

BOMBAY HIGH COURT

Ram Rijhumal Kriplani

Vs.

State (Bombay)

Criminal Appeal No. 1114 of 1956

(Vyas and Shelat, JJ.)

20.03.1957

JUDGMENT

Vyas, J.

1. The appellant in this appeal is Ram Rijhumal Kriplani, original accused No. 1, who has been convicted and sentenced by the learned Special Judge, Greater Bombay, of offences under Section 109 of the Indian Penal Code. The sentence imposed upon the appellant under Section 109 of the Indian Penal Code.

2. The facts as contended by the prosecution may now shortly be stated. There were three persons charged in this case and, as I have just said, the present appellant was accused No. 1. The charge against the three accused was that during the period between 19th November 1954 and 30th April 1955, they did agree to do an illegal act, to wit, to offer gratification other than legal remuneration, to Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil, the Police Constables attached to the Anti-Corruption Branch of the Police, Greater Bombay, as a motive or reward for showing favour or forbearing to show disfavour in the matter of helping accused No. 1 in connection with a case which was pending against him (accused No. 1), the said case being Special Case No. 9 of 1955, in which case Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil were prosecution witnesses, and that thereby all the three accused committed an offence punishable under Section 161 of the Indian Penal Code. It was alleged in this manner that accused No. 3 had committed an offence punishable under Section 109 of the Indian Penal Code.

3. Accused No. 1, the present appellant, was at one time working as an officer in the Co-operative Department. Accused No. 2 was then a peon working in the said department. The prosecution case is that accused No. 2 was working under accused No. 1. Accused No. 3 is alleged to be a friend of one Mohan Kriplani, who is said to be a relative of accused No. 1. It would appear that a complaint was filed against the present accused No. 1 and one Khatri by one

Sayyed of the Modern Tanners Cooperative Society at Dharavi and the complaint was that the accused No. 1 and Khatri were demanding illegal gratification from the officers of the Modern Tanners Co-operative Society to the tune of Rs. 2,500 in connection with the discharge of their official duties. Consequent upon that complaint the Anti-Corruption Branch of the Police, of which S. I. Patil, who is a prosecution witness in this case was a member, organised a trap and the trap was laid on the 19th November 1954. After due investigation, that case, which arose out of the complaint of Sayyed, was committed to the Court. A charge-sheet therein was sent up against the present accused No. 1 and Khatri on the 10th March 1955. The special Judge issued a process in that case and the process was returnable on the 17th March 1955. The case was provisionally fixed for hearing on 12th April 1955. It so happened that on the 12th April 1955, the learned Special Judge was busy with other cases and so the case against accused No. 1 and Khatri was postponed to the 15th April 1955. Even on the 15th April 1955, the case was not taken up and the hearing of it was postponed to the 29th April 1955. The prosecution contention is that the acceptance of the amount of Rs. 50 which was offered by accused No. 3 to Bhaskar Bhikaji Kulkarni took place on the 1st May 1955.

4. The prosecution case is that it was at the instance of Ram Rijhumal Kriplani (accused No. 1) that the three accused persons of the present case formed themselves into a criminal conspiracy the object of the conspiracy being to suborn the evidence of the prosecution witnesses in the case which was launched by the Anti-Corruption Branch against accused No. 1 and Khatri. The object of this criminal conspiracy between accused No. 1 and two others was to approach the important prosecution witnesses of the other case, for instance the panch witnesses, and tamper with their evidence. It would appear that in the case which was filed against accused No. 1 and Khatri, a copy of the charge-sheet relating to that charge had been supplied to this accused No. 1. In the said copy of the charge-sheet the addresses of the prosecution witnesses of that case were not stated. The prosecution goes on to contend that on the night of the 21st April 1955, accused No. 1 sent accused No. 2, who was at one time a peon in the department of accused No. 1, to the Worli Camp to contact Bhaskar Bhikaji Kulkarni, a Lance Naik, and Pandurang Genda Patil, a Constable, both members of the Anti-Corruption Branch of the Police. The prosecution contends that the names of Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil were stated in the charge-sheet, copy of which was furnished to accused No. 1, in the case against him which was launched upon the complaint of Sayyed. Not only the names of Bhaskar Bhikaji and Pandurang Genda were mentioned in the copy of the charge-sheet supplied to accused No. 1, but their buckle numbers were also mentioned. As I have just stated, the prosecution contends that on the night of the 21st April 1955, accused No. 1 sent accused No. 2 to meet Bhaskar Bhikaji and Pandurang Genda, and the purpose of the meeting was that a request was to be made to Bhaskar Bhikaji and Pandurang for their help in the case pending against accused No. 1 by offering illegal gratification to them. The help for which Bhaskar Bhikaji and Pandurang Genda were to be approached was to be rendered to accused No. 1, by supplying him with the full names and addresses of the important prosecution witnesses of the case pending against him (accused No. 1) and Khatri. Bhaskar Bhikaji and Pandurang Genda were to be requested to mould their evidence

in such a manner as to help accused No. 1 in the case pending against him. The prosecution says that accordingly accused No. 2 went to the Worli Camp and met Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil on the 21st April 1955. At that meeting accused No. 2 told Bhaskar Bhikaji and Pandurang Genda that they should help accused No. 1 in the prosecution which was pending against him. Thereupon both Bhaskar and Pandurang told accused No. 2 that he should not interfere in the matter and that as accused No. 1 had been arrested in the matter of accepting illegal gratification, nothing could be done which would defeat the ends of justice in that case. Thereupon accused No. 2 told Bhaskar Bhikaji and Pandurang Genda that accused No. 1 himself would meet them the next day in the morning near the Worli Gardens at about 8 o'clock. Bhaskar Bhikaji and Pandurang Genda told accused No. 2 in definite terms that even if accused No. 1 went to the Worli Gardens the next morning to meet them, they would not go there. Thereupon accused No. 2 made a fervent appeal to Bhaskar Bhikaji and Pandurang Genda, asking them to help accused No. 1. The matter was left there and accused No. 2 left Bhaskar Bhikaji and Pandurang Genda. Immediately thereafter Bhaskar Bhikaji contacted Inspector Savant on telephone and told him what had transpired between him and Pandurang Genda Patil on the one hand and accused No. 2 on the other hand. Inspector Savant told him that if any further developments took place they should be reported to him. The next day in the morning, 22nd April 1955, all the three accused persons of the present case met Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil. It was about 7-30 o'clock in the morning. During the course of that meeting accused No. 1 made an offer of a bribe to Bhaskar Bhikaji Kulkarni and the purpose for which the bribe was offered was that Bhaskar Bhikaji should obtain for accused No. 1 a list of the names and addresses of the witnesses upon whose evidence the prosecution was going to rely in the case which was launched against accused No. 1 and Khatri on the complaint of Sayyed. Bhaskar Bhikaji turned down the request of accused No. 1. He told accused No. 1 that if he were to accede to the request of accused No. 1, it would amount to the commission of a crime. Even after Bhaskar Bhikaji turned down the request of accused No. 1, accused Nos. 2 and 3 kept on repeatedly asking him (Bhaskar Bhikaji) to help accused No. 1. It was at that stage that Bhaskar Bhikaji and Pandurang Genda took a decision that unless some legal action were taken against accused Nos. 1, 2 and 3, they would not cease pestering them. Having taken that decision in their minds, they told accused No. 1 that they would be willing to help him. Thereupon accused No. 1 asked Bhaskar Bhikaji Kulkarni as to who the principal prosecution witnesses were in the case pending against him. Bhaskar Bhikaji told accused No. 1 that the said information could not be immediately furnished to him as the officer in charge of that case was S. I. Patil and not himself. Thereupon accused No. 1 asked Bhaskar Bhikaji to obtain the names and addresses of the important prosecution witnesses and pass them on to him. Accused No. 1 even made a request to Bhaskar Bhikaji that he (Bhaskar Bhikaji) should also try and 'Win over' those witnesses. Nothing happened thereafter till the 27th April. On the 27th April, says the prosecution, accused No. 2 went again to the room of Bhaskar Bhikaji at about 9-30 o'clock at night and asked him to accompany him outside. On that day Pandurang Genda Patil was on leave. He was out of Bombay. Accused No. 2 took Bhaskar Bhikaji out on the road and told him that he had been sent by accused No. 1 and the reason why he was sent was that the names and addresses of the panch

witnesses of the pending case against accused No. 1 were to be obtained from him. Bhaskar Bhikaji told accused No. 2 that the papers of that case were with S. I. Patil who was on leave. Even when this was stated to accused No. 2, accused No. 2 insisted that the names and addresses of the important prosecution witnesses of that case should be obtained as early as possible, as the 29th April 1955 was fixed for the hearing of that case and therefore accused No. 1 was in urgent need of the information. Accused No. 2 inquired of Bhaskar Bhikaji whether it would be possible to obtain the names quickly, whereupon Bhaskar Bhikaji said that he was busy with a special case and that the names and addresses could not be immediately found and supplied. Thereupon accused No. 2 told him (Bhaskar Bhikaji) that he would meet him again in the premises of the Special Court on the next following day, 28th April, between 4 and 4-30 o'clock in the afternoon. The matter was left there on that day (27th April). On the next day, 28th April, Bhaskar Bhikaji went to the Special Court at 2 o'clock in the afternoon and accused No. 2 met him there between 4 and 4-30 p.m. They both went to the ground floor and there a talk took place between accused No. 2 and Bhaskar Bhikaji. At that time S. I. Gosavi and a person of the name of Shanbhag were present about a couple of feet away. Accused No. 2 asked Bhaskar Bhikaji whether the work was done and Bhaskar Bhikaji replied that he was trying. Thereupon accused No. 2 told him that at 8-30 o'clock at night on that day they would all meet him near the Kumkum Cinema, Worli. Thus at 4-30 in the afternoon on the 28th April 1955, it was arranged that all the three accused persons and Bhaskar Bhikaji were to meet at 8-30 p.m. the same day near the Kumkum Cinema, Worli. After this arrangement was made, accused No. 2 left Bhaskar Bhikaji and went away. Immediately thereafter Bhaskar Bhikaji reported the matter to Inspector Savant. Inspector Savant called him at about 7 o'clock in the evening. Bhaskar Bhikaji accordingly went and met Inspector Savant at 7 o'clock in the evening. At that time, besides Inspector Savant, there were present two other police officers and two panchas. Inspector Savant gave two sheets of paper and a carbon paper to Bhaskar Bhikaji and asked him to write down the names and addresses of witnesses who were to figure against accused No. 1 and Khatri in the case pending against them. Inspector Savant dictated the names and addresses of those witnesses and Bhaskar Bhikaji took them down. It was in this manner that a list of the witnesses' names and addresses was made. At the foot of that list the initials of the panchas were taken. Bhaskar Bhikaji was instructed by Inspector Savant to pass on the list to the giver of the bribe after the bribe was given to him (Bhaskar Bhikaji). Panch No. 1 who was present at that meeting was asked to accompany Bhaskar Bhikaji and he was to pose as one of the panchas who were to give evidence in the pending case against accused No. 1 and Khatri. The real reason why panch No. 1 was sent with Bhaskar Bhikaji was to listen to the conversation which might take place between Bhaskar Bhikaji and the giver of the bribe. A signal was pre-arranged and upon the giving of that signal the police and the panchas were to go up and search the persons, both of the giver of the bribe and Bhaskar Bhikaji Kulkarni. After these arrangements were completed, Bhaskar Bhikaji Kulkarni accompanied by panch No. 1 went and stood near the Kumkum Cinema, Worli. It was about 8-30 o'clock at night. Be it remembered that this was the night of the 28th April 1955. At about 8-30 o'clock accused No. 3 alone made an appearance. He quickly gave an explanation why accused No. 1 did not go. The explanation given was that accused No. 1 had gone to meet

his advocate and had not yet returned. Accused No. 3 further, told Bhaskar Bhikaji that accused No. 1 had sent a message that he would go and meet him (Bhaskar Bhikaji) on the following day, 29th April, at 8-30 in the morning. Accused No. 3 said to Bhaskar Bhikaji that the next morning they would meet again at the same place. On this occasion accused No. 3 made an inquiry from Bhaskar Bhikaji whether the list of the names and addresses of the prosecution witnesses of the pending case against accused No. 1 and Khatri was ready. Bhaskar Bhikaji replied that instead of the list, he had brought one of the panchas himself, so that he might be directly' approached and requested to lend whatever help he could to accused No. 1. The next morning, 29th April, Bhaskar Bhikaji again met the police officers of the Anti-Corruption Branch. The two panchas were again sent for. They were the same panchas who were called the previous evening. The person of Bhaskar Bhikaji was searched and a fresh list containing the names and addresses of the prosecution witnesses of the pending case against accused No. 1 and Khatri was prepared. A carbon copy of that list was also prepared and both the documents were initialled by the panchas. On that occasion also accused No. 3 alone put in an appearance and again said that accused No. 1 had gone to meet his advocate and could not come. It was further stated by accused No. 3 to Bhaskar Bhikaji Kulkarni that accused No. 1 would be withdrawing money from his bank in order to pay the amount of gratification to him. Accused No. 3 also said to Bhaskar Bhikaji that the date of hearing of the case against the present accused No. 1 would have to be adjourned beyond the 29th April. Thus the trap did not succeed even on the 29th April. The next day was the 30th April. On that day accused No. 3 again went to the room of Bhaskar Bhikaji. It was 7 o'clock in the evening. He inquired from Bhaskar Bhikaji whether the list of the names and addresses of the prosecution witnesses was ready. Bhaskar Bhikaji said that the list was ready, but it was not with him in the room; it was in the office. So accused No. 3 told him that he would meet him (Bhaskar Bhikaji) near the Kumkum Cinema on the next day, 1st May 1955, at about 6 o'clock in the evening. On this occasion accused No. 3. further told Bhaskar Bhikaji that accused No. 1 had sent a message through him and the message was that he was in monetary difficulties, that Bhaskar Bhikaji should rest content with the amount of only Rs. 50 and that the balance would be paid later on after accused No. 1 was acquitted in the case pending against him.

5. We thus come to the important date, the 1st May 1955. On that day also Bhaskar Bhikaji contacted the officers of the Anti-Corruption Branch of the Police Department. The same panchas who were previously sent for were present again. The person of Bhaskar Bhikaji was searched again. On this occasion also Bhaskar Bhikaji was asked to write out a list of names and addresses of the prosecution witnesses in the case pending against accused No. 1 and Khatri. A carbon copy of the list was also prepared and both the documents were once again initialled by the panchas. Thereafter the party proceeded towards the appointed place. Bhaskar Bhikaji himself accompanied by panch No. 1, who according to the arrangements was to pose as one of the panchas in the case pending against accused No. 1, went and stood near the Kumkum Cinema. The other members of the raiding party stationed themselves at different places which were scattered about. It was about 6 o'clock in the evening when accused No. 3 made his appearance and asked Bhaskar Bhikaji whether everything was ready. Accused No. 3 proposed that they should go into a restaurant and have a cup of tea. After some hesitation Bhaskar Bhikaji

and the person accompanying him, namely, panch No. 1, agreed to go to the restaurant and they all went to the restaurant and ordered out tea and biscuits. After they took tea, accused No. 3 told Bhaskar Bhikaji that he had brought the amount of Rs. 50 with himself which Kriplani (meaning thereby accused No. 1) had given to him. He asked Bhaskar Bhikaji to take that amount. Accused No. 3 told panch No. 1, whom he thought to be one of the panchas of the case pending against accused No. 1, that in case he gave evidence in favour of accused No. 1 he also would be paid. As to the balance, Bhaskar Bhikaji was told that it would be paid to him after accused No. 1 was acquitted in the case which was pending against him. The amount of Rs. 50 was offered by accused No. 3 to Bhaskar Bhikaji in five currency notes, each of the denomination of Rs. 10. Bhaskar Bhikaji put those notes in the pocket of his pyjama. Thereafter accused No. 3 asked for the list of the names and addresses of the prosecution witnesses. Bhaskar Bhikaji took out the list from the pocket of his pyjama and showed it to accused No. 3. Thereupon accused No. 3 asked Bhaskar Bhikaji as to what was the name of the panch who was present on the spot along with Bhaskar Bhikaji. Bhaskar Bhikaji said that his name was Laxuman Bala. Be it noted that this was not really the name of panch No. 1; Laxuman Bala was in fact the name of one of the panchas who were to give evidence in the case pending against accused No. 1 and Khatri. Panch No. 1 who was kept present with Bhaskar Bhikaji was a different person altogether. He was to be a panch for the present case. But as an impression was to be created in the mind of accused No. 3 that the person present was one of the panchas in the case pending against accused No. 1, the name of that panch (Laxuman Bala) was given out to accused No. 3 as being the name of the person who was present on the spot along with Bhaskar Bhikaji on the 1st May 1955. Accused No. 3 then took the list in his hand and found that it was written in Marathi. Accused No. 3 said that he did not know Marathi. So Bhaskar Bhikaji mentioned the names which were written in the list and accused No. 3 noted those names on the reverse of the list in English. The addresses were also written by accused No. 3 on the reverse of the list. After all this was done, all the three persons, namely, Bhaskar Bhikaji, panch No. 1 and accused No. 3 left the restaurant. At that stage Bhaskar Bhikaji gave the pre-arranged signal, which brought the officers of the Anti-Corruption Branch and the other panch to the spot. Bhaskar Bhikaji, accused No. 3 and panch No. 1 were detained. Upon a search being made of the person of accused No. 3, List (Ex. B) of names and addresses of the prosecution witnesses in the case pending against accused No. 1 which was written out by Bhaskar Bhikaji was found from the person of accused No. 3; also a copy of the charge-sheet (Ex. C), which was the charge-sheet in the pending case against accused No. 1 was recovered from the person of accused No. 3. Upon a search being made of the person of Bhaskar Bhikaji, five currency notes, each of the denomination of Rs. 10, were found and recovered. A panchnama about all this was drawn up. Upon the completion of the investigation a charge-sheet was sent up against all the three accused and I have already mentioned at the commencement of the judgment what the charges against the accused were. These, shortly stated, are the facts of the case as contended by the prosecution.

6. The charges which the prosecution has brought against the accused persons are resisted by them. In the present appeal we are concerned only with accused No. 1. Accused Nos. 2 and 3

who have also been convicted by the learned Special Judge have not appealed against their convictions and sentences. So far as accused No. 1 is concerned, his defense is one of total denial of guilt. It is no doubt admitted by him that at the material time, the time with which we are concerned in this case, a case was pending against him and Khatri. It was also a bribery case and it was to be tried by a Special Judge. It is admitted that Ex. C is a copy of the charge-sheet of that case. It is also admitted that Ex. B is a list of important witnesses of that case together with their addresses. But here the admissions of accused No. 1 end and then the denials begin. He denies having asked accused No. 2 to approach either Bhaskar Bhikaji Kulkarni or Pandurang Genda Patil. He denies having asked accused No. 3 to pay a bribe to Bhaskar Bhikaji Kulkarni or to anybody else for the purpose of obtaining the list of the prosecution witnesses of the pending case. He also denies having met Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil on the 22nd April 1954 morning. He further denies having formed a criminal conspiracy with anybody else for the purpose of suborning prosecution evidence in the case pending against him.

7. Although we are not now directly concerned with the case of accused Nos. 2 and 3 in this appeal, it would be necessary to make a reference to the written statements filed by these accused persons. Turning to the written -statement of accused No. 2 which he filed while defending himself, it would appear that according to accused No. 2 there were previous meetings between himself on the one hand and Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil on the other hand. He says that they used to meet at the Mahalaxmi Railway Station from where they used to travel together by the same train upto Church Gate. During one of these meetings, says accused No. 2 in his written statement, there was a casual talk about the case pending against accused No. 1. On that occasion, according to accused No. 2, Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil told him that to their knowledge accused No. 1 was innocent of the offence with which he was charged and that the real person guilty of that offence was Khatri. They also suggested to accused No. 2 that they would do whatever they could to help accused No. 1 in that case. According to accused No. 2's contention, on the 21st April 1955 also in the morning at the Mahalaxmi Station, Bhaskar Bhikaji and Pandurang Genda met him. It was on that occasion that they asked him to meet them at night at their residence in room No. 5 or room No. 7 of C-1 Block at the Worli Police Lines. They told accused No. 2 that if he went and met them at their residence, they would talk to him in details about the case pending against accused No. 1. Accused No. 2's case is that it was thereupon, and not at the instance of accused No. 1, that on the night of the 21st April 1955, he went directly to room No. 5 where he found two persons sitting outside. He inquired of them where Patil bearing Buckle No. 1263 was. One of the persons replied that he was Patil himself. Then accused No. 2 made inquiries about Kulkarni and Kulkarni came out of his room. Thereafter, contends accused No. 2, all the three of them went out. The reason why they went out was that there was a third person present and in the presence of that person it was not considered advisable to talk about the matter for which Bhaskar Bhikaji and Pandurang Genda had sent for accused No. 2 that night. Ultimately there was a talk between them that night and during that talk Bhaskar Bhikaji told accused No. 2 that he should convey to accused No. 1 that they were willing to furnish him with the names and addresses of the panch

witnesses who were to give evidence in the case against him and that they would do their best to win them over. Accused No. 2 said that he would communicate that message to accused No. 1. On the next day, 22nd April 1955. accused No. 2 says that he went to accused No. 1, but learnt that he had gone to Poona. So he could not meet accused No. 1 on that day. Thereafter nothing happened on the 23rd, 24th, 25th and 26th April. On the 27th April Bhaskar Bhikaji met him at the Mahalaxmi Railway Station as they frequently used to meet for catching the train and on that occasion Bhaskar Bhikaji told him that the hearing of the case against accused No. 1 was coming up on the 29th April and yet he (accused No. 2) had done nothing in the matter which was suggested to him on the 21st April by himself (Bhaskar Bhikaji) and Pandurang Genda. Thereupon accused No. 2 told Bhaskar Bhikaji that he would meet him positively in the Sessions Court on the next day (28th April) between 4 and 5 o'clock in the afternoon and would let him know the reaction of accused No. 1. Accused No. 2's contention further is that on the 28th April he went to the Sessions Court at about 4-30 o'clock in the afternoon and met Bhaskar Bhikaji. Bhaskar Bhikaji told him on that occasion that he would obtain the names and addresses of the panch witnesses in the case pending against accused No. 1 and would let him have that list at 8-30 at night on the same day near the Kumkum Cinema. Bhaskar Bhikaji said that this message should be communicated by him to accused No. 1. Thereafter accused No. 2 went to the house of accused No. 1, only to find that he had not yet returned to Bombay. So accused No. 2 left the message, which was a message from Bhaskar Bhikaji Kulkarni to be given to accused No. 1 with a relation of accused No. 1 who was in the house. ? Accused No. 2's defense contained in the written statement of his is that this was all that he knew in this case and nothing further. It is denied by accused No. 2 that on the night of the 21st April 1955 he went to meet Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil at the instance of accused No. 1. I have referred to the written statement of accused No. 2 somewhat in details as it would be necessary to advert to it hereafter in the course of this judgment.

8. The defense of accused No. 3 which was contained in the written statement filed by him was that he did not go to meet Bhaskar Bhikaji Kulkarni at the Worli Gardens on the 22nd April 1955. This accused has denied the existence of any relationship with accused No. 1. He says that he is neither a brother nor a cousin of accused No. 1. He has further denied having gone to the Kumkum Cinema on the night of the 28th April 1955. He has denied having met Bhaskar Bhikaji Kulkarni and panch No. 1 on the 28th April 1955. Referring to the 1st May 1955, the contention of accused No. 3 is that he was invited by one Mohan Kriplani to accompany him to the Kumkum Cinema in the evening at about 6-15 o'clock. He arrived at the Cinema rather early. He arrived there at about 5-15 p.m., and waited for Mohan Kriplani. When Mohan Kriplani arrived, he said that he would purchase the tickets and he asked him in the meantime to go and meet a person who was pointed out to him. Mohan Kriplani asked him (accused No. 3) to go to that person and obtain from him the addresses of witnesses whose names were mentioned in a typed copy of a charge-sheet which was given to him by Mohan Kriplani. It was a charge-sheet in a case which was pending against accused No. 1. It was in this manner, says accused No. 3. that the copy of the charge-sheet came into his possession. According to him, he did not

previously know either that Police Constable (Bhaskar Bhikaji Kulkarni) or the other person who was with him. I have already mentioned in the previous part of this judgment that the person who was present with Bhaskar Bhikaji Kulkarni was panch No. 1 of this case. As directed by Mohan Kriplani, accused No. 3 went up to Bhaskar Bhikaji Kulkarni and asked him for the addresses of the witnesses. He told Bhaskar Bhikaji that Kriplani wanted the addresses. According to accused No. 3 he did not ask Bhaskur Bhikaji to give him any list of witnesses' names. There-after all these persons, viz., accused No. 3, Bhaskar Bhikaji and the person who was with him entered the Kumkum Restaurant and had tea. After the tea was over, Bhaskar Bhikaji took out a sheet of paper from his pocket and began to read out from that paper. When this was being done, accused No. 3 borrowed a pen from the person who was present with Bhaskar Bhikaji and began to write the names and addresses as they were being read by Bhaskar Bhikaji. It is denied by accused No. 3 that he ever passed on any money to Bhaskar Bhikaji. This is the gist of the defense taken by accused No. 3, whose broad outlines are contained in the written statement filed by him.

9. Now, the principal evidence upon which the prosecution relies in order to prove the association - and indeed the intimate association and connection of accused No. 1 with this offence is the Evidence of Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil. But before I deal with the evidence of these witnesses in details, I would dispose of a couple of points raised - if I may say so - as preliminary points by the learned advocate Mr. Chari appearing for accused No. 1 in this appeal. Mr. Chari's first contention is that the charge which is framed against the accused in this case purports to limit the duration of the conspiracy to a period between 19th November 1954 and 30th April 1955 and that as the incident, which is the subject-matter of the prosecution, namely, the alleged giving of a bribe by accused No. 3 to Bhaskar Bhikaji, took place on 1st May 1955, what happened on that day (1st May 1955), that is, what was done by accused No. 3 on 1st May 1955, would not be relevant as against accused No. 1 and evidence about it would not be admissible as against accused No. 1. Now with all respect to Mr. Chari, his reading of the charge is not correct. The charge merely says that the conspiracy came into existence, that is, the conspiracy was formed, that is the agreement to commit this offence was reached, between 19th November 1954 and 30th April 1955, that it continued even beyond the 30th April 1955, inasmuch as the charge says that this offence was committed in furtherance of the criminal conspiracy on 1st May 1955, that it subsisted on 1st May 1955 and therefore in our view the evidence about the act of accused No. 3, one of the conspirators, would be admissible as against the other conspirators also. This conclusion must follow from the provisions of Section 10 of the Indian Evidence Act. Once we come to the conclusion that the conspiracy did not come to an end on the 30th April, but continued even beyond that date, there could be no doubt that the act of accused No. 3 on 1st May 1955 would be relevant against the other conspirators and that the evidence about that act would be admissible as against the other conspirators. In our view, there could hardly be any controversy that the charge did not fix the two terminii within which only the conspiracy subsisted. If the terminii had been fixed by the charge, the charge would not have stated that on the 1st May 1955 what was done by accused No. 3 was done in furtherance of the criminal conspiracy. There could not be anything like the furtherance of the criminal conspiracy

if the criminal conspiracy had already come to an end before then. Therefore, on a correct reading of the charge it appears to us that the criminal conspiracy which was formed between 19th November 1954 and 30th April 1955 continued even on the 1st May 1955 and what was done on the 1st May 1955 by accused No. 3 was done by him in furtherance of that criminal conspiracy. Once we come to this conclusion, all the evidence which the prosecution has led about what happened on the 1st May 1955 and what was done by accused No. 3 on that day would be admissible as against accused No. 1, and in this view of the matter the case against accused No. 1 could not be said to be resting only on the evidence of the two Constables Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil. I shall presently point out that even if the case were to rest solely upon the testimony of the two constables Bhaskar Bhikaji and Pandurang Genda, there is ample corroboration to that testimony on the record of this case and even that testimony by itself would be sufficient to sustain the conviction of accused No. 1. But, as I have just said, it would not be correct to say in this case that the only evidence which the Court could consider as against accused No. 1 is the evidence of the two constables Bhaskar Bhikaji Kulkarni and Pandurang Genda Patil. As in our view the conspiracy did continue even on the 1st May 1955, the other evidence in the case which would be admissible against accused No. 3 would also be equally admissible against accused No. 1 and that would be the evidence of the panch witnesses and the other police officers and the panchnama of the search of the persons of accused No. 3 and Bhaskar Bhikaji Kulkarni. This disposes of the first preliminary objection which was taken by the learned advocate ?

Mr. Chari.

10. The next preliminary objection which was taken by Mr. Chari was that the information which was treated as the first information in this case, namely, the statement of Bhaskar Bhikaji Kulkarni taken on the 22nd April 1955 at about 10 o'clock in the morning by Police Inspector Savant, which statement was actually recorded by S. I. Desai, was not really the first information and was not admissible as such. This objection was raised by Mr. Chari in this way: According to Mr. Chari, the first information, under the Code of Criminal Procedure, is the information which an officer in charge of a police station receives from another person about the commission of a cognizable offence. Mr. Chari's contention was that before an information could amount to a first information, it must relate to a cognizable offence, that is to say, it must relate to an offence which the officer in charge of a police station is empowered to investigate without the order of a Magistrate and in regard to which the officer in charge of a police station is empowered to effect an arrest without a warrant. Then Mr. Chari invited our attention to Section 5-A of the Prevention of Corruption Act and said that it would follow from the provisions of this section that an offence under Section 165-A of the Indian Penal Code was not a cognizable offence. Now, if we turn to Section 5-A of the Prevention of Corruption Act, it says that

"notwithstanding anything contained in the Code of Criminal Procedure, no police officer below the rank, in the Presidency town of Bombay, of a Superintendent of Police, shall investigate any offence punishable under Section 165-A of the Indian Penal Code without

the order of the Presidency Magistrate." Be it noted that I have quoted only the material part of the provisions of Section 5-A of the Prevention of Corruption Act; I have not quoted the whole of it. Mr. Chari's contention was that since the Legislature laid down while enacting the provisions of Section 5-A of the Prevention of Corruption Act that no police officer below the rank of a Superintendent of Police in the Presidency town of Bombay, was without the order of a Presidency Magistrate, authorized to investigate into an offence under Section 165-A of the Indian Penal Code, the said offence could not be said to be a cognizable offence. Mr. Chari's contention was that if an offence under Section 165-A of the Indian Penal Code were to be treated as a cognizable offence, any officer-in-charge of a police station would be competent to investigate it without the order of a Magistrate and would also be competent to arrest the offender with a warrant. Such not being the case in respect of an offence under Section 165-A of the Indian Penal Code, Mr. Chari says that the said offence is not a cognizable offence.

11. We have given anxious thought to this submission of Mr. Chari; but we have felt constrained to reject it. Mr. Chari has overlooked the distinction between the stage of the first information, the stage of investigation and the stage of taking cognizance. The provisions of Section 5-A of the Prevention of Corruption Act are attracted only when the stage of investigation is reached and that too in the Presidency town of Bombay. They have no application at the stage of the first information. The stage of the first information precedes the stage of investigation. Provisions relating to the giving of the first information are contained in Section 154 of the Code of Criminal Procedure, and Section 154 has universal application in the whole of the Union of India. It says that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant. Every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it. The information given under this section (S. 154) is the first information. It precedes the commencement of the investigation. It is the basis upon which the investigation under Chapter XIV of the Code of Criminal Procedure commences. It is the basis of the case and represents what was intended by the informant to be his case when it was started. Unless the case is started by the giving of the first information, the question of investigating it does not arise. No matter where the place where the cognizable offence is committed is situated in the Union of India, the first information about the commission of that offence is required to be given to an officer-in-charge of a police station within whose jurisdiction the place of the offence lies. Upon receiving the said information, the officer-in-charge of the police station shall forthwith send a report of the suspected commission of an offence to a Magistrate empowered to take cognizance of such offence upon a police report (S. 157). It is only thereafter, and not till then that the investigation into the facts and circumstances of the case starts. Thus, under the Code of Criminal Procedure, the stage of the first information (S. 154) and the stage at which the investigation commences (S. 157) are distinct stages and it is the stage of investigation, and that too in the Presidency town of Bombay, which is referred to in Section 5-A of the Prevention of Corruption Act. It is clear, therefore, that

the provisions of Section 5-A do not affect, and are not intended to override, the provisions about the giving of first information relating to the commission of cognizable offences. That being so, Section 5-A of the Prevention of Corruption Act cannot be pressed into service for contending that the statement of Bhaskar Bhikaji Kulkarni taken by Police Sub-Inspector Savant on 22nd April 1955 is not admissible in evidence as first information. The stage of taking cognisance comes after the stage of investigation is over. After the investigation is completed by the officer in charge of a police station, he is required to forward a report to a Magistrate under Clause (a) of Sub-Section (1) of Section 173, and upon that report the Magistrate may take cognisance (S. 190, Sub-Section (1), Clause (b)).

12. While we are on this point, it would be appropriate to turn" to the provisions of Section 3 of the Prevention of Corruption Act and Section 3 lays down :

"An offence punishable under Section 165-A of the Indian Penal Code shall be deemed to be a cognizable offence, for the purposes of the Code of Criminal Procedure, 1898. notwithstanding anything to the contrary contained therein."

The language of this section is perfectly clear. There is no ambiguity about it The provisions of Section 3 could only have one meaning, and the meaning is that an offence under Section 165-A of the Indian Penal Code has to be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure. The position, therefore, is that but for the existence of Section 5-A on the statute book (the Prevention of Corruption Act), an offence under Section 165-A of the Indian Penal Code, though it may have been committed in the Presidency town of Bombay, would have been an offence which an officer in charge of a police station would have been competent to investigate without the order of a Magistrate. It is only because the Legislature enacted Section 5-A of the Prevention of Corruption Act that, so far as the Presidency town of Bombay was concerned, no police officer below the rank of a Superintendent of Police could, in the case of an offence under Section 165-A of the Indian Penal Code, investigate it without the order of a Presidency Magistrate. The provisions of Section 3 of the Act are independent provisions and they lay down that an offence under Si 165-A of the Indian Penal Code is to be deemed to be a cognizable offence. Section 5-A merely says that, so far as the investigation into an offence under Section 165-A of the Indian Penal Code in the Presidency town of Bombay is concerned, it shall not be done by a police officer below the rank of a Superintendent of Police. There is nothing in the language of Section 5-A which would suggest that an offence under Section 165-A of the Indian Penal Code is not to be treated as a cognizable offence. Accordingly, the second preliminary objection of Mr. Chari must also fail and be rejected.

13-18. I now proceed to deal with the merits of the case. (His Lordship considered the evidence and proceeded:) In these circumstances we are satisfied that there is ample and convincing evidence on the record of this case which must bring home the charges under Section 109 of the Indian Penal Code to accused No. 1.

19. The appeal accordingly fails and is dismissed.

20. Before parting with this case we may point out that at the commencement of the hearing of this appeal, the learned Advocate Mr. Chari had asked us to postpone the hearing on the ground that the sentence which has been passed in this case and the sentence which was passed in the case which is under appeal before the Supreme Court, being concurrent sentences, we should postpone the hearing of this appeal till after the decision of the appeal pending in the Supreme Court. Mr. Chari contended that on the assumption that the sentence passed in this case was confirmed and on the further assumption that the appeal pending in the Supreme Court was dismissed, then in case the hearing of the appeal before the Supreme Court was not reached until three months after the decision of this appeal, the sentence which the accused would have to undergo would be separate sentence of three months' rigorous imprisonment (which is the sentence passed in this case) and 12 months' rigorous imprisonment (which was the sentence passed in the case pending appeal in the Supreme Court). When this submission was made before us by Mr. Chari, we asked him to make a submission before Their Lordships of the Supreme Court that such a request was made before us by him.

21. The accused No. 1 to surrender to his bail.
Appeal dismissed.