

CALCUTTA HIGH COURT

Jitendra Nath Gupta

Vs

Emperor

(Cunliffe, J.)

30.07.1936

JUDGMENT

Cunliffe, J.

1. The appellants in these appeals, 29 persons, were tried by a Special Tribunal, constituted by the Government of Bengal under the Bengal Criminal Law Amendment Act, on a charge of conspiracy under Section 121-A.I.P. C The charge as drawn up by the learned Commissioners constituting the Tribunal was of the following description: That the accused persons, between 1930 and December 1933, at Munshiganj Road, Watgunge Police Station, and other 70 places, (mentioned in a schedule to the charge), along with Jiten Naha (an approver, examined as a witness for the prosecution) and other persons, five hundred and thirty-seven of whom were named in the schedule to the charge were parties to a criminal conspiracy to wage war against the King or to deprive the King of the Sovereignty of British India, or of some part thereof, or to overawe, by means of criminal force or show of criminal force, the Government of India or the Local Governments.

2. It may be noticed that the mention of so many names in the charge sheet as co-conspirators, was perhaps in consonance with the rule adopted in a case decided by this Court, the propriety of which has not always been recognized: see *Amrit Lal Hazra v. Emperor* AIR 1916 Cal 188 at pp. 984-986, although the adoption of such a course, the mention of names of persons as co-conspirators indiscriminately gives greater facility in the matter of leading evidence under Section 10, Evidence Act, which would otherwise be inadmissible. It may further be mentioned that the vagueness or indefiniteness attaching to the period of time mentioned in the charge must be taken to be inherent into the nature of the charge itself relating to a conspiracy the origin of which it was impossible to trace with any amount of accuracy, unless it came from the persons charged with the offence of criminal conspiracy, secret in its origin and inception and carried on in secrecy. The petition of complaint filed in the Court of the Commissioners appointed under

sub-ss. (1) and (2) of Section 4, Bengal Criminal Law Amendment Act mentions the commission of murders, dacoities and collection of arms in Bengal and other places in India and Burma, and ammunition in contravention of the provisions of law, and unlawful and malicious making, possessing, or having in control explosive substances for purposes of destruction of person and property; and evidence, it would appear, was led on the side of the prosecution in support of the case stated in the petition of complaint. For the purpose of a general idea of the case before the Court, a reference to the facts stated in the petition of complaint is necessary.

3. The criminal conspiracy of the nature mentioned above, was traced in the course of searches in connexion with tracing certain persons who had escaped from prison, detention camps or village domicile or were evading arrest under the Bengal Criminal Law Amendment Act. Jitendra Nath Gupta who had escaped from the Buxa Detention Camp was arrested in Calcutta; this was followed by the arrest of Hem Chandra Bhattacharya who was evading arrest under the Bengal Criminal Law Amendment Act, and of Kisori Mohan Das Gupta and Bimal Bhattacharjya; on the person of Jitendra Nath Gupta was found a bunch of keys and other articles; on Kisori Mohan Das Gupta was found a bunch of keys and three letters. After this Surendra Dhar Chaudhury and Jyotish Mazumdar were arrested in a room in which was found a revolver in two parts concealed inside some flour contained in an earthen pot (Handi), 20 cartridges, and several documents and letters including a note on Sanyet Sen; from the pocket of a coat of Surendra Dhar Chaudhury were recovered nine cartridges and a magazine base of a pistol No. 9978. The pistol itself was recovered subsequently from another place. Following upon this, Hrishikesh Das Gupta was arrested, on a statement made by Kisori Mohan Das Gupta, and Kisori's statements led to a search in which books, maps, list of books, letters and iron rods were seized, and this was followed by the arrests of Jitendra Chakravarti, Santosh Chatterjee, Dwijendra Talapatra, one after another on the same day. In the house in which Jitendra Chakravarti lived were found maps of different districts of Bengal, proscribed literature, and an angle of a spring, the spring was connected with the part of the pistol found previously to which reference has been made above, the magazine base of which was also discovered. In the house of Santosh Chatterji was found a cryptic letter; and in the room in which Dwijendra Talapatra lived with Jiten Gupta, were found Dwijendra Talapatra's Post Office Savings Bank Pass Book and other books, a number of letters, maps, Railway Time Tables, false motor car number plates, big hammers, chisels and documents. Subsequent to this, the house occupied by Shyam Behari Sukla was searched, and in that search was found one pistol No. 9978 without the magazine base, three cartridges in a clip, 42 copies of "Swadhin Bharat," leaflets, two zinc blocks, a list of proscribed books and a copy of the Sedition Committee Report; the search was followed by the arrest of Shyambehari Sukla. This Shyambehari Sukla according to the case for the prosecution was the person who introduced Sitanath De to the United Provinces Branch of the conspiracy as an organiser.

4. The search of the premises No. 11, Sitala Lane resulted in the arrest of Probhat Chandra Chakravarti, the leader of the organisation. Probhat Chandra Chakravarti was a detainee at the Buxa Camp, and was transferred to village Faridpur (Asansol Sub-Division) as an internee; he escaped from that place, leaving some of his belongings and was in hiding, till he was found at No. 11 Sitala Lane living with Abani Bhattacharjya. The search of the above premises led to important discoveries; in the room occupied by Provat Chakravarti and Abani Bhattacharjee were found one revolver, one air pistol, two sketches of a bomb, cipher codes, a mass of documents, correspondence and letters establishing connection of the conspiracy with Burma, the Punjab, Guzerat, Bombay, the United Provinces, Delhi, Madras, Bihar and different places in Bengal; among the finds were also a catalogue of Messrs. Lyon and Lyon gun makers, maps, time tables and various other articles. The cipher codes mentioned above, on being decoded were found to contain names of 186 persons, with addresses of persons in different districts of Bengal and other provinces. According to the prosecution the room in which Provat Chakravarti and Abani Bhattacharjya lived at No. 11 Sitala Lane was the very centre of the criminal conspiracy of which Provat Chakravarti was the leader. The arrest of Abani Bhattacharjya was subsequent to that of Provat Chakravarti. The arrest of Probodh Ghose followed upon the search of the premises mentioned above, and in the house in which he lived were found proscribed books, letters and pocket diaries of an incriminating nature.

5. The discovery of cipher codes at No. 11 Sitala Lane led to many other searches and arrests. Indu Bhusan Mazumdar was arrested in Calcutta, and Dharendra Kumar Bhattacharjya at Lahore; this Dharendra Bhattacharjya was according to prosecution an important emissary from the Bengal revolutionary party and was sent to the Punjab to organise and was responsible for revolutionary activities there. Among the other accused persons arrested were Hrishikesh Gupta who subsequently turned an approver, who was connected with the arrangement for the publication of the Swadhin Bharat leaflets in which the objects of the conspiracy of which Provat Chandra Chakravarti was the leader were fully set out. The accused Manindra Chaudhury, a detainee in Chittagong Jail, and who was subsequently removed to the Buxa Camp at a time when Probhat Chandra Chakravarti and Jiten Gupta were there, was connected with a letter written from the Buxa Camp found at No. 11 Sitala Lane which disclosed the existence of a conspiracy; and contained instructions to carry on the organisation in various centres during his absence. The accused Abani Ranjan Sarkar was arrested in Calcutta with a bundle containing one hundred and seventy-five copies of the Swadhin Bharat leaflets and two letters, one of which was in the handwriting of Probhat Chakravarti, containing directions relating to the distribution of the leaflets.

6. It was the case for the prosecution that it was arranged by the conspirators led by Probhat

Chakravarti that Swadhin Bharat leaflets advocating armed rebellion and violence on persons co-operating with the Government should be distributed simultaneously on a particular day, in different parts of Bengal, and that such distribution was made, in point of fact. The accused Narendra Prosad Ghose was convicted of a dacoity on his own plea, was connected with activities of the conspiracy in Burma, and correspondence in his handwriting was recovered from Probhat Chakravarti's room at No. 11 Sitala Lane. In support of the case for the prosecution and in proof of the methods employed for the furtherance of the objects of the conspiracy, reliance was placed on letters intercepted at Post Offices of a highly incriminating nature, referring in one case to transmission of arms through a steamer station; and on the strength of some of these intercepted letters a parcel containing a six chambered revolver and thirty live cartridges of different bores was seized by the police during course of transmission. The accused Sitanath De, a detenu, was according to the prosecution deputed as a representative of the revolutionary organisation in Bengal, to the Punjab and the United Provinces for the purpose of carrying on the activities there; this Sitanath De according to the evidence led by the prosecution was responsible for a Bank robbery at Ootacamond (Madras).

7. The accused Satyendra Narayan Mazumdar was detained at Presidency Jail, Calcutta under the Criminal Law Amendment Act, and when being transferred to Jessore for village domicile, was found to be in possession of a thousand rupee note; a letter in his handwriting was found at No. 11 Sitala Lane. The accused Jiten Naha, who turned an approver, was arrested at a place where one glass phial containing silica tetra chloride, formulae for bomb, and metal blades with a coating of poisonous layer of strychnine, gun cotton and other chemicals, maps of different places, a cipher list, proscribed literature and a book on military tactics were found on search. The accused Paresh Guha was a detenu who had escaped from his village domicile; Amiya Pal was arrested and materials were found connecting him with the conspiracy. The search of No. 11 Kakurgachi Lane led to important discoveries; here were found amongst other things wooden folding ladder, four phials of liquid, a cardboard case containing wire rope, boring machines, nails, chisels, bolts, emery cloth, small crucibles, small cast iron pipe, a catalogue of guns and hardware, maps of several districts, a list of schools and police stations district by district, a printed programme in English detailing the constitution of Hindusthan Socialist Revolutionary Party.

8. The petition of complaint before the Court mentioned the purchase of a motor car by the members of the conspiracy which used to be seen in the front of the Kakurgachi house; the car was seized at another place, and at about that time the accused Haripada De and Niranjana Ghosal were arrested; in the car was found an abstract of the printed programme seized at the Kakurgachi house, and a leather pouch containing money claimed by Niranjana Ghosal. On the

arrests of Probhat Kumar Mitter were found letters and some proscribed literature was seized at the place of his residence. At No. 12-A Chakraberia Road where the accused Amulya Sen Gupta was arrested, were found a dagger, some revolutionary literature and a cipher list. The accused Sudhir Bhattachariya confessed his guilt after arrest but it has to be mentioned that the confession was retracted as soon as the trial commenced. The accused Purnanda Das Gupta was said to have sent out a cipher message from the Presidency Jail, Calcutta, which, decoded, contains detailed instructions to members of conspiracy outside the jail regarding the working of the organisation which is in consonance with other ciphers seized at the Chakraberia Lane house referred to above; in addition to that, the case for the prosecution was that on search of the belongings of Purnananda Das Gupta when he arrived at the Deoli Prison Camp, was recovered a letter which definitely connected him with the conspiracy to the farthest extent, regard being had to the matters of detail finding place in the letter.

9. The case for the Crown as already indicated in the petition of complaint filed in Court, the contents of which have been summarized above, was a widespread conspiracy to wage war against the King-Emperor, the central figure of which was the accused, Provat Chakravarty. According to the prosecution the conspiracy was hatched in the Detention Camp at Buxa, and the plan of the conspiracy was perfected as between the ringleader and the principal figures of the conspiracy, and was directed from the different haunts in Calcutta. It would appear that evidence was led for the purpose of connecting the conspiracy of which Provat Chakravarty was the central figure with the Anusilan Party in Bengal of which the history and development are to be found in the judgment of this Court in *Pulin Behari Das v. Emperor* (1912) 15 C L J 517, the real object of which was to subvert the Government in this country. The main object of the conspiracy was the building up of an organization in preparation for a general armed rising throughout the country at such time as might find the organization complete; collection of arms, robbery, murder, violence, rebellion so far as constituted authority of the Government was concerned, were the avowed objects of the conspiracy as means to an end. The existence of such a conspiracy was required to be proved by the prosecution. For the objects of the conspiracy which the prosecution sought to establish, as it is manifest from the evidence led in the case, men, money and arms were to be collected, emissaries or agents were to work in the districts of Bengal and other provinces of India recruiting young men and women; seditious and revolutionary literature were collected for the purpose of undertaking the objects of the revolutionary organization, and young men and women were being converted to revolutionary ideas. The existence of the conspiracy was attempted to be established by evidence, portions of which must necessarily come from approvers and accomplices, by searches at different places, by interception of letters, and the publication of the objects of the conspiracy was sought to be established by the publication of leaflets in which the objects of its organization were clearly and

definitely stated. In short the prosecution placed before the Court such evidence to establish that a conspiracy of the nature indicated above existed, that the object of the conspiracy was armed revolution; the accused persons placed on trial were parties to the conspiracy, their connexion with the same was sought to be established by evidence of association and by evidence which was discovered at the searches. It is elementary but it is usual to state that under the law as contained in Section 121-A.I.P.C., conspiracy itself is a crime and it is not necessary to establish any illegal act or illegal omission as overt acts of the conspiracy the existence of which has to be established. The illegal acts or omission, if established, support the case of the existence of the conspiracy itself; the offence being complete even though two persons conspiring together go no further than the original agreement.

10. There cannot be strictly speaking direct evidence of the inception of a conspiracy, if any of the conspirators themselves do not choose to speak to the same. That a conspiracy, as contemplated by Section 121-A, I.P. C, did exist and the persons placed on trial were members of the conspiracy was sought to be established by evidence which falls under different heads; in the first place, there was the evidence of the approvers or accomplices, then there was the confessional statements of the accused persons, the finds at the searches at different places and the letters intercepted at Post Offices supported and supplemented in material particulars by evidence documentary and oral which is denominated as independent evidence as distinguished from the evidence of approver and accomplice witnesses. There was evidence led for proof of overt acts on the part of the conspirators in furtherance of the objects of the conspiracy, and evidence was placed on record for establishing the publication and distribution of the Swadhin Bharat leaflets in which the objects of the conspiracy were stated in definite and clear language. The method followed in leading evidence on the side of the prosecution appears to be in accordance with that indicated in previous cases of conspiracy which came up for consideration of this Court or of the other High Courts in India; and in reading the judgment in the case before us, one is forcefully reminded of all that was said in *Barindra Kumar Ghose v. Emperor* (1910) 37 Cal 467, *Pulin Behari Das v. Emperor* (1912) 15 C L J 517, *Amrit Lal Hazra v. Emperor* AIR 1916 Cal 188, in *Jhabwalla v. Emperor* known as the Meerut case and in *Indra Chandra Narang v. Emperor* AIR 1929 Pat 145, not to speak of other cases decided by the High Courts finally, in which the question relating to the existence of a conspiracy, of participation in the same by the members of the same came up for decision, both in the matter of letting in evidence and weighing and applying the same.

11. The one salient feature that stands out prominently is the publication of the Swadhin Bharat leaflet and the wide dissemination of the same throughout Bengal. The objects of the conspiracy were clearly indicated in the leaflet. It is a document giving unqualified expression to the idea of

revolution and hatred to the Government, it is an incitement in unequivocal language to rebellion and armed revolution throughout the country. The bloody path of revolution was the only way to the royal gate of liberation, or triumphant march to freedom. The path lay over the raging, surging sea of death. The object was to erect a system of Government based on revolution to be achieved by means of an armed rebellion. Actions of the Government taken for the purpose of rooting out terrorism and indiscriminate murder of officials were referred to in the leaflets as wrongs done by the Government and it was asserted that there were still men in the land who could take revenge for these wrongs. There is a direct incitement in the Swadhin Bharat leaflet to armed revolution the existence of an organisation having armed revolution as its object was definitely disclosed and warning was given in unmistakable language to all who would resist the organisation and continue to support the Government established by law. The prosecution led evidence as to the printing and publishing of the leaflet Swadhin Bharat and as to its wide distribution. Whether the avowed objects of the conspiracy headed by Provat Chakravarti as disclosed in the leaflet were similar to those of the Anusilan Party or not, is not a question arising in the case before us; the question was whether it was established that a conspiracy for the furtherance of the objects stated in the Swadhin Bharat leaflet existed, and whether the accused persons placed on trial were members of that conspiracy. It is worthy of notice in this connection that in addition to the publication and distribution of the Swadhin Bharat leaflet, there was evidence placed on record, for the purpose of establishing that blocks were prepared in pursuance of the objects of the conspiracy for printing other leaflets similar to the Swadhin Bharat leaflets, for propaganda work.

12. The evidence of the existence of the conspiracy and of the participation of the accused persons in the same came from the approvers Jiten Naha and Hrishikesh Gupta; there were then the witnesses coming within the category of accomplices or persons in the position of accomplices: and there were also the confessions-so called confessional statements-by some of the accused persons; of these confessional statements, two stand out prominently, others are of a self-exculpatory nature, and their evidentiary value as statements of accused persons is negligible. The objects of the conspiracy were stated definitely by Sudhir Bhattacharjya, one of the accused persons, in his confession which was subsequently retracted; the organisation for which Sudhir Bhattacharjya was to work was for the purpose of an armed rebellion against the British Government. The object of the party to which Probodh Ghose was grafted was to achieve the independence of India by means of an armed revolution; their programme of work consisted of guerilla warfare, political assassination and political dacoities which were to be committed in order that money for the purchase of arms might be procured; high officials were to be murdered; and the Government to be paralysed by such acts of terrorism. In addition to activities in Bengal, evidence was given to establish that workers for the furtherance of the objects of the conspiracy

started by Provat Chakravarti and of which he was the directing genius were busy in Burma, in the Punjab and the United Provinces, and in Madras. Whether the expression "emissaries" could or could not be used in describing the workers in the other provinces, evidence was given that three of the accused persons, Narendra Ghose, Dharendra Bhattacharjya and Sitanath De, were in connection with Provat Chakravarti and were acting as agents of Provat Chakravarti and his Bengal associates, and who were working towards and whose activities were directed towards the achievement of the India-wide conspiracy of which Provat Chakravarti was the leader, and the objects were carried on under his direction.

13. The evidence relating to the activities in the Punjab and Madras related to overt acts in furtherance of the objects of the party controlled from Calcutta, the party of Provat Chakravarti which certain persons in these provinces were serving under the guidance of Dharendra Bhattacharjya and Sitanath De. So far as Burma was concerned, and evidence was not very full, as to the exact nature of the objects achieved by Narendra Ghose, in view of the nature of the evidence coming from an accomplice. The searches leading to the arrest of some of the accused persons furnished material evidence in the case for the prosecution. The documents found at the different searches in and outside Calcutta and the things discovered at the several places searched, according to the prosecution, not only lead to the conclusion of the existence of the conspiracy and the complicity of the accused persons in the same, but also in the nature of things the finds at the searches were used as valuable evidence supporting the history and development of the conspiracy, and the method adopted in furtherance of its objects. Of the places searched, the room at No. 11 Sitala Lane was the most important; according to the prosecution that was the head-quarter of the organisations in Bengal. There were the cipher lists containing addresses; there were the introduction slips, letters of incriminating character; and in addition bomb diagrams and a revolver; all found at the search of No. 11 Sitala Lane. It was at this place that Provat Chakravarti was arrested. Of the other searches mention has to be made of the one at No. 35 Sib Thakur Lane, where two of the accused persons were arrested when they were packing a revolver in an earthen vessel (Handi) and where in addition to other things the magazine base of a pistol was found. At No. 9 Darmahata Street, were discovered letters of incriminating nature, as also thick iron rods; when No. 201 Harrison Road was searched by the police, blocks were found as also a number of Swadhin Bharat leaflets, and a copy of the Sedition Committee's Report. Searches at 221 Darmahata Street, at 82 Upper Circular Road, at No. 6/2 Tangra Road, at No. 47 Kakurgachi Second Lane and No. 12-A Chakraberia Lane, led to discoveries of incriminating things and documents. At the front of the house No. 11 Jamir Lane a motor car was seized by the police and in the car was found a pouch containing some money which was claimed by Niranjana Ghosal, one of the accused persons placed on trial, as also a violently revolutionary document. The police officers claimed to have arrested this Niranjana Ghosal as also Haripada De in the

motor car.

14. The search at No. 11 Sitala Lane led to the finds which supplied the material clues to the discovery of the conspiracy charged against the accused persons placed on trial, and was the most important of the searches in that way, relating to the existence of the conspiracy in question and to the participation of the accused persona in the same. The incriminating articles found at the different searches stood by themselves, indicating the nature of the activities of the conspirators concerned, some of whom were arrested at the places searched. Then there were the cipher lists, and the introduction slips and letters found at the different places searched. The cipher lists were decoded and the handwriting in the documents was examined by experts competent to discharge the functions allotted to them by persons responsible for the prosecution, and these experts were subjected to cross-examination of a most searching nature on matters deposed to by them in Court. It would appear to be clear that with reference to the documents recovered at the searches the standpoint was kept in view that they need not have been written by the party against whom they were used, that it was sufficient if they were found in their possession and the conduct of the person concerned created an inference that he was aware of its contents and admitted their accuracy. The documents found at the premises searched or found in possession of individual accused persons were admitted in evidence if they satisfied all or any of the conditions that the handwriting was proved by comparison with an admitted or proved specimen of the handwriting of the persons concerned, in the light of the testimony of expert witness; that the document was in possession of an accused person; and that the document was admissible in evidence as one falling within the scope and operation of Section 10, Evidence Act.

15. The searches at which the documents which the prosecution tried to establish were discovered, were carried on in the manner provided by law, and to which no just exception could be taken and the articles found at these searches have to be connected with the conspiracy charged against the accused persons, and evidence had to be given to connect these finds with the conspiracy and with the acts of the individual accused persons alone in furtherance of the objects of the conspiracy. The prosecution examined two persons who turned approvers, and there was evidence coming from independent sources or from accomplices or persons in the position of accomplices, as they are sometimes denominated, to prove facts establishing that the accused persons were acting in pursuance of an agreement between two or more persons, leading to the inference that a conspiracy as contemplated by Section 121-A existed. The existence of a concerted intention was sought to be established as a matter of inference closely bound up with some overt act or acts, as if only by means of overt acts that the facts of the existence of the conspiracy would be established. The criminality of the conspiracy was, as it was well settled now, independent of the criminality of the overt acts. Direct evidence was given to prove the

existence and the planning of a conspiracy as charged, but it was not necessary to establish by direct evidence that the accused persons did enter into an agreement to conspire.

16. In regard to the inception of an agreement and the origin of a conspiracy as charged, there was evidence led consisting principally of documents that Provat Chakravarti, who was the ringleader, when he absconded from his place of village domicile, left behind him a list of 457 detainees dealt with under the Bengal Criminal Law Amendment Act and information contained in an exercise book regarding the location of arsenals in different parts of India. A list of books of a distinctly revolutionary and seditious nature was also left behind. These discoveries were significant and gave sufficient indication of the ideas that were working in the mind of Provat Chakravarti, and throw a flood of light on the whole case before the Court in which Provat Chakravarti was taken to be the central figure of the criminal conspiracy charged against the accused persons placed on their trial.

17. The searches which led to the discovery of the conspiracy and which formed the basis of the case for the prosecution, and which were most rigorously attacked, were found to have been conducted in the manner provided by law, and evidence was given of the due preparation of the list prepared after the searches which were signed by search witnesses and in some cases by the accused persons themselves in whose presence some of the searches were conducted; the search lists full and complete in matters of detail were initialled by the Magistrate concerned. The evidence discovered by the searches was admissible and that evidence could not be held to be inadmissible even in a case in which it could be made out, as was not done, that there were irregularities or disregard of the strict formalities relating to searches and to the manner of conducting them. The discovery of documents and other articles at the searches was the very important connecting link in the case for the Crown. The cipher lists were decoded and the handwriting in letters and other documents was sought to be proved by the best evidence possible.

18. In addition to the documentary evidence referred to above, there was a body of revolutionary literature in the shape of books found at the different searches, used as sought to be established by evidence, for the purpose of recruitment and furtherance of the objects and method of the conspiracy. The evidence in the case points to the fact of recruitment of members by reading books. In addition to the evidence of the approvers, there is the evidence of persons acquainted with the methods and working of the conspiracy who testify to the fact of the use of books in furtherance of the objects of the conspiracy. Short sketches of the contents of twelve of the books discovered at the various searches have been given in the judgment of the tribunal in a separate chapter; many of them are proscribed books; and some of them were written solely for the purpose of influencing young readers, to emulate the deeds of persons who lost their lives

following the commission of revolutionary and terrorist crimes in Bengal and elsewhere, men like Khudiram, Kanai Lal and Bhagat Singh. The revolutionaries in Russia, Ireland and China are held up in the books as heroes; and these books were found at some of the haunts of the conspirators, along with arms, ammunition and incriminating documents, and were associated with the revolutionary pamphlet *Swadhin Bharat*, leaflets stating in clear language the object of the conspiracy. The books were used for the purpose of recruitment, and evidence was led to show that the course adopted generally was to ask prospective recruits to read certain books for the purpose of finding out whether they favoured violence or armed revolution, and the method of terrorism; attempts were then made to gain them over by prolonging the course of reading, until the final object was attained. The evidence furnished by the books related to the method of furtherance of the objects of the conspiracy.

19. The prosecution brought before the Court the evidence of approvers and accomplices more than one of whom was sought to be placed in the category of spies and informers. The evidence coming from this class of witnesses was sought to be supported in material particulars, and in all matters of detail by evidence which is commonly described as independent evidence; and conclusion had to be drawn from the entire evidence in the case. The Commissioners constituting the Tribunal before which the appellants were tried demanded corroboration of evidence coming from approvers and accomplices, where that evidence implicated individual accused; and the whole trend of the judgment of the tribunal, consisting of minute details in evidence, proceeds on that basis. It may be mentioned in this connexion that a mass of materials has found its way on to the records in the case before us, some of which may very well be held to be not strictly admissible under the law, except by a liberal interpretation of the provisions contained in Section 10, Evidence Act, and from the nature of the case, great care had to be taken to weigh the general character of the evidence which was to a large extent bound to be circumstantial affording corroboration of facts related by witnesses, in the position of approvers, accomplices or independent witnesses. The materials before us must be examined in the light of the above proposition as it appears to have been in the trial Court in consonance with the observations of Sir Lawrence Jenkins, C.J. in *Barindra Kumar Ghose v. Emperor* (1910) 37 Cal 467.

20. The above is the main outline of the case for the Crown, and in addition to the materials referred to, there were the confessions of the approvers who were examined as witnesses and the other confessions strictly so called were more or less self-exculpatory recorded as confessions by the accused persons. The confessions were retracted, and evidence was led for the purpose of establishing the voluntary nature of the same, and the truth of the same. In one case there was a verification report so far as the confessional statement of an accused person was concerned, which it would appear was fairly supported by other evidence bearing on matters covered by the

said report by the Magistrate by whom it was recorded, and which cannot be ruled out on the ground that it was inadmissible in evidence, seeing that the Magistrate himself was examined as a witness in the case, and spoke to the contents of the report made by him, which is placed on record as evidence in support of the confessional statement of Sudhir Bhattacharjya. An objection was taken to these verification proceedings. They are not wholly illegal:

They are undertaken, it would seem, with a view to testing the truth of a confession and to obtain evidence either corroborating the confession or indicating its falsity. In so far at least as such evidence may be obtained, for instance in ascertaining that the prisoner is familiar with or wholly ignorant of the localities of which he has spoken or in furnishing clues to further enquiry such proceedings may be useful: Amiruddin's case AIR 1918 Cal 88.

21. Statements made by the accused to the verifying Magistrate in the course of the proceedings, if they are not recorded in the manner provided in Section 164, Criminal P.C., are however inadmissible. The line of defence adopted in the case before us is indicated by the cross-examination of witnesses before the Court that the entire evidence was fabricated and false, coming mainly from police officers and from persons who were police informers and police spies. The approvers and some of the accomplice witnesses or persons in the position of accomplices were suggested to be persons who had purchased escape from prosecution by gross perversion of truth at police instigation. The confessional statements made by some of the accused were generally characterized as statements forced on these persons. In regard to the searches which furnished materials for the prosecution and resulted in the accused persons being placed on trial it was asserted that they were not properly conducted; that the documents and arms and ammunition and other incriminating things were planted by the police and nothing incriminating was found, and the accused were not connected with them; the police officers conducting the searches could not be relied upon as also the witnesses to the searches. The documents found at the searches did not bear the interpretation placed on them. The ciphers to which a great deal of importance attached, so far as the case for the Crown was concerned, were a concoction by the police, they had not been properly decoded, and they could not possibly bear the interpretation put on them by the prosecution. The handwriting in the documents, a large number of which were examined by a handwriting expert examined as a witness by the prosecution, was the subject of detailed criticism by way of elaborate and what appears to be unnecessary and irrelevant cross-examination; and it was the case for defence that the evidence given by the expert could not be accepted. As to the conspiracy as alleged by the prosecution, it was the case for defence that its origin had not been proved, and its existence has not been established, the conspiracies in the Punjab, the United Provinces, Madras and Burma, of which evidence was given had no connexion with any conspiracy in Bengal, and in Bengal itself there

might have been separate and independent bodies which were not connected with the conspiracy to which the present prosecution related. It was suggested that the accused might have been members of different and separate organizations, but were not proved to be members of a conspiracy, the existence of which was sought to be established by the prosecution, of which Provat Chakravarti was the leader. In regard to the objects of the organization, as it was manifest from the Swadhin Bharat leaflet, which was according to the case for the Crown widely distributed by Provat Chakravarti and his party in furtherance of the objects of the conspiracy, the case for the defence was that the contents of the leaflets could not bear the interpretation sought to be placed on it by the prosecution, namely that it was a direct incitement to armed revolution.

22. According to the defence a violent political revolution was not referred to, but the leaflet has a socialistic or communistic ideal in view, and could at best be said to be seditious in its nature. The legal aspect of the case for the defence mainly related, in the first place, to the plea in bar so far as the prosecution was concerned generally and with some of the accused persons individually in view of previous prosecutions, in which some of the accused persons placed on trial were convicted or acquitted. The charge as framed was characterised as bad in law, vague in its nature, giving no information to the accused placed on trial, fixing an arbitrary period from 1930 to December 1933. The joint trial of the accused persons was said to be unjustifiable. A plea in bar was specifically raised based on provisions contained in Section 403, Criminal P.C. and on general principle, and it was said that some of the accused having stood their trial on one charge of conspiracy, a second trial on a cognate charge was barred and was not maintainable generally or as against some of the accused in particular. In regard to documents of which secondary evidence was given on the side of the prosecution, in place of primary evidence, as in the case of letters intercepted in Post Office it was urged on the side of the defence that the provisions contained in Sections 65 and 66, Evidence Act, not having been complied with, the documents could not be admitted in evidence, that the contents of these intercepted letters could not be proved, that no reliance can be placed upon them.

23. There was also a question raised on the admissibility of documents found in the possession of persons placed on trial or others, and their evidentiary value, in cases where handwriting in the document had not been proved. The Commissioners of the Tribunal, before whom the trial was held, gave their decision against the appellants in the Court. They were each of them convicted of the offence charged against them, under Section 121-A I.P.C. The appellants Provat Chandra Chakravarti, Jitendra Nath Gupta, Narendra Prosad Ghose, Purnendu Das Gupta, Dhirendra Nath Bhattacharjya and Sita Nath De have been sentenced to transportation for life. The appellants Kishori Mohan Das Gupta, Manindra Lal Chaudhury and Paresh Guha have been sentenced to undergo rigorous imprisonment for ten years each. The appellants Jitendra Chakravarti,

Dwijendra Mahapatra, Abani Mohan Bhattacharjya, Provat Kumar Mitter, Satyendra Narayan Muzumdar, Haripada De, Niranjan Ghoshal, Amulya Charan Sen Gupta and Amiya Kumar Pal have been sentenced to seven years' rigorous imprisonment each. The appellants Hem Chandra Bhattacharjya, Bimal Bhattacharjya, Surendra Dhar Choudhury and Jyotish Chandra Mazumdar, have been sentenced to rigorous imprisonment for six years each, and Sudhir Chandra Bhattacharjee to five years' rigorous imprisonment. The sentences passed on the appellants Santosh Chatterjee, Shyam Behari Lal Sukla, Indra Bhusan Mazumdar, Probodh Kumar Ghose and Susil Kumar Roy Chakravarti were those of three years' rigorous imprisonment in each case; and the appellant Abani Ranjan Sarkar in view of his conviction and sentence in another case, was sentenced to undergo rigorous imprisonment for one year.

24. In giving our decision on questions arising for consideration in case before us, it may be mentioned at the outset that the points raised in the appeals by several appellants were the same or similar to those raised before the Tribunal before which the trial was held and it is worthy of notice that although a great deal of time was taken in placing the cases of the appellants by the different lawyers appearing on their behalf before us, not much of discrimination or exercise of sound judgment in the matter of importance or of substance involved in the points framed before us, was generally exercised; there were exceptions in some cases.

25. The judgment in the case consists of 359 printed pages excluding the appendices to the same covering pp. 368 to 449 of the printed papers before us containing translations of documents or transcriptions of some of the important documents placed on record. It must be acknowledged that the judgment as it stands shows great care and attention that was bestowed to the case before the Tribunal, and the usual practice in vogue now-a-days of writing out long judgments has been followed; it may however be mentioned in line with what was said by Sulaiman C.J. of the Allahabad High Court in , that much time would have been saved if the Commissioners constituting the Tribunal were not called upon to discuss in their judgment all the evidence produced by the prosecution. A judgment is not required to be a resume or reproduction of all the evidence on record; a Court is entitled to and should select such important evidence as it considers necessary to support a decision on material points arising for consideration. The materials collected in the judgment itself show that greater discrimination in the choice and selection of evidence should have been used by the prosecution and more strictness on the part of the Tribunal which appears to have allowed the trial before it to continue for an extraordinary long period. The most important part of the judgment is that contained in the two chapters dealing with "The Conspiracy" (Ch. 35) and "The Individual accused and the conspiracy" (Ch. 36). The portion relating to the existence of the conspiracy has been dealt with already, and the cases of individual accused have to be separately dealt with. The conclusions we have arrived at

on the material parts of the case on a careful consideration of the materials placed on record and which have been enumerated in very great detail in the judgment of the Tribunal, are given below under separate heads:

26. The plea of non-maintainability of the trial wholly unsubstantial on the merits, regard being had to the materials on the record, was based on this state of facts. The Government of Bengal directed the trial of the appellant Provat Chakravarti, Abani Bhattacharjya, Hem Bhattacharjya, Bimal Bhattacharjya, Surendra Dhar Chaudhury, Jyotish Mazumdar and Shyam Behari Sukla. The orders of the Government in the case of Provat Chakravarty and Abani Bhattacharjya related to offences under Section 120-B, I.P.C. and Section 19-A, Arms Act; in the case of Hem Bhattacharjya, Bimal Bhattacharjya, Surendra Dhar Chaudhury and Jyotish Mazumdar, the orders of the Government related to offences under Sections 19 (f) and 20, Arms Act, as also Section 120-B, I.P. C, read with Sections 117 and 302, I.P.C. The orders of the Government in Shyam Behari Lal Sukla's case were with reference to offences as mentioned in the case of Hem Bhattacharjya and others mentioned above. As the result of the trials held, Provat Chakravarti was convicted, while Abani Bhattacharjya was acquitted. Hem Chandra Bhattacharjya and the three other persons mentioned above tried together were convicted. Shyam Behari Lal Sukla was also acquitted. In addition to the above appellants, the appellant Abani Sarkar was convicted under Section 18 of Act 23 of 1931(The Press Emergency Powers Act) and under Sections 506/117 read with Section 120 B, I.P.C. On these facts, it was asserted that the trial of the appellants named above was barred according to the general principles of law and justice, and under the provisions enacted in Section 403, Criminal P.C. It was urged that the accused persons could not be charged or held guilty of two conspiracies.

27. The facts which have to be noticed on this part of the case are that none of the persons referred to above was charged with the commission of an offence under Section 121-A, I.P. C, at any of the previous trials, in connexion with a conspiracy of a general nature we are dealing with; and in the case of Abani Sarkar the Courts before which they were tried were not even competent to try a charge under Section 121-A, I.P.C. In the case of others, the Courts were not competent and had no jurisdiction under the law to try any of the appellants under Section 121-A, I.P. C, as charged in the case before us in the absence of a complaint. In the absence of a complaint under Section 196, Criminal P.C., the Court would have no jurisdiction to try any of the accused persons for an offence under Section 121-A, I.P.C. As the learned Commissioners of the Tribunal have observed, the question at present is whether the Special Magistrate who held the previous trial was competent to try the accused persons on the charge on which they were tried in the present case. The answer must be in the negative in view of the clear provisions of Section 196, Criminal P. C, and in this connexion it is worthy of notice that the Bengal Suppression of

Terrorists Outrages Act, 1932, was controlled by Section 196, Criminal P.C., which not being inconsistent with the provisions of Ch. 2 of the Act, was not superseded by Section 34 of this Act.

28. No useful purpose can be served by discussion, more or less academical, of the decisions of the different High Courts in this country bearing upon the provisions contained in Section 403, Criminal P. C, in which the conflict of opinions expressed from time to time is more apparent than real. The question as to whether a particular trial is barred by reason of previous prosecution ending in conviction or acquittal is a question to be determined on the facts and circumstances of a particular case: one of the tests the Commissioners of the Tribunal in the case before us have observed in their judgment is whether facts are the same or not; but the true test as has been said in cases decided by this Court is not so much whether the facts are the same in both trials as whether the acquittal or conviction from the first charge necessarily involves an acquittal or conviction on the second charge: see *Ram Sahay Ram v. Emperor* AIR 1921 Cal 181. It is necessary to indicate here that the provisions contained in Section 403, Criminal P.C., are complete by themselves on the subject of the effect of previous acquittal or convictions and no question of exercise of inherent jurisdiction or the application of the rule of *res judicata* arises where there are specific provisions in the law. The four sub-sections of Section 403 deal with four different kinds of cases: (1) the case of one set of facts or omissions constituting one legal offence; (2) the case of one series of facts involving more than one offence; (3) the case of one set of facts constituting more than one legal offence; and (4) a special case where a single act or set of acts has had a consequence unknown or having occurred since the first trial. The law as enacted, complete by itself, deals with the maxim that 'no man ought to be tried twice upon the same facts' which must mean that a person cannot be tried a second time for an offence which is involved in the offence with which he was previously charged. Keeping the above consideration in view it must be held in the case before us that the contention as to the non-maintainability of the prosecution must be overruled as wholly without substance. The facts in the present prosecution under Section 121-A, I.P.C., and those involved in the earlier prosecutions are not the same; some of the facts are no doubt common, but on the facts of the previous trials a charge under Section 121-A, I.P.C., could not possibly have been framed or a trial held on that charge. As the Commissioners of the Tribunal have observed, the offences with which the accused were charged in the earlier trial were some of the limits, the present charge under Section 121-A, I.P.C., includes them, but goes much beyond them. The facts of this case therefore attract the operation not of Sub-section (1) but of Sub-section (2) of Section 403, Criminal P.C. The offence charged in the present case was a distinct offence and could not possibly be covered by a charge under Section 120-B, I.P.C.

29. In view of the conclusions set forth above, the contention advanced on behalf of the appellants that if Provat Chakravarti, the central figure, the leader and the directing genius of the conspiracy, could not be tried, for a second time, the whole of the present trial of conspiracy was bound to fail, cannot be given effect to. Nor could it be held that the trial of any of the other accused persons who were convicted or acquitted at previous trials referred to above, was not maintainable. On this part of the case to, accept the contention would have the effect of our holding that a person accused of conspiracy under Section 121-A, I.P. C, cannot be convicted of that offence, if he had been convicted or acquitted of an overt act in regard to that conspiracy, a proposition wholly untenable in its nature. It may be mentioned in this connexion that it cannot be seriously argued that anything contained in the Criminal Law Amendment Act bars the operation of the provision of the Code of Criminal Procedure as contained in Section 196, or Sections 235, 236 and 237 to which latter provisions reference is made in Section 403 of the Code; and it is further difficult to appreciate how the provisions contained in Section 561, Criminal P.C., relating to the saving, of the inherent power of the Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice, could be invoked on the facts of the case before us in support of the position that the conviction or acquittal of Provat Chakravarti or of any accused previously tried for commission of offences under the Indian Arms Act or under Section 120-B, could bar the present prosecution or the present trial.

30. The subject of the general conspiracy charged in the case before us, the existence of the same, and the evidence led for establishing the fact of the furtherance of the aims and objects of the conspiracy, were matters discussed at length, more as a matter of form than of substance. It has been established on evidence that there was an agreement between a number of persons. The prosecution established on reliable evidence that the act done by the conspirators of whom Provat Chakravarti was the leader were in furtherance of the common object of the conspiracy charged and not of different conspiracies as suggested by the defence. In the evidence reference was made by some of the witnesses to the original Anusilan Samity of Dacca, and connexion with that organization was traced; reference was also made in the evidence together revolutionary parties, the Jugantar party, the Hindusthan Socialist Revolutionary party, the Indian Socialist Revolutionary party, the Indian Republican party, the Chittagong Revolutionary party, the District Organization Scheme at Malda, the different groups of the Anusilan party, as also some other organizations revolutionary in nature. The connexion with Anusilan party of Dacca as originally started, the connexion with different organizations with similar objects, the connexion of individual member or members with different organizations, were not questions of primary importance in the case before us and could not minimise the offence of the accused persons placed on trial charged as members of the conspiracy of which Provat Chakravarti was the leader and relating to which materials were placed before the Court proving its aims and objects, its

origin so far as it could be traced, its existence and establishing the furtherance of the aims and objects at different places in and outside Bengal. There was one conspiracy and not different conspiracies which had to be taken into consideration, the association of the accused persons in furtherance of the aims and objects of the same was sought to be established, and has been proved by the prosecution.

31. It requires notice that there was a large number of letters placed on record the writers and the addresses of which were not traced; there were also slips of papers found at the different searches placed on record in which names were mentioned against whom no evidence was led by the prosecution. The Commissioners of the Tribunal do not appear to have based their decision on any of the documents referred to above; and as no decision could be based on any of the documents which were more or less irrelevant for the purpose of the case before us, we do not attach any importance to these documents. The same observation applied to some of the names appearing in the cipher list which have not been traced. The documents connecting individual accused with the conspiracy, of which the handwriting has been satisfactorily proved, and of the admissibility in evidence of which has been established, are the only ones of which mention is made at places where the cases of individual accused persons are considered. The searches at various places which furnished materials for the discovery of the conspiracy in question, and led to the arrest of the conspirators were criticised on the side of the defence. They were according to the defence not properly conducted under the law; the finds at the searches were according to the trend of cross-examination of witnesses connected with the searches were things planted at the places searched, the police officers conducting the searches were unreliable, the witnesses to the searches were untruthful witnesses procured by the police and the search lists were concocted.

32. On examination of the materials placed on record on this part of the case, there can be no doubt that the prosecution has given reliable evidence in support of the searches and the suggestions made in cross-examination of witnesses relating to the searches are not worthy of serious consideration. The searches and the finds at the searches which were conducted in the manner prescribed by law, fully supported the case for the prosecution, and they formed the main base of the evidenced in the case before us, establishing the fact of the existence of a conspiracy, and the complicity of the accused persons placed on trial with the objects of the same. The evidence relating to the searches also gave clear indication of how the members of the conspiracy were acting in furtherance of the objects of the same. The existence of the conspiracy as members of which the appellants before us were placed on their trial was proved; the object was definitely stated in the Swadhin Bharat leaflet. The furtherance of the object of the conspiracy and the manner and method were definitely indicated in the leaflet intended to be distributed and circulated as widely as possible. The contention on the side of the defence that the contents of the

leaflet could not have the interpretation placed on it by the prosecution does not bear serious consideration. The leaflet speaks of the bloody path of revolution and of the nature of the struggle that was to be undertaken; it speaks of sacrifice of lives and of soaking the earth with streams of blood.

33. There can be no question with that the object of the conspiracy as stated by the Swadhin Bharat leaflet was violent revolution, and warning was given to all those who dared to support the Government in this country as established by law; it was not simply a seditious leaflet or one advocating communism or socialism, as contended for by the defence. The evidence established the fact of the origin and the distribution of Swadhin Bharat leaflet advocating overthrowing the Government and the present order of society by means of an armed revolution; the objective indicated in the leaflet was not a distant aim to be realized in the unknown far off future, but an immediate object. The members of the conspiracy whose progress of work was definitely indicated by the Swadhin Bharat leaflet had come to an agreement to deprive His Majesty the King-Emperor of the sovereignty of British India, and were guilty of an offence as contemplated by Section 121-A, I.P.C. In proof of the existence of the conspiracy and for the purpose of establishing the connexion with the same, so far as the accused persons placed on trial were concerned, by means of acts done in reference to the common intention of the conspiracy after the time when such intention was first entertained, a mass of documents was placed on record, as mentioned in Section 10, Evidence Act, which lays down not only the rule applicable in this country, so far as leading evidence in cases of conspiracy was concerned, but has to be treated as a part of statute law in the matter of proof of existence of a conspiracy and of the furtherance of its objects.

34. No useful purpose is served by pointing out, as is the practice now-a-days, the distinction between the English and the Indian law on the subject, inasmuch as decisions of Indian Courts throw sufficient light on the same. So far as documents found in possession of a party were concerned, possession and conduct create an inference that he was aware of its contents; what sort of conduct would properly give rise to such inference must necessarily depend on the facts of each case: *Barindra Kumar Ghose v. Emperor* (1910) 37 Cal 467. In the next place documents found in possession on search or Otherwise are admissible in evidence if they satisfy any of these conditions, namely (i) they are in the handwriting of the party concerned and (ii) if they fall within the scope and operation of Section 10, Evidence Act: *Pulin Behari Das v. Emperor* (1912) 15 C L J 517. The class of documents to which the rule would apply in the case before us, includes not only the letters found at searches and in the possession of the persons at the time of their arrest, but also to the cipher lists, introduction slips and other documents, and one proposition deducible from the general rule applicable was very clearly enumerated by Sulaiman

C.J. in his judgment in ; a document of which the writer is not known if found in the possession of a conspirator, would not by itself be admissible for the purpose of proving the truth of its contents as against other accused. The fact of possession would be evidence to show that the conspirator in whose possession it was found, had received and preserved it. It is to be noticed that the execution and authorship of a document was a question of fact. It may be mentioned in this connection that in England letters and other papers found in a party's possession are received in a criminal prosecution, specially in case of conspiracy and treason, though their weight as evidence against the prisoner depends on the fact whether anything can be shown to have been done upon them. The propositions which indicate rules which may be taken to be well settled and are beyond the pale of controversy, have been kept in view in arriving at conclusions on the question of admissibility and of the question of their evidentiary value in regard to the documents and it will not be necessary therefore to discuss the question of admissibility separately in connection with a particular document. The document which has been held to be admissible in the case of an individual accused person, has been considered to be admissible in the light of the above proposition; and its evidentiary value by way of admission or otherwise has been estimated in the light of other materials on record.

35. In addition to letters seized on searches and found on the person of accused persons, there were number of documents in the shape of copies of intercepted letters placed on the record in support of the case for the prosecution. Some of the letters were intercepted at the Post Office at Jamshedpur, others at the Post Offices at Dacca, Comilla and Chandpur. In some cases photographs of the letters intercepted were taken, and the handwriting and signature in them were proved while in the majority of cases copies taken by Police Officers at the place of interception were used in evidence. It was urged on the side of the defence that the secondary evidence of the intercepted letters was inadmissible under the law, as the provisions contained in Section 66, Evidence Act had not been complied with. It would appear that notices under Section 66 were not given to the addressees of letters in question before the copies were admitted in evidence. Notices under Section 66, Evidence Act were however subsequently given; and as indicated by the Commissioners of the Tribunal in their judgment, neither the evidence nor the exhibits could be considered till after the return of notices had been received. The result of the notices issued was that in all cases there was denial of the receipt of the letter in question. The only purpose of a notice under Sections 65 and 66, Evidence Act is to give the party an opportunity by producing, if he pleases, the best evidence of its contents. Secondary evidence as provided by Section 65 is admissible when the party offering evidence of the contents of the document cannot for any reason not arising from his own default or neglect produce the original document in a reasonable time: *Surendra Krishna Boy v. Mirza Syed Ali* . The procedure followed in the case in regard to reception of copies of intercepted letters was somewhat irregular, regard being had to the

circumstances stated in the judgment of the Tribunal; but we are satisfied on the materials before us that the provisions of the law bearing upon the reception of secondary evidence were substantially complied with in the case before us, and that the accused persons against whom the secondary evidence was used were not prejudiced in any way whatsoever. The accused were given full opportunity of entering their defence by cross-examination or otherwise in respect of the secondary evidence given in the case, in the shape of intercepted letters; and there could not be any question of prejudice on account of which the copies of intercepted letters used in evidence could be ruled out. The procedure adopted by the Tribunal in the matter of reception of copies of intercepted letters in evidence amounted merely to a technical defect and may very well be condoned in the absence of prejudice to any of the accused persons or a very clear case of miscarriage of justice: see in this connection *Profulla Kumar Bose v. Emperor*. It is hardly necessary to reiterate the position to which a reference has already been made that the execution or authorship of a copy of intercepted letter as in the case of any other document is a question of fact and may be proved like any other fact. The question whether the contents of a copy of intercepted letter used in evidence against an accused person could be acted upon must be determined on a consideration of other evidence in the case, documentary and oral. It may be mentioned that no useful purpose could be served by entering into a discussion of the provisions of the law contained in Section 94, Criminal P.C. and Sections 130 and 162, Evidence Act inasmuch as the technical question raised on the side of the defence related solely to the fact of the want of service of notice previous to the placing of copies of intercepted letters on the record, and to the weight to be attached to the contents of the copies.

36. The ciphers or cipher lists discovered at different searches constituted an important link in the matter of leading evidence as to the existence of and as to the furtherance of the aims and objects of the conspiracy we are dealing with. The effect of these documents and whether they were properly decoded are questions of fact; the general proposition that must guide Courts in regard to ciphers was clearly mentioned in the judgment of the Patna High Court in *Indra Chandra Narang v. Emperor* AIR 1929 Pat 145. The ciphers, provided they were properly decoded, were not and could not, of course, be treated as acts, words or deeds of any particular person; but the fact that they existed and that the names and addresses of a number of persons who were alleged to be parties to a conspiracy as charged, are mentioned in them; the fact that they were in peculiar forms, such as was not likely to be used for any lawful purpose, taken along with other matters brought out in evidence, gives rise to a legitimate inference that the ciphers were prepared in connexion with some unlawful purpose requiring secrecy; and in the absence of evidence that the matters appearing from the secret documents were associated with some legitimate or lawful purpose, the ciphers were themselves materials affording good reasons for inferring that the names, addresses and other matters appearing in the ciphers were connected with the furtherance

of the objects of the conspiracy, and as such evidence under Section 10, Evidence Act.

37. In so far as decoding the ciphers goes, we have, on a very careful consideration of the evidence of the expert on the subject, come to the definite conclusion that the ciphers were properly decoded in the manner mentioned by him. The effects, of the evidence of the expert could not be minimised in spite of the elaborate cross-examination on behalf of the defence, which principally related to the position that ciphers could not possibly be decoded within a short time as mentioned by the expert and that the decoding of ciphers was a story invented by the prosecution. The weight to be attached to those ciphers which were properly decoded is a matter of evidence and the effect of the same had to be considered in the case of each individual accused person.

38. The handwriting in some of the documents used in support of the case for the prosecution was required to be proved and an expert was examined in Court who gave evidence on writing of at least twenty-five persons, including some of the accused persons placed on trial, and the two approvers examined as witnesses in the case. The handwriting expert was subjected to what appears to be unnecessarily lengthy cross-examination which afforded very little material for the purpose of assisting the Court. The writing in question had to be examined and points of similarity or dissimilarity were to be noticed with the alleged handwriting of the individual and his admitted handwriting. The reasons given by the expert had to be considered and either accepted or rejected for the purpose of coming to a decision. It is almost a truism to say that expert opinion in the case of handwriting as in the case of other matters has to be received with caution; the charge of expressing a too emphatic opinion levelled against the expert examined in the case before us is nothing new. Experts in handwriting always try to impress themselves by reference to pen holds, pen pressure, pen scope, pen pause, pen presentation, pen lift, hand movements, movements of letters and spaces, angles of the pen, under-strokes and numerous other things, which formed the subject of elaborate but more or less groundless cross-examination in the case before us, giving little of real assistance, seeing that more attention was bestowed on generalizations than on points requiring attention in the case of particular documents so far as formation of letters, pen-habits and idiosyncracies of the writer were concerned.

39. Numerous examples are to be found in the judgments of Courts and in books in which the experts' opinion could not be acted upon on careful examination of the handwriting or otherwise; the reasons given by the expert had to be examined by the Court in all cases in which the service of an expert was requisitioned. The handwritings in the documents which had to be proved to be the handwritings of any particular individual were examined by the Commissioners of the Tribunal, and they were scrutinised with all possible care and attention by ourselves, in the light

of the reasons given either for accepting or discarding the opinion of the expert on handwriting examined as a witness for the prosecution. The handwriting expert based his conclusion on certain class characteristics of the writings and the fixed pen-habits of the writer. The Commissioners in arriving at their conclusion have taken into consideration the reasons given by the expert as well as other evidence in the case. On careful consideration of the reasons given by the Commissioners bearing directly upon the question of identity, similarity or dissimilarity of handwritings placed before the Court, there is no reason to differ from them; the record was burdened with an examination in chief, so far as the handwriting expert was concerned, by introduction of technicalities and matters of technical detail; and full advantage was taken of that by the cross-examining counsel; the Commissioners of the Tribunal did however succeed in separating substance from mere chaff in the expert's evidence in arriving at the proper decision with reference to different documents to which reference has been made in Ch. 31 of the judgment, dealing with handwriting.

40. There is no doubt that a comparison of handwriting is something hazardous and inconclusive, and should be made with care and caution in the light of assistance that may be available in the shape of expert evidence or arguments on behalf of parties concerned, or other ways ensuring a right decision. No hard and fast rule could possibly be laid down as to the best method of arriving at a proper conclusion on the question of similarity of handwriting. The rejection even in toto of an expert's opinion would not exonerate the Court from the duty of coming to an independent finding on the question of an authorship of handwriting; the Court has to examine the opinion and come to its own decision. The most important things were to examine the general characteristics, formation of letters, fixed pen habits and mannerisms, and discern the identity of the writer. The identity or resemblance in handwriting has to be found out on the value of the effect of various considerations arising from individual characteristics and idiosyncracies which have been embodied in technical language of experts. It goes without saying that considerations that arise in the case of examination of continuous documents with a view to fix the identity of the writer, as in the case before us, are different from those arising in the case of signatures on documents, or forged documents.

41. In arriving at the decision on the identity or similarity of handwritings, on comparison with admitted handwritings with the handwritings on the disputed documents, the position has been recognized that the writing that we often see has about it that which we instantly recognize as something that gives them personality and a characteristic which it may be impossible to describe and fix without the most careful analysis. It is not the form alone, nor any one feature, tout a combination of all its qualities that impress us and we name the writer without hesitation. This total individuality in free and natural writing is thus recognized even by the untrained without

dependence upon individual peculiar forms and may strongly affirm judgment as to identity; the general appearance or pictorial effect is always of assistance in 'identifying a writing. A correct conclusion in any case is based only upon a combination of common qualities and individual characteristics in sufficient number so that it is reasonable to say that they would not all accidentally coincide in two writings by different writers (Osborn on "Questioned Documents," Edn. 2, pp. 262, 263 and 381). It may be mentioned in this connexion as was pointed out by this Court in *Sarojini Dasi v. Hari Das Ghose* AIR 1922 Cal 12, that a comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive and specially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and evidence of experts, a comparison of writing has consequently been deemed a mode of ascertaining the truth which ought to be used with very great caution. In the case before us the method adopted by the Commissioners of the Tribunal appears to us to satisfy the tests that could possibly be applied to arrive at a proper conclusion, and it must be taken into account that the decision on the question of disputed handwritings in the case before us is not based on identity or similarity of handwriting alone, but also on what is called internal evidence supplying a solid and substantial basis for pronouncing judgment.

42. A part of evidence on the side of the prosecution in a case of conspiracy of the nature we are dealing with, must of necessity come from accomplices, some of whom turn approvers. The evidence in the case before us, coming from approvers, or from witnesses in the position of accomplices or persons in the position of accomplices or informers has been supported and amply corroborated in material particulars by other materials placed on the record, in the shape of confessional statements, other evidence, documentary and oral, and evidence afforded by circumstances leading to irresistible inference. The decision of the question wholly academical in the case before us, on the question whether an accused person can legally be convicted upon the uncorroborated evidence of an approver, which finds place in the judgment of the Commissioners of the Tribunal, against which these appeals are directed, appears to be wholly inappropriate and out of place. The judgment states the position clearly that the trial Court demanded corroboration of the evidence of the approvers; and the conclusions we have arrived at are based on the evidence in the case as a whole. It is significant that some of the confessional statements, about the voluntary nature and truth of which we have no doubt, support the basis of the case for the Crown. It is worthy of notice that the case before us is not one the decision in which primarily depends upon the weight to be attached to the evidence of approvers or accomplices, characterised by the defence as police spies and informers; the existence of the conspiracy, the furtherance of the aims and objects of the same, the participation of the members of the conspiracy placed on trial, and the acts done by them individually as such members, were established by evidence afforded by searches and by documents and articles found on searches

and otherwise, and by oral evidence coming from sources which are unimpeachable and that evidence was supported and links connecting evidence direct or circumstantial afforded by documents and incriminating articles were supplied by evidence of approvers and persons who were aware of the existence of the conspiracy, although not participators in crime, and were in a position to support other evidence in the case.

43. The evidence of the two approvers, on careful consideration, appears to be reliable on the whole, although in the case of one of them, Jitendra Nath Naha, there are inconsistencies in matters of details so far as narration of events goes. It has to be noticed in this connexion that some of the overt acts of which detailed accounts were given by the approvers, were not connected with the conspiracy we are dealing with; the dacoity at Balurhat, and what was described as the Dacca Municipal robbery cannot be considered as overt acts of the conspiracy, of which Provat Chakravarti was the leader, and the inconsistencies in matters of detail occurring in the narration of events in connexion with these two incidents do not affect the evidence of the approver as a whole which supplies connecting links in the chain of other evidence documentary and oral. The method of obtaining statements from the approvers, especially in the case of Jitendra Naha, was subjected to comments. Attempt was made to throw doubt on the propriety of the procedure adopted by the investigating Police Officers in obtaining statements from this person; but the alleged irregularities in matters of procedure in recording statements on different dates and at different times cannot take away the value of the evidence of the approvers before the Court when it is found that it is in the main supported by other reliable evidence documentary and oral. The view point from which the materials placed before the Court appears to have been considered by the Tribunal and from which we have considered them in arriving at our conclusions, specifically set forth in the case of individual accused persons, may be briefly stated although such a statement only embodies well established rules which have guided Courts in dealing with cases of conspiracy of the nature we are dealing with in the present case.

1. The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act, or an act which is not illegal by illegal means. It is immaterial whether the illegal act is the ultimate object of such an agreement or is merely incidental to that object. The agreement itself is enough to constitute the offence as contemplated by Section 121-A, Penal Code, it not being necessary that any act or illegal omission shall take place in pursuance of the conspiracy. The rule of evidence forming part of the substantive law is the one formulated in Section 10, Evidence Act, the operation of which is strictly conditional upon there being reasonable ground to believe that two or more persons have conspired together to commit an offence. As has been indicated clearly in the judgment, the position summarised above has been clearly adhered to in the case before us.

2. The general evidence of the existence of the conspiracy of which Provat Chakravarti was the leader was given in the case before us before particular facts were proved to show that one or more of the accused persons placed on trial took part in it as members of that conspiracy. In this connexion it is worthy of notice regard being had to the nature of evidence led in the case, that whenever it was necessary to rebut by anticipation the defence suggestion of an innocent condition of mind, evidence was given that the accused has been concerned in a course of conduct of the same or similar kind. It appears further that the proof of the case against an individual accused depended for its support not upon the absence or want of any explanation on the part of the accused, but upon the positive evidence of his guilt. If, however, there was a certain appearance made out against an accused person, if he was involved by the evidence in considerable suspicion, he was very properly called upon for his own sake and his safety to state the circumstances which might reconcile such suspicious appearances with perfect innocence: see in this connexion the observation of Tindal, C.J. in Regina v. Frost (1839) 4 St. Tr. N. Section 85, quoted in 42 Cal 957 and Emperor v. Benoyendra Pande .

3. It is to be noticed that there were overt acts on the part of the members of the conspiracy we are dealing with. They were to be looked at as evidence of the existence of a concealed intention; as it has been said, the conspiracy was closely bound up with the overt acts because in many cases it is only by means of overt acts that the existence of the conspiracy can be established, but the criminality of the conspiracy is independent of the criminality of the overt acts. This aspect of, the case has prominently been kept in view as it was not always possible nor was it necessary to establish by direct evidence that the accused persons did enter into an agreement to conspire.

4. As has been indicated in some other, places in this judgment, members of the conspiracy with which we are dealing, led by Provat Chakravarti may have been members of different organisations or associations. It was not necessary in the case before us to establish that the different associations were connected with one another. What was established on evidence was that the accused persons charged under Section 121-A, Penal Code were members of the conspiracy mentioned in the charge.

5. The method of proof adopted in the case before us is clear and consistent and fully meets the requirement of law. The origin of the conspiracy was traced as far as practicable to Provat Chakravarti and his principal confederates Jitendra Gupta, Narendra Prosad Ghose, Purnendu Das Gupta, Dharendra Bhattacharjya and Sita Nath De. The existence of the aims and objects of the conspirators and the furtherance of the same were proved by a mass of documentary and oral evidence, admissible under the general provisions of the law, and under the special provisions applicable to a case of conspiracy. Evidence was led in proof of overt acts connected with the conspiracy generally and connecting the individual accused persons specially with some act or

another, in furtherance of the aims and objects of the conspiracy. The evidence coming from a mass of documents and that evidenced by the searches and arrest, was necessarily connected so far as different parts of the same were concerned, by means of oral evidence, a part of which was bound to come from approvers, accomplices, informers and spies. The evidence coming from this class of witnesses was amply supported by other evidence, documentary and oral. There were also the confessions by some of the accused persons affording very valuable materials so far as the case for the prosecution was concerned. (The judgment then considered the cases of the individual accused and their connexion with the conspiracy and continued.) The question of sentence has received our anxious consideration. The evidence established the case for the prosecution that a conspiracy existed of which the aim was armed rebellion; it was proved that the conspiracy was not a local affair but had its associates in different parts of India and Burma, the leadership and direction was in Bengal, as indicated by the rising sun over Bengal in the heading of the Swadhin Bharat leaflet.

44. The materials on record give indication that there was a great deal of aimless activity, but it could not be gainsaid that the existence and the active furtherance of its aims and objects as manifested by the materials placed on record, involved a serious menace to the State and to the country, and the objective was the destruction of the existing order of things, so far as this country was concerned. In connexion with the existence of a conspiracy as contemplated by Section 121-A, I.P.C., and in regard to the acts of individual persons placed on trial under that provision of the law in furtherance of the aims and objects of the conspiracy, the state of things prevalent in Bengal for years now, cannot be overlooked. The linking, up of politics with treason, revolution and murder cannot serve to minimise the offence charged against the appellants before us. In awarding sentence, the prevention of crime, the protection of the State, the society and the public, as also the reformation of the offender, have to be kept in view. It has been said that in the case of political offences, arising out of beliefs of the accused, severe sentences defeat their object: ; but a distinction must be drawn between political offences of the nature of sedition or spread of ideas of communism and socialism charged under Section 121-A, I.P. C, and offences against the State and society involving treason, armed rebellion and murder, in connexion with which the name of politics is used. The sentence passed in a case which is required to be deterrent must be in proportion to the gravity of the offence committed, and the offence committed was one of the most serious against the State. The Court has to keep in view the ends of justice as provided by law, in the matter of conviction of the accused placed on trial, as also in the matter of sentence passed on him commensurate with the nature of the offence committed. In awarding sentences mentioned below, the complicity of each of the individual accused persons, and the part played by him as a member of the conspiracy in furtherance of the aims and objects of the conspiracy, have been carefully considered.

45. The question of meting out adequate sentences on the accused persons, the appellants before us, in most cases misdirected persons in the prime of their youth, has received our anxious consideration. It goes without saying and as it has been said above that the guilt of the appellants as members of the same conspiracy has not been and could not be considered of the same description, regard being had to the part actually played by them. There was in the first place, the originator, the master mind of the conspiracy, the leader of the party of the conspirators with whom we are concerned, and those directly connected with and closely associated with the leader acting as his agents and messengers and concerting plans for the furtherance of the aims and objects of the conspiracy; in the next place there were persons directly connected with some other overt acts of the conspiracy of which evidence was given, and were very important of the conspirators. The guilt of some of the accused persons falling within the category might have been of the same description as those of others of the same class. After these come those of the accused persons, who were on the evidence directly concerned with the objects of the conspiracy and to whom was entrusted the duty of carrying on the objects of the same; but who were not the originators or the guiding spirits of the conspiracy. Lastly, there were the members of the conspiracy placed on trial entrusted with the work of recruitment in different parts of the country, the work of rescuing prisoners in jail for which elaborate preparations appear to have been made, these members taking more or less minor parts in the furtherance of the objects of the conspiracy. Some of those members, playing minor parts, were channels of communication between the leaders and other persons whose direct complicity was clearly established on evidence. The case of Abani Mohan Bhattacharjya associated closely with Provat Chakravarti the leader of the conspiracy, stands by itself, so far as the nature of his guilt is concerned.

46. The decision we have arrived at is that the appeals to this Court must be dismissed, so far as they relate to the conviction of the appellants. The sentences passed on some of the appellants have to be reduced, regard being had to the nature of the offence proved against them. The reduced sentences have accordingly been passed. (Their Lordships then passed sentences in each case and dismissed the appeals.)