

PATNA HIGH COURT

State of Bihar

Vs

Srilal Kejriwal

Govt. Appeal No. 6 of 1957

(H.K. Chaudhuri and Tarkeshwar Nath, JJ.)

26.04.1960

JUDGMENT

H.K. Chaudhuri, J.

1. This is an appeal by the State Government from an order of acquittal of the respondents who were put on trial in the court of the Assistant Sessions Judge of Bhagalpur on charges of criminal conspiracy, arson and abetment of arson. All the respondents were charged under sections 120B/436 and 436/109, of the Indian Penal Code. Srilal Kejriwal, respondent No. 1, Mahadeo Lal Santhalia, respondent No. 2, his maternal uncle, and Bhola Mander, respondent No. 4, his motor driver, were further charged under section 436/34 of the Indian Penal Code. Bhola Singh, one of the accused persons, died sometime after the commitment proceedings.

2. The occurrence which gave rise to the prosecution took place at about midnight between the 24th and 25th June, 1953, at Tilkamanjhi, a quarter in the town of Bhagalpur. There was a serious explosion with fire as a result of which the double-storeyed godown building of a mill, known as the Bhagwati Hosiery Mill, was completely blown up and three persons, viz.(1) Bhagwati Ram Kejriwal, the father of respondent No.1 Srilal, and one of the Directors of the Mill, (2) Shivaram Sharma, an employee of a firm, known as Gopalrai Ramchandra, and (3) Nagendra Nath Das, a mistri attached to the Hosiery Mill, were killed. Besides the loss of lives and the building a huge quantity of hosiery goods, Cotton piece goods and cotton yarn were destroyed by fire. The prosecution case is that the goods in the godown which were insured had been deliberately set on fire in pursuance of a conspiracy with the intention of claiming against the insurance companies concerned. The respondents, the three victims and certain other persons are said to have been parties to this conspiracy.

3. It is necessary to set out the following pedigree : The branch of Bhagwati is separate from that of Gan According to the prosecution, Bhagwati and his sons are joint and own. two firms at Bhagalpur, one known as Gopalrai Ramchandra dealing in cotton piece goods and the other known as Atmaram Deokinandan dealing in cotton yarn. Respondent Srilal, however, asserted at the trial that Bhagwati and his sons including himself were separate from one another. This question of jointness or separation is material in this case only in so far as it throws some light on

the question of motive for the crime.

4. The learned court below has traced the full history of the hosiery mill since its establishment in 1946. For the purpose of the present appeal it is not necessary to go into all these details. The mill is a public limited company with a nominal share capital of ten lacs divided into 3000 preferential shares of Rs. 100/- each and 7000 ordinary shares of: Rs. 100/- each. It is undisputed that the family of Bhagwati owned 72 per cent of the total shares of the company. Shivaram Sharma, one of the persons killed during the occurrence, was an employee of firm Gopalrai Ramchandra and owned seven ordinary shares. Bholu Singh, who is dead, also owned three ordinary shares.

5. The Mill had a cash-credit account with the Central Bank at Bhagalpur since 1952. Firms Gopalrai Ramchandra and Atmaram Deokinandan also had similar accounts with the local branch of the Imperial Bank, later known as the State Bank of India, since 1951 and 1952 respectively. The pledged goods of the two firms and the Mill used to be kept stored in the godown building of the Mill premises. This godown consisted of three rooms, two on the ground floor and one on the first floor. The goods pledged by the Mill with the Central Bank used to be kept in the room on the first floor while the goods of firms Atmaram Deokinandan and Gopalrai Ramchandra used to be kept in the northern and southern room respectively on the ground floor. All these goods were insured against fire with different companies for a total sum of Rs. 7,50,000/-. The Mill's debt to the Central Bank amounted to Rs. 1,47,931/13/3. Firms Gopalrai Ramchandra and Atmaram Deokinandan were indebted to the Imperial Bank to the extent of Rs. 2,49,506/1/6 and Rs. 1,72,958/12/3 respectively. Apart from these debts, the Directors of the Mill raised a further loan of Rs. 2,50,000/- in February 1953 from firm Brajmohan Ratanlal of Ahmadabad and Parmeshwar Prasad Nandlal of Bombay by mortgaging the Mill premises and the machineries. A debenture trust deed was also executed by respondent Srilal in connection with these transactions. ' The execution of the debenture trust deed was resented by the Central Bank who considered it to be a breach of faith on the part of the Directors of the Mill and it called upon the Mill to clear off the debit balance which on 1-5-53 stood at Rs. 1,49,248/8/3 (vide exhibit 16/5). On receipt of this demand notice the Mill made some small payments between 2nd of May 1953 and 24th of June 1953, the total amounting to Rs. 3,030/4/-. At the same time the Bank started verification of the stock in the godown which continued from 15th of June 1953 to 24th of June 1953. The Imperial Bank authorities also had verified the stock between the 4th May 1953 and the 9th June 1953. These verifications did not disclose any shortage of goods. The case of the prosecution, however, is that these checks had been done superficially and there was in fact considerable shortage of goods as respondent Jagdish Pandey, who was the Godown Keeper on behalf of the Imperial Bank, had surreptitiously allowed Srilal and his father to remove the goods from time to time. It is also alleged that in consideration of the favor shown by Jagdish Pandey, Srilal and his father had made a gift of two trucks to him.

6. Towards the latter part of 1952 the price of Egyptian ganjis produced by the Mill went down by Rs. 2/- per dozen and that of ordinary ganjis by Re.1/- per dozen. In view of the fall in prices and the depression in trade the Mill authorities issued a discharge notice on some of their employees on 15-6-53. It was in these difficult circumstances that Bhagwati Ram, the respondents and others are alleged to have entered into a conspiracy to destroy the stock in the godown and retrieve their financial position with the ready cash which was to be had from the insurance companies.

7. The prosecution case is that at about 4 or 4.30 p.m. on 24-6-53 a secret meeting was held in the house of Bhagwati Ram at Bhagalpur in which Bhagwati himself, his sala Mahadeo Lal Santhalia and Godown Keeper Jagdish Pandey were present. In that meeting they decided to destroy the goods in the godown to enable them to claim the insurance money and also to prevent any harm reaching Jagdish Pandey on account of the shortage of goods. Udami Maharaj (P.W.I) who was employed as a cook at the house of Bhagwati Ram for 18 years and who later lived in the Mill premises and supervised the work of the employees happened to come to the room and hear the talk which was going on. Udami was warned not to disclose the talk to anyone else.

8. The rest of the prosecution story is based mainly upon the evidence of Udami Maharaj who later on turned an approver in this case. From the house of Bhagwati Ram, which was at a distance of about two miles from the Mill, Udami went back to his residence in the mill premises and went off to sleep after his night meal. At 10 o'clock the same night he woke up on hearing the sound of a motor van. On hearing the horn he went near the gaddi room in the Mill premises. Near the gaddi he saw Bhagwati Ram, Srilal, Mahadeo Lal, Shivaram Sharma, and Bhola Mandar. The van proceeded towards the godown. Bhagwati Ram took Udami and Shivaram to the godown. On the way Shivaram asked Udami as to why he had been called. Udami replied that he had better enquire about it from the malik. After they all reached the godown Bhagwati opened the lid on the back side of the van where there were petrol tins. Bhagwati and Mahadeo asked Udami and Shivaram to sprinkle petrol on the goods in the godown. After some hesitation they obeyed them. The room on the first floor as well as the rooms on the ground floor were locked at the time. Bhagwati Ram handed over the key of the ground floor rooms to Udami who opened the locks. He and Shivaram then sprinkled petrol over the goods in the northern room. Thereafter they came to the southern room. After Udami had sprinkled petrol over a portion of the goods he left the work as he was unable to stand the smell. Then Srilal himself took up the work of sprinkling. At this stage Bhagwati and Mahadeo sent for Nagendra Mistri who came with a screw-driver and other implements. Nagendra also sprinkled petrol on the goods in the southern room on being asked to do so. Thereafter the doors of the rooms were kept slammed shut. Bhagwati Ram, Shivaram, Nagendra Mistri and Mahadeo Lal then went upstairs. Nagendra Mistri opened the door of the first floor by removing the rings etc. and Shivaram carried petrol upstairs. After petrol had been sprinkled on the goods, there the door was similarly closed and they all came down. During this operation, Bhagwati Ram was wearing only a dhoti and a ganji. He had earlier put off his kurta and cap and kept them in the gaddi room. After they came down from the first floor Bhagwati Ram gave the key of the Imperial Bank godown to Mahadeo and the latter left the Mill premises. Thereafter Srilal also went away with Mathura Singh (P.W. 10) who was the watchman of the Mill and was on duty at the time. They left in a car bearing No. 3387 which was driven by Bhola Mandar. The only person who remained near the godown after their departure were Bhagwati Ram, Shivaram, Nagendra Mistri and Udami Maharaj. They went in front of the east facing southern room of the godown and thereafter Nagendra Mistri lighted a match stick and threw it in the southern room. As the petrol did not catch fire immediately Udami Maharaj was asked by Shivaram to fetch kerosene oil. Udami Maharaj thereupon went towards the store, which was to the north of the godown at a distance of about 50 feet. As soon as he reached the store there was a terrible explosion. As he turned his eyes towards the godown he found that the building had been completely blown up and there were huge flames and smoke. The entire building was crushed and the bricks were thrown to a distance of about 50 feet to the

east and west. No trace was found of Bhagwati Ram, Shivaram and Nagendra Mistri. Seeing this calamity Udami Maharaj ran to the gaddi room and informed Srilal on the telephone as to what had happened. He found the gate of the Mill closed at the time. Soon a police constable, Bansilal Rai (P.W.34), came inside the Mill premises by scaling over the compound wall. This constable was on round duty at Tilka Manjhi crossing when he heard the explosion. About two minutes earlier he had seen the car of Bhagwati Babu going from the Mill side to the west. Before he rushed to the Mill he had also met Havildar Md. Mohsin Khan (P.W.14) and had been directed by him to proceed to the Mill. This Havildar also had seen the car passing with Srilal and two or three others as occupants. Constable Bansilal (P.W.34) immediately on reaching the Mill telephoned to the Fire Brigade. Soon thereafter a Sub-Inspector of Police, R. P. Pathak (P. W. 3), also arrived at the Mill. This Sub-Inspector was at the time attached to Mofassil police station and had his residence at Tilku Maujhi. On that night he was returning home on a cycle after attending a cinema show which had ended at about 12-15 a.m. As he came near a crossing known as Adampur Chouraha he heard the sound of an explosion from the east at about 12-30 a.m. As he reached near the gate of the house of Rani Chandravati which was at some distance to the east of Adampur crossing he saw a car bearing No. BRA 3387 going from east to west at high speed. He recognized the car as belonging to the Mill. As he reached the Mill he found the employees in a perturbed state of mind. When questioned they were unable to give him any satisfactory answer about the incident. Inside the Mill he found flames and smoke on the south-western side. He immediately telephoned to the Fire Brigade Office. He also met Udami Maharaj (P. W. 1) in the Mill area. While he was moving with Udami Maharaj he saw the car bearing No. BRA 3387 entering through the gate and stopping near the office or gaddi. It was the same car which he had seen passing near the gate of Rani Chandravati. Srilal and his younger brother Murli emerged from the car. Srilal enquired from the Sub-Inspector as to what had happened. Sub-Inspector Pathak told him what he had seen. Thereafter, Srilal, Murli, Udami Maharaj and Sub-Inspector Pathak proceeded towards the fire. On the way Udami Maharaj took Srilal and Murli aside and had a talk with them. Srilal and Murli rejoined Sub-Inspector Pathak and began to weep. The Sub-Inspector asked Srilal as to why he was weeping whereupon the latter said : "My father may have died in this". The Sub-Inspector expressed his doubts and told him that he had seen Srilal's car passing while he was returning from the cinema. He suggested that it was possible that his father had gone by that car but Srilal asserted that that was the first time that the car had come out from his residence after 8 p.m. that night. Srilal showed the Sub-Inspector his father's kurta and topi hanging in the office and said that his father never went out any where without wearing his kurta and topi.

The Sub-Inspector actually saw the kurta and topi hanging in the office. The Sub-Inspector then discovered two dead bodies, one lying to the immediate north of a boiler in front of the blown up building and the other 8 or 9 feet further north. These dead bodies were later on identified to be those of Shivaram Sharma and Nagendra Mistri respectively. As the Sub-Inspector came back to the gaddi he came to know that Srilal, Murli and Udami Maharaj (P.W.1) had already left in the car. He then wrote out a Fardbeyan (exhibit 4).

9. In the meantime Srilal on returning home gave Rs. 10/- to Mathura Singh (P. W. 10) who was waiting there and asked him to leave for his native place in the district of Muzaffarpur. He was warned that he should not disclose what he knew to anyone. Mathura Singh thereupon left immediately. Leaving others at home Srilal then again left for the Mill. Sub-Inspector Mahadeo Prasad Singh of Kotwali Police station had in the meantime arrived at the scene of occurrence at about 1.30. a.m. Sub-Inspector Pathak (P. W. 3) handed over his fardbeyan to him at 2 a.m. The

latter endorsed it and sent it to police station Kotwali for drawing up a formal first information report. He also noticed the two dead bodies near the boiler. He examined Sub-Inspector Pathak (P-W. 3) and constable Bansi Lai (P. W. 34). While he was thus engaged the Sub-divisional Officer, the Acting Superintendent of Police and the District Magistrate arrived there. Srilal had also arrived at the Mill premises sometime after Sub-Inspector Mahadeo Prasad Singh (P. W. 54) reached there. Some time after 4 a.m. Nagendra Mistri's wife (P. W. 55) came and identified her husband's dead body. At this stage Sub-Inspector Mahadeo Pd. Singh (P. W. 54) discovered the dead body of Bhagwati Babu amongst the debris to the east of the collapsed building. A wrist watch was tied round his wrist. On his person there was a dhoti and a ganji. The third dead body of Shivaram had not till then been identified. His brother Hari Pd. Sharma (P.W.8) came to the Mill and identified the dead body. Thereafter the Sub-Inspector arrested Srilal, Bhola Singh and Bhola Mandar. Photographs were also taken of the entire scene of occurrence including the dead bodies etc. The dead bodies were sent to the Sadar hospital for postmortem examination and thereafter the Sub-Inspector made a detailed inspection of the place of occurrence. To the south of the gaddi room he found the car bearing No. BRA 3387, one private motor delivery van and two motor trucks. The trucks appeared to be out of order. In course of his inspection the Sub-Inspector found a Godrej key at a distance of 21 feet north of the boiler. In the pocket of the half shirt of Nagendra Mistri was found one iron wrench. A torch light in a damaged and broken condition was also found at a distance of 38 feet to the west of the boiler. An iron lock with the words "Imperial Bank of India" engraved on it was found lying on the ground at a distance of 123 feet northeast of the boiler. The lock was in an open condition. He then searched for Udami Maharaj (P.W.1) and Mathura Singh (P. W. 10) but neither of them could be found.

10. On the very next day i.e.on 26-6-53, Narendra Nath Chaki, (P. W. 21), an employee of Messrs. Sinclair Murray and Co. Private Ltd. of Calcutta, who are assessors and surveyors of several Fire and Marine Insurance Companies including those with whom the goods of the Mill and the two firms were insured, reached Bhagalpur and started salvage operations. He stayed in this connection at Bhagalpur till 17-7-55. On 27-6-53 G. N. Vadehera, Inspector of Explosives, Government of India at Calcutta (P.W.4) arrived at Bhagalpur. He inspected the place of occurrence and gave instructions to the police to arrange to have the debris cleared. He came to Bhagalpur once again on 13-7-53 for purposes of inspection and got samples of several articles from amongst the debris collected and separated. He instructed the police to send them to his office at Calcutta with due formalities. On 29-6-53 Investigating Officer Mahadeo Pd. Singh (P.W. 54) recovered a bundle of coating cloth from under the debris emitting spirit like odour. On 1-7-53 he recovered another bundle of katrans (ganji cuttings) wrapped in a gunny piece. This bundle also gave out smell like that of petrol. On 3-7-53 the Officer sent a requisition to the Officer-in-charge of Hajipur police station to arrest Mathura Singh. Mathura Singh (P.W.10) appeared before the Sub-Inspector on 6-7-53 when his statement was recorded. The statement of Mathura Singh was also recorded by a Magistrate under section 164 of the Code of Criminal Procedure. This Sub-Inspector carried on his investigation till 31-8-53 when he made over charge to Inspector Daya Kant Khan (P. W. 50) on 31-8-53.

11. On 1-1-54 the Sub Divisional Officer received the report of the Explosives Inspector (Ext. 64). His opinion as to the cause of the explosion was as follows :

".....I am of opinion that the explosion as a result of which the building in question within the premises of Shree Bhagwati Hosiery Mills got demolished was caused by a

gaseous explosive mixture. From the fact that a small percentage of petroleum was found soaked in the pieces of cloth and ganji cuttings mentioned above, it appears that one or more compartments of the building contained just before the accident inflammable vapour in admixture with air in a concentration which was within the explosive limits for that mixture".

Udami Maharaj (P. W. 1) who had left the Mill premises on the night of occurrence with Srilal remained in hiding at Bhagalpur for three days. He was then advised by respondent Mahadeo and Murli to leave Bhagalpur as the police were searching for him. They asked him to go to Samastipur and stay with their priest Dhanna Maharaj. Murli gave him Rs. 50/- and on receipt of this money Udami left for Samastipur. Before leaving; he handed over the key of his room in the Mill premises to Murli asking him to take charge of his articles consisting of 11 1/2 tolas of gold ornaments and 60 tolas of silver ornaments which had been pledged with him by debtors besides a cash of Rs. 300/- and other articles. At that time the arrears of salary due to him amounted to Rs. 500/- This amount was in deposit with his masters. He stayed at Samastipur for a week. During his stay there he received Rs. 200/- from his maliks. He was then instructed by respondent Mahadeo Lal to leave for his native place at Maldra in East. Punjab. He stayed at Maldra for three or four days and then on receipt of another message from Mahadeo Lal left for his sister's place at Bhiyani in the district of Hissar. At Bhiyani he met his 'bhagna' Nathu Maharaj (P. W. 38) to whom he narrated all the events from beginning to end. He stayed there for three months during which period he further received a sum of Rs. 100/- and some message from Mahadeo Lal. He then came to Colgong in the district of Bhagalpur and met Mahadeo Lal there. Mahadeo Lal, it may be noted, is a resident of Colgong. There Udami Maharaj expressed his desire to surrender. Srilal and Mahadeo, however, asked him to wait for a month as the courts were closed at the time on account of the Pujas. He asked Srilal and Mahadeo to pay him his money and his things. They told him that he would not get his things etc. at that time and that he should accept some money for expenses and go back. They promised to pay his money later and to give his things besides Rs. 4,500/- as reward. On this occasion he received a payment of Rs. 200/- only. He was sent off by the night train under the escort of a Munshi. At Kiul station, however, Udami had a suspicion that he might be cheated and hence he told the Munshi that he should ask the maliks to give him his money otherwise he would surrender. The Munshi went back to Colgong and Udami Maharaj went to Jassidih.

There Murli, Bhola Mandal and Dhanna Maharaj the priest, met him. Srilal and one Satnarain Murarka, a friend and neighbour of Srilal, also came to Jassidih subsequently. Satnarain Murarka stood surety for Udami's money. It was then decided that Udami Maharaj should have correspondence with Srilal in the name of Satnarain Murarka and that letters to him would be addressed to Nathu Maharaj at Bhiyani. Thereafter Udami Maharaj went back to Bhiyani and told Nathu Maharaj all that had happened. On this occasion Udami Maharaj stayed at Bhiyani for another three months. During this period he had correspondence with Srilal under assumed names. Finally he made up his mind to return to Bhagalpur and make a statement about the true facts. Accordingly he came to Nathnagar in Bhagalpur in the first half of December 1953. He was, however, unable to meet Srilal whereupon he went to Calcutta where he stayed for 20 or 25 days. There he met Srilal and Mahadeo. He once again demanded his money but they told him that he should first make statement to the police and then payment would be made to him. Thereafter Udami Maharaj came to Bhagalpur on 3-1-54. He surrendered in court on the following day, that is, 4-1-54. He filed a petition before the Subdivisional Officer through a

Mukhtear named Habeeb Babu. From the court of the Subdivisional Officer he was taken by a peon to the court of Mr. Haque, a Magistrate, at about 4 p.m. where he made a confessional statement. After the confession was recorded he was again taken to the residence of the Subdivisional Officer along with his Mukhtear. The Subdivisional Officer read over the statement to him once again whereupon Udami Maharaj told him that there was an omission in it. The Subdivisional Officer asked him to go to Mr. Haque again. Udami Maharaj was taken to Mr. Haque, but the latter said that he was unable to do anything and asked him to file an application before the Subdivisional Officer. Next day he filed a petition before the Sub-divisional Officer through the same Mukhtear and made a supplementary statement at about 4 or 4.30 p.m. before the same Magistrate.

12. Sub-Inspector J. K. Singh (P. W. 52) took over charge of investigation of this case from Inspector Daya Kant Khan (P. W. 50) on 16-4-54. It was this Officer who submitted charge-sheet on 15-9-54. The commitment proceedings opened on 22-11-54 and terminated on 31-3-55. The sessions trial before the Assistant Sessions Judge of Bhagalpur commenced on 11-7-56 and continued till 30-11-56. The learned fudge delivered his judgment acquitting the respondents on 28-12-56.

13. Srilal has pleaded innocence. He totally denies that he or the other members of his family had entered into a conspiracy to destroy the goods of the Mill and the two firms as alleged by the prosecution. According to him there was no shortage of goods and there was therefore no reason for any such conspiracy. He stated that he issued a notice of retrenchment to the employees of the Mill on 15-6-53 and suggested that the fire and explosion may have been caused by these disgruntled workers. His story is that on the night of occurrence he and his father on return from the Mill at 8 O'clock attended a marriage in a neighbour's house. They stayed there for sometime and then went back home and took their meal at 10 p.m. Thereafter, the story continues, he went to the house of another neighbour named Baiju Babu. His father also went there.

It is stated that after sometime Srilal came back and went off to sleep leaving his father at his neighbour's house. The allegation is that at about 12-30 O'clock Srilal was roused from sleep by respondent Bhola Mander, the driver, who said that he had been asked by Bhagwati Ram to proceed to the Mill at once. He had no talk with the driver on the way but he came to know later on that while he was sleeping in his house a stout stranger had come to his neighbour's house and called his father away to the Mill saying that he should go there at once as there was likelihood of a great mischief being done. His father accordingly immediately left for the Mill accompanied by the stranger. A little to the north of the Mill the stranger is said to have asked his father to get down from the car and go on foot after putting off his cap and kurta. At the same time Bhagwati Ram is alleged to have directed the driver to go back and call Srilal. When Srilal came the explosion had already occurred. He pleaded that he remained in the Mill premises till he was arrested at about 8 or 9 a.m. He denied that he had removed the kurta and topi of his father from the Mill premises at night. He alleged that the explosion was very likely brought about by Udami Maharaj with the help of Shivaram, Nagendra Mistri, Mathura Singh and the dismissed employees.

14. Bhola Mander has supported the above defense.

15. Mahadeo Lal has denied that there was any conspiracy between him and Bhagwati Ram to destroy the godown. According to him he was at Colgong on that night. He alleged that he had

ill-feeling with Udami Maharaj as he used to tease him on account of his being one-eyed.

16. Jagdish Pandey the Godown Keeper of the Imperial Bank, also denied the charges. He further asserted that the allegation that he used to help Bhagwati Ram and others in surreptitiously removing goods from the godown or that Bhagwati Ram had given him two motor trucks by way of reward is false.

17. In spite of the large number of witnesses examined and documents filed and the lengthy arguments advanced in this case the points which actually fall to be determined lie within a short compass. It is the case of both parties that the outbreak of fire was not due to natural causes but was the malicious act of some fire-raisers acting in concert with one another. The controversy is as to who took part in the crime and the motive which led to the act. According to the prosecution it was an act of firing of premises by Bhagwati Ram, the respondents and some others with the intention of collecting an excessive amount of insurance. The defense of Srilal, the principal accused, on the other hand, is that the cause of fire was revenge and malice on the part of some disgruntled workmen including those who had been served with the notice of retrenchment.

18. On these points the findings of the court below, are :

- (1) The occurrence was an act of deliberate arson - the stock of goods having been burnt with intent to defraud the insurance companies.
- (2) The defense version that it was an act of revenge and malice by some disgruntled workmen was unacceptable.
- (3) The arson was committed by Bhagwati Ram with the help of Shibaram, Nagendra and some others.
- (4) There was no legal evidence to show that the respondents were parties to the conspiracy or were connected with the crime.

19. Before I take up the question of conspiracy it is necessary to determine what exactly was the material used by the conspirators in promoting the fire. The prosecution case on the point is that the material used was petroleum. The learned Assistant Sessions Judge for reasons which are somewhat difficult to understand did not accept this case and held that "the prosecution has failed to prove that the occurrence took place in the manner and by the means spoken of by the approver". The learned Judge's finding that the prosecution had failed to prove that petroleum was used in setting fire to the building is based on the following grounds.

- (1) The approver's story as to Bhagwati Ram having come in a van with petrol and the van having been sent out once again for further petrol is not corroborated.
- (2) He made improvements in his supplementary confession by adding the name of Srilal as one of the sprinklers.
- (3) In his confession the approver stated that he and Shivaram sprinkled petrol on being "threatened" by Bhagwati but in court he merely stated that he and Shivaram did the act on being "cajoled" to do so.
- (4) In his confession the approver did not mention who actually opened the ground-floor

rooms but in evidence he stated that he himself did it.

(5) He gave details as to how petrol was sprinkled on the goods in the first floor room but admittedly he was not competent to speak on the point as he did not go there.

(6) The story of the approver that 8 or 10 big tins each containing 4 gallons and 16 or 20 small tins each containing 2 gallons of petrol were sprinkled was improbable.

(7) The expert's opinion as to the explosion having been caused by petroleum vapour was not fit to be accepted.

(8) Nobody who came to the Mill soon after the explosion spoke of having smelt petrol.

20. Grounds Nos. 2 to 5 do not really affect the prosecution case as to the cause of the fire. As to ground No. 1, I shall consider it when I discuss the question of conspiracy. The remaining grounds urged by the learned judge are also not convincing and he appears to me to have gone completely wrong in holding that any material other than petroleum was the cause of fire.

21. The Investigating Officer (P. W. 54) stated as follows :

"On 29-6-53 I inspected the place of occurrence again and watched the clearance of the debris. A bundle of coating cloth was recovered from under the debris which emitted spirit-like odour. I seized it and prepared a seizure list".

He visited the place of occurrence again on 1-7-53. On that day he seized some other articles. This is his evidence:

"I found one wire electric like about 9 feet in length recovered from under the collapsed building and I also found a bundle of Katrans (ganji cuttings) wrapped in a tetti (gunny piece). The bundle presented a petrol like smell."

He further stated :

"The Inspector of Explosives of Calcutta inspected the place in my presence. I pointed out the things to him. I gave him, in three containers, piece of cloth and cuttings of ganji which I had taken in my charge, for examination. They gave forth odour like that of petrol".

22. The Explosives expert (P. W. 4) stated at the trial that he detected small quantities of petroleum soaked in the pieces of cloth and ganji cuttings sent to him. According to him the building was demolished as a result of a gaseous explosion. The witness states :

"From the fact that small percentage of petroleum was detected in the pieces of cloth, Ganji cuttings etc, it appears that one or more compartments of the building contained just before the accident inflammable vapour in admixture with air, in a concentration or proportion which was within the explosive limits for that mixture".

The learned Judge's comment on the evidence of the expert was that the Explosives Inspector did not give any idea as to the time which the mixture of petrol vapour and air would take to explode on being kindled. He then observed that it was a mystery as to how the mixture of petrol vapour and air could explode the double storeyed strongly built building 90' x 25' in such a short time and that too in such a way that not a single brick was found in position. It appears that the magnitude of the damage caused for a considerable time stood in the way of the police officers accepting petroleum as the cause of the occurrence. The expert's opinion appears to me to be perfectly correct and is supported by authorities. L. C. Nickolls in his book. "The Scientific Investigation of Crime" has fully discussed the behavior of petroleum as a cause of fire and explosion. At page 239 (1956 edition) the learned author states :

"The layman imagines that petrol just burns when ignited. In fact, petrol always explodes when a light or spark is applied to it. After the lower boiling fractions have been removed in either way the residue will burn albeit very vigorously but the initial effect is an explosion."

The author has also referred to a case in this connection :

"A young man purchased a business which he subsequently found was not as profitable as he had been led to believe. He soon started to lose money and so he decided to recover his capital by setting fire to the building and collecting the insurance money. Accordingly, he collected a pile of newspapers and brought two gallons of petrol to the premises. He placed the pile of newspapers in the cellar under the wooden steps and poured the petrol on to the papers. Then, standing on the steps, he threw a match on to the heap. There was an explosion which blew the man up the steps and out of the window and a fire followed the explosion. When this was put out by the Fire Brigade the floor of the cellar was deep in water. Nevertheless the paper, as described above, was essentially unburned and the paper at the bottom of the heap was taken, as a sample. Though soddened with water, a fluid ounce of purified petrol was recovered from it.

This case illustrates the ignorance of laymen of the behaviour of petrol, the resistance of paper to burning, and the ability of petrol to remain absorbed in materials notwithstanding the fire." The illustration quoted by the learned author disposes of one of the arguments of Mr. S.N. Sahay that it was unlikely that petrol should still have been found in any of the articles at the scene of occurrence several days after the fire. The learned Court below seems to have been considerably impressed by the facts that nobody who visited the scene of occurrence soon after the fire spoke to having smelt the odour of petrol. There does not, however, appear to be mystery about it. As Nickolls says, volatile fluids may survive the heat of a fire if they are absorbed in non-conducting solids. The fluids, however, are readily vaporized and lost by the action of currents of air. In my opinion, the conclusion of the learned Judge that petroleum had not been proved to have been the cause of the fire is hasty and cannot be accepted. On the basis of the evidence of the investigating officer (P. W. 54) and the expert (P. W. 4) who, as shown above, is fully supported by Nickolls it can be stated with certainty that the fire and explosion in question was promoted by petroleum. The discovery of a small piece of electric wire at the scene of occurrence does not appear to me to be of any significance and no plausible theory as to this piece of wire having been the cause of

fire and explosion was put up on behalf of the defense.

23. With regard to the manner of occurrence the main points in the evidence of the approver are these. He woke up at 10 p.m. on hearing the sound of a motor van near the gaddi or office of the Mill where he saw Bhagwati Ram, Shivaram and respondents Srilal, Mahadeo and Bhola. Bhagwati Ram opened the lid of the van where there were petrol tins. The approver and Shivaram were asked by Bhagwati Ram to sprinkle petrol on the goods in the godown. In spite of their unwillingness these persons obeyed him. The approver opened the lock of the Imperial Bank godown with the help of the key supplied by Bhagwati Ram. Both he and Shivaram sprinkled petrol in the northern room. This operation started at about 10-15 p.m. Petrol was sprinkled in the southern room partly by the approver and partly by Srilal and Shivaram, Nagendra Mistri who came on being called also sprinkled petrol there. Thereafter the door was slammed, shut. Bhagwati Ram, Shivaram, Nagendra Mistri and Mahadeo then went upstairs. Nagendra Mistri opened the room with the instruments brought by him. Shivaram took petrol upstairs. After petrol was sprinkled there they all came down and Mahadeo left the Mill premises with the key. Srilal also then left with Mathura Singh Choukidar. The total time taken in sprinkling petrol was one hour and 25 minutes. During the operation Bhagwati was carrying a torch and was wearing only a ganji and a dhoti having left his kurta and cap in the gaddi room. Nagendra Mistri lighted a match stick and threw it in the southern room. As it did not kindle the fire immediately the approver was directed to bring kerosene oil. The approver went to the stores for kerosene oil and heard the explosion followed by smoke and fire immediately he reached there. He ran to the gaddi and sent a telephonic message about the occurrence to Srilal. Originally 8 or 10 two gallon tins and 4 or 5 four gallon tins of petrol had been brought. During the operation the van was sent out once again and a similar quantity of petrol was soon brought.

24. The learned Judge has held that the approver's version as to the manner of occurrence had not been established. He considered the approver to be an unreliable witness on the following grounds :

- (1) He was a witness of no status and was "a mercenary man".
- (2) He made the confession after a great delay.
- (3) He was under police influence who showered favors upon him.
- (4) He spoke of sprinkling of petrol three days after the expert's report was received.
- (5) His supplementary confession was suspicious. There were developments and inherent improbabilities in his statement.

25. The rules relating to appreciation of an approver's evidence have been laid down by the Supreme Court in the case of *Sarwan Singh v. State of Punjab*¹, Their Lordships have held that the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver. The first question that arises for determination, therefore, is whether the approver can be treated to be a reliable witness. It is beyond controversy that he was a trusted servant of Bhagwati Ram and was living in the Mill premises. That he was present at the Mill when the occurrence took place is also established beyond doubt. Sub-Inspector Ram Prasad Pathak (P. W.

3) found him at the Mill when he arrived there immediately after the explosion. The learned Judge has spoken of the approver's poor status and mercenary nature. If the approver is a competent witness which undoubtedly he is the mere fact that he was a man of low status should not be adequate to condemn his evidence. It is not quite clear what the learned Judge has meant by describing him as mercenary. (His Lordship discussed the evidence and proceeded.) The charge that he was actuated by mercenary ends in coming out of his hiding has little justification.

26. The approver undoubtedly made his confessional statement about seven months after the occurrence. The learned Judge, however, himself found that there was sufficient explanation for this delay. (After reviewing the evidence, his Lordship proceeded.) On a review of the evidence I think that no case has been made out for rejecting the evidence of the approver so far as the manner of occurrence is concerned. As to whether his account with respect to the persons participating in the crime is concerned can be accepted in toto is however, a matter which I shall discuss hereafter.

27. The question next is. To what extent has the approver's evidence regarding the occurrence been corroborated? In discussing the evidence of the approver what the learned Judge appears to have done was to segregate the incidents deposed to by the approver and seek their corroboration in isolation - a procedure which appears to me to have been erroneous. The nature and extent of corroboration necessary in such a case has been laid down in *Rameshwar v. State of Rajasthan*², Their Lordships have held :

"It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged". The rules which should, however, be applied are these :

(1) It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction.

(2) The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime.

(3) The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal.

(4) The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. In this connection their Lordships have also considered the effect of section 157 of the Evidence Act. It has been pointed out that this section makes no exceptions. Provided the condition

prescribed, that is to say, "at or about the time etc.", are fulfilled there can be no doubt that such a statement is legally admissible in India as corroboration. The weight to be attached to it is, of course, another matter and it may be that in some cases the evidentiary value of two statements emanating from the same tainted source may not be high, but in view of section 118 its legal admissibility as corroboration cannot be questioned.

28. The approver's evidence as to the manner in which the crime was committed appears to be amply corroborated in this case. (After discussing this, his Lordship proceeded). Even if corroboration is lacking in regard to these details it does not falsify the general account given by the approver as to the manner of occurrence.

29. Nathuram Sharma of Bhiyani, in the district of Hissur, (P. W. 38) who is the bhagina of the approver has deposed that in the middle of July 1953 Udami Maharaj came to his house in Bhiyani. The witness found his uncle to be depressed and upset. On his enquiry Udami Maharaj narrated the entire occurrence to him. The motive for the occurrence, the manner in which the godown was set fire to and the names of all the participants in the crime formed the subject of this disclosure. This statement was made by Udami Maharaj as early as could reasonably be expected in the circumstances of the case and is undoubtedly admissible under section 157 of the Evidence Act although the evidentiary value of the statement, emanating from the same tainted source, is not very high. The learned Judge was of the view that this witness must in law be deemed to have been an accomplice, and hence no reliance should be placed upon his testimony. In this connection he has referred to the case of *Ismail v. Emperor*³, According to the learned judge since the witness had harboured the approver even after the disclosure he must be deemed to have been an accessory after the fact. The ruling relied upon by the learned Judge, however, does not support him. As has been pointed out in this case, to constitute a crime the act must, except in the case of certain statutory crimes, be accompanied by a criminal intent or by such negligence or indifference to duty or to consequences as is regarded by the law as equivalent to criminal intent. The term "accomplice" has been explained in this case as follows :

'The expression accomplice' has not been defined in the Evidence Act, but there can be little doubt that it means a person who knowingly or voluntarily co-operates with or aids, and assists another in the commission of a crime".

Referring to the Privy Council decision in *Mahadeo v. The King*⁴, Bhandari J., who delivered the judgment, points out that three conditions must unite to render one an accessory after the fact, viz., that the felony must be complete that the accessory must have knowledge that the principal committed the felony, and that the accessory must harbour or assist the principal felon. He then observes :

"Mere acts of charity which relieve or comfort a felon, but do not hinder his apprehension and conviction nor aid his escape, do not render one an accessory after the fact (4 Blackstone's commentaries p. 38). He must be proved to have done some act to assist the felon personally R.V. Chapple, (1840) 9 C and P. 355. The mere fact, that one had knowledge that a crime had been committed, and that he concealed or failed to disclose such knowledge, does not render him an accomplice. If, for example, the concealment is due to the witness's anxiety for his own safety rather than to any desire to shield the

criminal, he would not be an accomplice. Nor would be a person who remains passively silent after obtaining knowledge of the commission of the crime be an accessory or an accomplice within the rule as to the testimony of accomplices. To render a person an accomplice his participation in the crime must be criminally corrupt".

Judged by these tests it is impossible to urge that Nathuram Sharma was an accomplice. The evidence shows that he is a student and a Junior member of the family. The approver's visit must have been taken by the witness to be a visit by a near relation in the ordinary course. It would be preposterous to suggest that he harboured him with a criminal intent. I am unable, therefore, to hold that the witness is an accomplice. As, however, pointed out before, the evidence of this witness is not of much probative value since he has deposed only to the statement of the approver himself. There is, however, no bar to the statement of the approver being used as corroboration, whatever be the value of his evidence in court.

30. Another witness on whose evidence the prosecution has relied for corroborating the evidence of the approver is Mathura Singh (P. W. 10). (On a review of the evidence, his Lordship held that this witness was an accomplice and that he was at least a principal in the second degree. His Lordship then proceeded.) For all these reasons I do not consider him to be a witness on whom any reliance can be placed. His evidence must, I think, be ruled out of consideration.

31. Even if, however, his evidence is left out of account there is sufficient independent evidence to show that the approver's statement regarding the manner in which the occurrence took place is true.

32. All the respondents were charged in the court below with criminal conspiracy under section 436 of the Indian Penal Code was actually committed the charge of criminal conspiracy to commit the same offence is relevant. Ratanlal in his Commentary on the Law of Crimes (19th edition at page 265) observes as follows :-

"Where the matter has gone beyond the stage of mere conspiracy and offences are alleged to have been actually committed in pursuance thereof, section 120A and this section (120B) are wholly irrelevant".

In the case before us the offence of arson which is alleged to have been the object of the conspiracy was in fact committed and hence the conspiracy amounted to abetment. In these circumstances, the charge under section 120B was entirely uncalled for. The matter was considered by a Division Bench of this Court in *Jugeshwar Singh v. Emperor*⁵, and the learned Judges made the following observation :

"Where a criminal conspiracy amounts to an abetment under section 107 it is unnecessary to invoke the provisions of sections 120A and 120B because the Code has made specific provision for the punishment of such a conspiracy. In the case before us, the offences which are alleged to have been the object of the conspiracy were in fact committed so the conspiracy amounted to abetment. The Court should not, therefore, have framed additional charges under section 120B. Appellants having been convicted on the substantive charges

framed were not liable to be convicted also of conspiracy".

The same view was expressed by the Madras High Court in *In re Venkataramiah*⁶, Their Lordships in that case expressed the following view :

"In my judgment sections 120A and 120B have been quite wrongly applied to this case and have no bearing at all. When the matter has gone beyond the stage of mere conspiracy and offences are alleged to have been actually committed in pursuance thereof, these two sections are wholly irrelevant. Conspiracy, it should be borne in mind, is one form of abetment (see section 107, Penal Code) and where an offence is alleged to have been committed by more than two persons, such of them as actually took part in the commission should be charged with the substantive offence, while those who are alleged to have abetted it by conspiracy should be charged with the offence of abetment under section 109, Penal Code. The explanation to section 109 makes this quite clear. An offence is said to be committed in consequence of abetment, when it is committed in pursuance of the conspiracy, and the abettor by conspiracy is made punishable (under section 109) with the punishment provided for the actual offence".

The Bombay High Court in *Emperor v. Karamalli Gulamalli*⁷, has taken a contrary view, but we are bound by the decision of this Court. The question of criminal conspiracy under section 120B not being relevant the only question for decision is whether the respondents had participated in the crime or abetted the commission of the offence.

33. On behalf of the prosecution it has been contended that the evidence of the approver which is fully corroborated by the circumstances proves beyond doubt that amongst the participants in the crime were the three persons whose dead bodies were found on the spot soon after the occurrence. There is no doubt that these dead bodies prima facie show that Bhagwati Ram, Shivaram and Nagendra Mistri had actually taken part in the crime. Mr. S.N. Sahay has, however, strenuously urged that Bhagwati Ram had absolutely no motive for committing this heinous crime and that the arson was very probably the act of some disgruntled workmen who had been served with a notice of retrenchment. On the question of motive learned counsel has drawn my attention to the finding of the lower court that on the day of occurrence there was no shortage in the goods of the Mill pledged with the Central Bank. The learned Judge also found that the prosecution had failed to prove beyond reasonable doubt that there were shortage in the goods stored in the Imperial Bank godown either. It further appears that while the total value of the goods in the godowns was Rs. 8,61,411/- the total amount of insurance was Rs. 7,50,000/-. Mr. S.N. Sahay has taken us through the balance-sheet and other papers in order to show that the Mill was financially in a sound position. Reference is also made to the fact that the Mill had been able to secure a loan of Rs. 2,50,000/- from Bombay and Ahmadabad in February 1953 at a low rate of interest. This, it was submitted, was indicative of the sound financial condition of the Mill. I am not, however, impressed with the contention of learned counsel. There is evidence to show that sometime prior to the occurrence there was a fall in the price of Egyptian ganjis, which the Mill manufactured, by Rs. 2/- per dozen. There was decline in the price of ordinary ganjis also by Rs. 1/- per dozen. The balance-sheet of the Mill (exhibits 25 to 25/5) also show that the profit was declining gradually and that in 1952 it came down to Rs. 3,362/12/6. The Mill was also

indebted to firm Gopalrai Ramchandra to the extent of Rs. 2,13,000/-. In face of these facts it is apparent that the Mill was not in a prosperous condition. Only a few days before 20 employees of the Mill including some skilled workers had been served with a notice of retrenchment. That the Mill was in need of ready cash is indicated by the fact that it went in for a loan at Bombay and Ahmadabad. The Central Bank was also dunning for its debt. There is correspondence to show that the Bank treated the conduct of the Directors in raising a loan at Bombay and Ahmadabad by execution of a debenture trust as a breach of faith. The learned court below considered all these circumstances and came to the following conclusion :

".....the Mill was not in a flourishing condition financially at the relevant time and it would have been profitable to destroy the goods and realize money from the Insurance companies. There would have been profit even though the goods were as the books show, worth Rs. 2,51,202 for the Mill could not have at a time disposed of all those goods and got rid of the debts".

This finding of the learned Judge is fully borne out by the evidence on the record and I agree with it. There was, therefore, a reasonable motive for the crime.

34-35. The defense contention that the crime was committed by Shivaram, Nagendra Mistri and several other dissatisfied workers does not bear scrutiny. (His Lordship scrutinised the evidence and proceeded). The learned Judge's finding that the explosion was brought about by Bhagwati Ram, Shivaram, Nagendra Mistry, the approver and others must, therefore, be held to be correct.

36-40. The principal question for decision now is whether the evidence on the record is sufficient to connect the respondents with the crime. It would be convenient at this stage to consider the case of each individual accused separately : Srilal - (His Lordship discussed the evidence and proceeded). On a review of the evidence I am, therefore, of opinion that the prosecution had failed to prove that Srilal participated in the crime or abetted it. Mahadeo Lal Santhalia - (In this case it was held that his participation in crime was not proved beyond doubt). Jagdish Pandey - (His Lordship reviewed the evidence and proceeded). In the result, I am of opinion that the court below rightly held him to be not guilty. Bhola Mander - The learned Standing Counsel has frankly conceded that there was no evidence of his participation in the crime and he cannot press the charges against him.

41. In the result, the appeal fails and is dismissed.

Tarkeshwar Nath, J.

42. I agree that the appeal must be dismissed. The charges have not been brought home to the respondents and they have been rightly acquitted by the learned Assistant Sessions Judge.

43. I, however, wish to express my opinion with regard to the prosecution case that Bhagwati Ram Kejriwal and his son, Srilal Kejriwal, had the motive to destroy the goods, of the Mill and that Bhagwati Ram Kejriwal also was a party to the conspiracy. (His Lordship reviewed the evidence and proceeded). Thus the motive alleged by the prosecution for Bhagwati Ram's taking this drastic step of destroying his own goods has not been established beyond reasonable doubt.

44. The prosecution case that Bhagwati Ram also was a party to the conspiracy, which took place at about 4 p.m. on the 24th June, 1953, is equally untenable. (After reviewing the evidence his Lordship proceeded). Therefore, the prosecution case that Bhagwati Ram was a participant of the crime is improbable. His dead body has undoubtedly been found in the premises of the Mill, but that circumstance is not incompatible with the theory of his innocence. The defence of Srilal, who is the only person, who can give some explanation about the presence of his father in the Mill premises on the fateful night, was that he and his father attended the marriage ceremony that night at the place of Anant Ram Lal, an employee of the Mill, and having stayed there for some time they returned home. He took his meal at about 10 p.m. and then went to the house of his neighbour Baiju Babu. His father also went there, a little later and the father remained there but he returned home. At about 12.30 in night he was awakened by Bhola driver who asked him to go to the Mill as Malik was calling him. Thus he and Murli went to the Mill, but by the time he reached the building had caught fire and the godown had fallen down. In the written statement filed by Sri Lal he made out that he later on learnt from the driver, Bhola Mandar that his father having been informed by a stranger that an act of sabotage was to be committed went to the Mill in the car and moved incognito by putting off his Kurta and topi in the gaddi in order to prevent the mischief so imminent at that time. The learned Assistant Sessions Judge has held that the version of the occurrence given by Srilal was not worthy of credence. But even then, the crucial question is as to whether the finding of the dead body of Bhagwati Ram was such a circumstance that it conclusively established his participation in the crime. The defence of Srilal that his father went to the Mill in the circumstances alleged by him, has not been proved, but the finding of the dead body of his father does not rule out the possibility of his father having gone to the Mill a few minutes before the incident to find out what kind of mischief was likely to be committed. In my opinion, the chain of evidence in the present case is not complete and by the mere finding of the dead body it cannot be conclusively held that Bhagwati Ram took part in this crime. The Supreme Court has in the case of *Hanumant Govind Nargundkar v. State of Madhya Pradesh*⁸, laid down the caution and the principles to be followed while dealing with circumstantial evidence and it is useful to quote the following observations of their Lordships :

"In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the Jury in *R. v. Hodge*⁹, where he said :

'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the

more likely was it, considering such matters, to over-reach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In

other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused".

The same view was taken with regard to circumstantial evidence in the case of *Palvinder Kaur v. State of Punjab*¹⁰, and the earlier decision in the case of Hanumant Govind Nargundkar, AIR 1952 SC 343, just referred to above, was relied upon. To crown all, it is difficult to believe the evidence of the approver that Srilal and Mahadue Lal if present went back home leaving Bhagwati Ram, an old man of 50 years of age, in the Mill premises to take care of himself at the dead of night. (After discussing some evidence His Lordship concluded).

45. As a result of all these considerations I am of the opinion that the prosecution has not proved that the explosion was brought about by Bhagwati Ram as well.
Appeal dismissed.

Cases Referred.

¹ AIR 1957 SC 637

² AIR 1952 SC 54

³ AIR 1947 Lah 220

⁴ AIR 1936 P.C 242

⁵ ILR 15 Pat 26 : (AIR 1936 Pat 346)

⁶ AIR 1938 Mad 130

⁷ AIR 1938 Bom 481

⁸ AIR 1952 SC 343

⁹(1838) 2 Lew CC 227

¹⁰ AIR 1952 SC 354