is yet another circumstance which he proves and which merits some consideration. According to the witness, in the special leave petition filed by PW 1, March 12, 1976 was fixed for screening the film. The witness adds that he took instruction from A-1 as to what should be done when A-1 asked him to inform the Supreme Court through an affidavit that efforts had been made to trace the prints of the film at Bombay as also at Delhi but that there were no chances of their becoming available. The witness says that he was also directed to mention in the affidavit that such misplacements had often occurred in the past, and that he passed on this information to the Secretary, Mr. Burney who suggested that the orders of the minister should be carried out. In consonance with the instruction, Ghose filed an affidavit before the Supreme Court on March 22, 1976 but the Hon'ble Chief Justice emphasised the importance of making the film available for viewing by the Judges. The witness recorded a note Ex. PW 2/A-17 to bring to bring the matter to the notice of the minister. Ultimately, however, as PW 1, Amrit Nahata, withdrew the petition nothing further happened. It appears that while the petition was pending in the Supreme Court, contempt proceedings were taken against some of the officers including PW 2 who also filed four affidavits, one of them on November 28, 1977 and the other three on February 28, 1978. These affidavits are Exs. PW 2/B-1 to B-4. In these affidavits he wanted to prove that as the film had been mixed up with lost of other films received in connection with the Fifth International Film Festival, the material of the film Kissa Kursi Kaa was misplaced, and that is a stand which comes into direct conflict with the testimony of the witness in court in which the entire blame is shifted to A-1 but which again runs counter to an assertion made earlier by the witness in his own hand. That assertion appears in the form of an amendment to a draft of a letter (Ex. PW 2/DE) to be sent to Mr. V. P. Raman, Additional Solicitor-General and reads : 'In spite of efforts the film has not been found'. The witness admits clearly that this statement was false to his knowledge. A witness who could go to the extent of making intentionally false statement cannot be relied upon for the purpose of convicting the appellant. On his own showing, he was fully collaborating with A-1 in a criminal design and was therefore, no better than an accomplice whose testimony cannot be accepted in any material particular in the absence of corroboration from reliable sources. Even Mr. Jethmalani, the erstwhile senior counsel for the prosecution conceded the correctness of this proposition. On an appreciation of the evidence of PW 2 and other factors discussed above, his evidence has not only not been corroborated but definitely contradicted by other witnesses,

circumstances and documents.

26. PW 63, K. N. Prasad was the Additional Secretary in the Ministry of Information and Broadcasting. He stated that in March 1977, A. K. Verma, the then Joint Secretary wanted to know whether the government had any inherent power to destroy property which had been seized or forfeited, and also disclosed that the enquiry was made in connection with the film 'Kissa Kursi Kaa'. The witness further stated that after two or three days Verma and PW 39, Ghose came to his room and asked the same question. The witness further goes on to state that he was informed by his P.A. that he was required to attend a meeting at the residence of the minister (A-1), that when he entered the office at the residence of A-1, he found PW 62, Mr. Burney, Secretary to the Ministry of Information and Broadcasting, sitting there and that Mr. Burney (PW 62) asked the witness what the legal position was about the right of the government to destroy forfeited property. At that time, according to the witness, Tripathi, Mr. Burney and A-1 were present. He, however, admits that A-1 did not ask and particular question.

27. From the testimony of PW 63 the prosecution seeks to draw an inference that it was A-1 at whose instance Verma, Ghose and Burney had asked for the advice of the former (PW 63). Now A. K. Verma has not been examined as a witness and his statement (seeking the advice of PW 63) is not therefore, admissible in evidence, while both Ghose and Burney have denied that any such conversation as has been deposed to by PW 63 took place between the latter and the witnesses in the presence of A-1. In fact, a specific suggestion was put to Burney (PW 62) in the following terms :

Q. When Shri Nahata asked for the return of the film material, did it happen that you discussed the matter regarding availability and return of the film material with Shri Shukla at his official residence and during that discussion Shri K. N. Prasad and Shri A. K. Verma had also come there and Shri V. S. Tripathi, Special Assistant to the Minister was also present ?

28. His answer was an emphatic no.

29. Besides, the story given out by the witness does not appear to be very plausible, for it does not stand to reason that A-1 would depute no less than three officers (Verma, Ghose and Burney), one after the other, to obtain advice of PW 63 when A-1 could have had no difficulty in obtaining the advice himself. And then how was PW 63 selected as a specialist in the concerned branch of law over the head of superior officers, even if it was considered hazardous to enlist the services of a competent lawyer ? We are, therefore, unable to place reliance on the evidence of this witness on this point. From a discussion of the circumstances mentioned above, we conclude that the prosecution has failed to prove that the film materials brought from Bombay to Delhi were placed in the personal custody of A-1 or that A-1 had them transferred to No. 1, Safdarjung Road or to the Maruti complex.

30. Another link in the chain of prosecution evidence (the existence of which seems to have been accepted by the learned Sessions Judge) was that two tempos belonging to the Maruti company were sent to the New Delhi Railway Station where the thirteen trunks which arrived by the Western Express were loaded therein and were taken to 1, Safdarjung Road before being transported to Maruti complex where they were unloaded, kept and later on destroyed. It was also alleged by the prosecution that a raid of the Maruti complex carried out in 1977 led to the recovery of the lid of a trunk, an empty can which earlier contained part of the film material and a gunny bag to the inside of which were found sticking scraps of paper. The investigators also claimed that a few miles away

from the Maruti complex some round cans were recovered from a nallah. The learned counsel for the defence submitted that the allegations about the trunks being taken to Maruti complex and the recoveries being made were false and addressed to the court lengthy arguments in this behalf. It is, however, not necessary for us to go into these details at this stage because assuming for the purpose of argument that the trunks were brought to the Maruti complex, and that the film material was destroyed unless A-1 or A-2 were shown to be connected with the transport or destruction of the material, the charge against the appellants cannot be held to be proved.

(3) The burning of the film 'Kissa Kursi Kaa' in November 1975, at Maruti complex at the orders/instructions of A-2

31. In support of this part of the prosecution story, reliance was placed mainly on the testimony of Khedkar (PW 3) who is the approver. The effort of the prosecution was to establish that on instructions given by A-2 the film material was burnt inside the Maruti complex on two consecutive nights and that the fact was reported to A-2 on each of the two following mornings. The approver was the Security Officer in the Maruti Limited at the relevant time and the assertions made by him in this behalf may be split up as follows :

(a) In the middle of November 1975, A-2 sent for the approver and told him that some boxes containing films were lying in the stores, that the films were to be destroyed when the workers were away and that the approver would get the keys of the locks on the boxes on the next day.

(b) On the next day one of the security guards who used to accompany A-2 handed over a sealed packed of paper wrapped in cloth to the approver. On the same day the approver directed his assistant named Kanwar Singh Yadav, PW 32 to meet the approver (in the Maruti Complex) at 9.00 p.m. along with watchman Om Prakash, PW 31. Kanwar Singh Yadav, PW 32 met the approver at 9.30 p.m. They reached the factory gate where watchman Om Prakash, PW 31 was waiting for them. The approver signed the key register and obtained the key of the General Store. The party of three opened the store and found lying therein the thirteen boxes containing the film material. The boxes were opened with the keys which were taken out of the sealed packed mentioned earlier. Each box was found to contain 10 or 12 cans having film spools inside them. Each can bore a label with the legend 'Kissa Kursi Kaa'. The first lot of the films was removed to a nearby pit and was burnt there, the operation lasting from 10.30 p.m. to 2.30 a.m. Watchman Om Prakash, PW 31 however left the place at about 11.00 p.m. because he felt giddy.

(c) Next morning the approver reported to A-2 that the work had been carried out in part only and that it would be completed on the night following, which was done from 10.00 p.m. to 2.00 a.m.

(d) Next morning the approver again made a report to A-2 telling him that the job had been completed.

32. Learned counsel for the defence contended that the stand taken by the approver could not be accepted at its face value and had to be rejected lock, stock and barrel. On a thorough consideration of the evidence we find that the contention well-based as we shall presently show.

33. The firm material, according to the case of the prosecution, is said to have reached Maruti complex on November 10, 1975. After November 23, 1975, Khedkar, PW 3, on his own showing, went away on leave. The period during which the film is said to have been burnt thus lies between November 10 and 23, 1975. Furthermore, Khedkar, PW 3 has firmly asserted that on the first of the two nights on which the burning operations were carried out, watchman Om Prakash, PW 31 was on duty from 2.00 p.m. to 10.00 p.m. He was examined at length in relation to duty rosters PW 22 and PW 32/2 which were admittedly prepared by him. Duty roster Ex. P/22 covers the entire month of November 1975, and according to the entire appearing therein watching Om Prakash, PW 31 was to be on duty during the whole of that month in the third shift only, i.e., daily from 10.00 p.m. to 6.00 a.m. The approver however explained that the roster could be changed from time to time according to the exigencies of the situation. He averred that on November 15, 1975, which was a Saturday and therefore on off-day for watchman Om Prakash, PW 31, the latter took over duty from 2.00 p.m. to 10.00 p.m. as a substitute for watchman Tarachand. A similar arrangement was made on November 18, 1975, when watchman Om Prakash, PW 31 changed places with watchman Ramdular and went over from the 3rd to the 2nd shift (2.00 p.m. to 10.00 p.m.). As it is, November 15 and 18, 1975, were the only two days in the month on which watchman Om Prakash, PW 31 was on duty during the second shift as a special arrangement. For the rest of the days during the month he was admittedly never on duty in that shift. The period during which the film was destroyed is thus further narrowed down so that the first operation of burning could have taken place on the night of November 15 or on that of November 18, 1975, and on no other date.

34. Here we may refer to another aspect of the matter. Evidence has been produced to show that A-2 left Delhi by air at 7.50 a.m. on November 17, 1975 for Hyderabad, and arrived back at Delhi at 8.30 p.m. the same day. He again took off at 6.40 a.m. on November 19, 1975, for Sikkim and returned to Delhi not earlier than 11.10 a.m. on November 23, 1975. On both occasions he travelled as a member of the party of the then Prime Minister, his own mother, namely, Shrimati Indira Gandhi. The evidence of Dr. K. P. Mathur, DW 3, is categorical in this behalf and is supported by the passenger manifests (Exs. DW-3/A and DW-5/A) prepared in relation to the journeys which contain the name of A-2, and other documents which need not be mentioned here. We regard his testimony as conclusive as was done not only by the learned Sessions Judge but also by the Special Public Prosecutor who made a statement at the trial that testimony be accepted by the prosecution in toto. In this view of the matter the prosecution has to prove that a period of four days in between November 14 and 18, 1975, was such as A-2 was available in Delhi during day time on the first, third and fourth of such days.

35. Now, as pointed out already, the burning could have taken place only on November 15 or 18, 1975, if the approver and the duty rosters prepared by him are to be believed. November 18, 1975, has to be excluded for the reason that on the two days following A-2 had to be shown to have been in Delhi (for receiving the report about the destruction of the material from the approver) which he definitely was not. November 15, 1975, as the first night of the burning operation also does not click with the prosecution case because, although the report about it could have been made to A-2 on the next morning (in spite of the fact that it was a Sunday and therefore a closed day for the factory), A-2 was not in Delhi or anywhere near it throughout the 17th so that the story of the report made to him by the approver about the second part of the burning operations loses weight. No other dates being in point, the story propounded by the approver is negatived by reference to unimpeachable documentary and circumstantial evidence, although it may be further noted that neither Kanwar Singh Yadav, PW 32 nor watchman Om Prakash, PW 31 supports the approver's version and each one of them was declared hostile to the prosecution.

36. The recoveries said to have been made during investigation have also not impressed us. As stated earlier the incriminating articles said to have been seized are a lid of a trunk, an empty can, a gunny bag-all from inside the Maruti complex-and a few cans from inside a nallah lying a few miles away. These recoveries are sought to be connected with the destruction of the film on the basis of the following averments forming part of the testimony of the approver :

It was after the elections held in March 1977, that Sanjay Gandhi who was then Director met me in the factory hall. Kanwar Singh Yadav was also there. Vijay Sharma, Bus Body Manager, was called there. Sanjay Gandhi asked us to collect all the damaged trunks with the contractors and to deposit them in Bus Body store. We could collect 12 out of 13 trunks mentioned above along with four or five other big trunks. There were deposited in Bus Body Store. Later on I found them shifted to Press Shop Store. A couple of days thereafter, Kanwar Singh Yadav, Sanjay Gandhi and I went inside the General Store. We walked down to Bus Body Store. There Sanjay Gandhi asked Panna Lal, Bus Body Supervisor and incharge Bus Body Store, to collect all the damaged locks available with them. Panna Lal passed on the order to Om Prakash who was Bus Body Clerk Incharge Stores. About 25 damaged locks were collected. These included Harrison, Tiger and Godrej locks. Godrej locks were 4 or 5. Sanjay Gandhi asked me to get all those collected locks melted in a foundry and I got them melted Ram Lakhan was incharge of the foundry and I handed over the collected locks to him Thereafter, scrapping of the trunks and their removal was performed by my Assistant Kanwar Singh Yadav and he told me about that. Kanwar Singh Yadav told me that Sanjay Gandhi had asked him to scrap the trunks and cans and to dispose them off. He told me that he cut the trunks into pieces and threw them into the iron scraps which were sold to different contractors. As regards the cans, he told me that he had damaged the cans and thrown them at different places on Rajasthan Highway and Rajasthan Bypass He told me that the trunks had been cut into pieces and cans had been damaged in the Press Shop.

37. This story is inherently improbable. The thirteen trunks which admittedly had no marks of identification on them and were of the ordinary type available in any market are said to have been shredded and the locks which again are available in plenty everywhere - are alleged to have been melted in the foundry but, strangely enough, the cans which had on them labels carrying the legend 'Kissa Kursi Kaa' were subjected to a much milder treatment and were merely pressed and then thrown away at various places on the Rajasthan Highway and Rajasthan Bypass to which Kanwar Singh Yadav, PW 32 had to make journeys off and on. It is not disputed that if the cans were to be shredded or melted the operation would not have presented any difficulty whatsoever in view of the facilities available at the Maruti factory. And if that be so, surely and person who wanted to obliterate evidence of the commission of a serious offence would see to it that the material of the cans was so transformed as to be impossible of identification. There is no reason why all of them should not have been melted into lumps or in any case shredded beyond recognition. And we also do not see how just one can would be left intact when so much care was bestowed on Operations Obliteration. In fact, it may have been much easier for the cans to be shredded or melted than for them to be first pressed and then transported to far off places and thrown away there. In this view of the matter we need not pursue this part of the case any further.

38. Thus, on a complete and careful examination of the circumstances and the evidence, mentioned above, even taking the substratum of the prosecution case at its face value, the prosecution has not been able to prove either that there was any existence of any conspiracy between A-1 and A-2 to

destroy the film 'Kissa Kursi Kaa' by burning it or to commit any other offence in respect of the film. There is no evidence to show that there was any meeting of minds between A-1 and A-2. We have also found that even on the first two parts of the prosecution case, the allegation of the prosecution that the positive prints were removed at the instance or to the knowledge of A-1 or that the negatives and other materials of the film were sent for by A-1 and kept in his personal custody has not been proved. The mere fact that A-1 decided to ban the film and refused certification for public exhibition and passed orders for seizure of the film and its transfer to the custody of the Ministry of Information and Broadcasting does not disclose any offence. We have already shown that the decision to ban the film was not taken by A-1 secretly or clandestinely but after a full-fledged discussion in the co-ordination committee meeting and it is proved that such meetings are usually attended by senior officers of various ministries, as deposed to by K. N. Prasad, PW 63. Further, that part of the case which relates to the burning of film material rests solely on the uncorroborated testimony of the approver and is negatived insofar as the role therein of A-1 is concerned.

39. We may mention here that a lot of evidence has been produced by the prosecution to show :

(a) that the positive print of the film found its way into the luggage compartment of the car in which A-1 then travelled to the Prime Minister's house where the print was unloaded by someone in the absence of A-1; and

(b) that the negatives and other material relating to the film were taken in a tempo or two to the Prime Minister's residence and from there to the Maruti complex where they were stored before their destruction.

40. We have considered it purposeless to go into these factors for the reasons that the connection of A-1 or A-2 therewith remains unproved as discussed above. Held these factors provided circumstantial evidence on the basis of which along the charge against either A-1 or A-2 could be held established it would have been necessary for us to sift the evidence produced in support thereof. But that is definitely not the case, for, if either or both of the factors are proved, the inference of guilt of either A-1 or A-2 does not necessarily follow. For circumstantial evidence to furnish evidence of guilt it has to be such as it cannot be explained on any other reasonable hypothesis except the guilt of the accused which is not the case here because appellants A-1 and A-2 could not be said to be the only the person interested in the destruction of the film if it was as obnoxious to the then Prime Minister or as critical of the functioning of the then Union Government as the prosecution would have us believe. The film and all the material relating to it no doubt appear to have vanished into thin air but then neither A-1 nor A-2 can be held responsible therefor, in the absence of proof in that behalf - proof which would exclude all reasonable doubt.

41. The prosecution having thus failed to prove the case against the appellants, their appeals are allowed, the convictions recorded against and the sentences imposed on the appellants are set aside and they are acquitted of all the charges framed against them. Both the appellants who are on bail shall now be discharged from their bail bonds. In view of the acquittal of appellant 1, Shukla in Criminal Appeal 494 of 1979 and appellant 2, Sanjay Gandhi in Criminal Appeal 493 of 1979, Criminal Appeal 492 of 1979, filed by the State is dismissed. In view of the fact that we have made no comments on the conduct of the investigation or one Mr. N. K. Singh, no order need be passed on the applicant filed by him.

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