

H. H. B. Gill and another - - - - - *Appellants*

v.

The King - - - - - *Respondent*

FROM

THE FEDERAL COURT OF INDIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH FEBRUARY, 1948

Present at the Hearing :

LORD SIMONDS
LORD NORMAND
LORD MORTON OF HENRYTON
LORD MACDERMOTT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD SIMONDS]

This appeal which is brought from a judgment of the Federal Court of India dated the 11th December, 1946, raises questions of difficulty and general importance. They relate in the first place to the problem which has so often been debated in the Courts of India in regard to the meaning and effect of section 197 of the Code of Criminal Procedure and in the second place to the admissibility of evidence upon a charge of conspiracy.

The nature of the case demands that the facts should be set out at some length.

As a result of the judgment now under appeal the appellants H. H. B. Gill and A. Lahiri stand convicted for offences under section 165 read with section 120B of the Indian Penal Code.

The appellant Gill joined the Indian Army Ordnance Corps in December, 1939. He was appointed Staff Captain in the Contracts Directorate from January, 1940, and in April, 1941, he was given the temporary rank of major as Deputy Assistant Director of Contracts at Calcutta. In this office he was responsible for the issue and acceptance of tenders for purchase of material in compliance with indents made by the proper authorities.

The appellant Lahiri is the proprietor of the Baranagore Engineering Works. In that capacity he obtained numerous contracts for supplying Government requisites through the appellant Gill and other officers.

As a result of secret enquiries which, for reasons that need not be further investigated, the Deputy Superintendent of Police, Calcutta, thought fit to make into the affairs of Gill, it was found that Gill had on the 21st May, 1941, received from Lahiri a cheque for Rs.500. A search warrant was then obtained for the search of Lahiri's house. The warrant

was executed on the 11th October, 1942, and the police took possession of a diary kept by Lahiri and of the counterfoils of his cheque book in which there were notes purporting to refer to Gill in the handwriting of Lahiri. Upon these materials with others to which reference will be made it was determined that criminal proceedings should be instituted against Gill and Lahiri and accordingly steps were taken to obtain what were thought (so far as Gill was concerned) to be the necessary consent and sanction under section 270 of the Government of India Act, 1935, and section 197 of the Code of Criminal Procedure as amended by the Government of India (Adaptation of Indian Laws) Order, 1937. It is convenient to set out these sections. They are as follows:—

Section 270 of the Government of India Act, 1935.

“Indemnity for Past Acts.—(1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.”

Section 197 of the Code of Criminal Procedure (as amended).

“(1) When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of a Provincial Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—

(A) in the case of a person employed in connection with the affairs of the Federation, of the Governor General exercising his individual judgment; and

(B) in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province exercising his individual judgment,

(2) The Governor General or Governor, as the case may be, exercising his individual judgment may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

(3) In relation to the period elapsing between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, the references in this section to the Federation and to the Governor General exercising his individual judgment shall be construed as references to the Governor General in Council.”

On the 28th January, 1943, the consent of the Governor General under section 270 was given to the institution of proceedings against Gill in the following terms:—

“Under Section 270 (1) of the Government of India Act, 1935, I Victor Alexander John Marquess of Linlithgow acting in my discretion consent to the institution of Criminal proceedings against Major H. H. B. Gill formerly Deputy Controller of Purchase Supply Department Calcutta for having committed during the years 1941 and 1942 offences punishable under Section 161 and Section 120B read with Section 420 of the Indian Penal Code.”

On the 3rd February, 1943, sanction of the Governor General in Council under section 197 of the Code of Criminal Procedure was given in similar terms.

It is to be observed that the sanctions refer to " offences punishable under section 161 and section 120B read with section 420 of the Indian Penal Code " and it is convenient here to set out these sections together with section 120A and section 165 of the Indian Penal Code which are also relevant:

120A.—DEFINITION OF CRIMINAL CONSPIRACY.—When two or more persons agree to do, or cause to be done—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B.—PUNISHMENT OF CRIMINAL CONSPIRACY.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine, or with both.

Section 161.—Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or dis-service to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations: " Expecting to be a public servant " If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

" Gratification " : The word " gratification " is not restricted to pecuniary gratifications, or to gratifications estimable in money.

" Legal remuneration " : The words " legal remuneration " are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

" A motive or reward for doing " : A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Section 165: Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate:

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any

connection with the official functions of himself or of any public servant to whom he is subordinate;

or from any person whom he knows to be interested in or related to the person so concerned;

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 420.—CHEATING AND DISHONESTLY INDUCING DELIVERY OF PROPERTY.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

These sanctions having been obtained, on the 25th February, 1943, the Deputy Superintendent of Police filed a complaint in the Court of the Chief Presidency Magistrate, Calcutta, and it appears to their Lordships that it is relevant to observe that the complaint refers to a number of facts which the police purported to have then discovered and that while, as has already been stated, the sanctions related only to offences (a) under section 161 and (b) under section 120B read with section 420, the same facts or some of them would appear equally to support charges under section 120B read with section 161 or with section 165.

On the 4th May, 1943, the Chief Presidency Magistrate (Mr. R. Gupta) framed the following charges:—

1. Against Gill and Lahiri.

“ That you, between March 1941 and July 1942, along with others unknown, at Calcutta and other places were parties to a criminal conspiracy to cheat the Government of India in the Department of Supply by dishonestly or fraudulently inducing its Financial Officers to pay larger sums of money than due to you Anil Lahiri of Baranagore Engineering Works in respect of contracts for the supply of Anti-gas Respirator Spring Compressors No. 3 and Decking Spikes by means of false representation regarding the acceptability of the rates quoted by Baranagore Engineering Works and character and capacity of supply made by them in preference to those of other firms and you thereby committed an offence punishable under Section 120B read with Section 420 of the Indian Penal Code and within my cognizance.”

2. Against Gill only.

“ That you on or about the 21st day of May, 1941, at Calcutta, being a public servant, to wit, Deputy Controller of Purchase in the Department of Supply, Government of India, obtained from Anil Lahiri of Baranagore Engineering Works Rs.500/- (Rupees five hundred) by encashment of cheque (Exhibit 4) as gratification other than legal remuneration for showing in the exercise of your official functions favour to the said Anil Lahiri in the matter of the contract for the supply of Anti-gas Respirator Spring Compressor No. 3 and you thereby committed an offence punishable under Section 161 of the Indian Penal Code and within my cognizance.”

3. Against Lahiri only.

“ That you on or about the 21st day of May, 1941, at Calcutta abetted Major H. H. B. Gill in the commission of the offence under Section 161 of the Indian Penal Code by paying him Rs.500/- by cheque (Exhibit 4) as gratification other than legal remuneration for showing, in the exercise of his official functions as Deputy Controller of Purchase, favour to your firm Baranagore Engineering Works in the matter of the contract for the supply of Anti-gas Respirator Spring Compressor No. 3, which offence was committed in consequence of your abetment and you thereby committed an offence punishable under Section 109 read with Section 161 of the Indian Penal Code and within my cognizance.”

It has not been disputed that these charges at least were framed strictly in accordance with the consent and sanction given. It has, however, been urged by learned counsel for Gill that it was not competent for the Magistrate to try the appellants upon any other charges or for any other offences. To this matter their Lordships will recur.

On the 29th June, 1943, both Gill and Lahiri were examined and made statements under section 342 of the Code of Criminal Procedure and on the 19th August, 1943, the Chief Presidency Magistrate gave judgment. He held that the charge of conspiracy under section 120B read with section 420 had not been established and acquitted both the accused. On the second charge also against each of the accused under section 161 he found that the evidence fell short of the standard required to convict: he therefore acquitted them both.

An appeal against this order of acquittal was preferred by the Superintendent and Remembrancer of Legal Affairs, Bengal, to the High Court of Judicature at Fort William in Bengal. It was heard on the 8th December, 1944, by Roxburgh and Ormond, JJ., who made an order in the following terms:—

“ The order of acquittal is set aside and the case is remanded to the Chief Presidency Magistrate for trial on an amended charge of conspiracy to take [sic] and receive bribes and also on the charges under sections 161 and 161/109 of the Indian Penal Code as previously framed.”

It may be noted parenthetically that section 109 refers to abetment.

Thus section 420 drops out of the conspiracy charge and section 161 takes its place.

No further sanction under the sections already cited was obtained or asked for.

On the 22nd June, 1945, Mr. Palmer, who had succeeded Mr. Gupta as Chief Presidency Magistrate, framed a new charge of conspiracy in the following terms:—

“ That you between March 1941 and July 1942 at Calcutta and elsewhere were parties to a criminal conspiracy with the object of you Major (now Captain) H. H. B. Gill being a public servant to wit the Deputy Controller of Purchases in the department of Supply, to accept from you Anil Lahiri a contractor in the name of Baranagore Engineering Works and you Anil Lahiri to give to the said Major (now Captain) H. H. B. Gill gratifications other than legal remuneration as a motive or reward for showing in the exercise of you Major Gill's official functions, favours or for rendering or attempting to render any service to you the said Anil Lahiri in the matter of your contracts for the supply of Anti-gas Respirators Spring Compressors and Decking Spikes and in consequence thereof offences punishable under Section 161 of the Indian Penal Code were committed, and you Major (now Captain) H. H. B. Gill and Anil Lahiri thereby committed an offence punishable under Section 120B read with Section 161 of the Indian Penal Code.”

The separate charges under section 161 and section 161/109 (which related to the cheque for Rs.500) were retained unaltered.

Upon these charges, old and new, Gill and Lahiri were duly tried. A large number of witnesses gave evidence for the prosecution. Both Gill and Lahiri were examined by the learned Magistrate under section 342 of the Code of Criminal Procedure, while Gill also put in a written statement and an additional written statement. Amongst the evidence adduced by the prosecution and admitted by the Court were the diary and cheque counterfoils and notes to which reference has already been made. That these documents, which will be compendiously referred to as “ Lahiri's notes ”, were evidence against Lahiri is not denied. Nor is it to be denied

that they would be at least cogent evidence against Gill, if against him they were admissible. The question which must be presently considered is whether they are admissible against him.

On the 13th August, 1945, the Chief Presidency Magistrate gave judgment, and, in view of the importance which upon one part of the case this matter has assumed, it is relevant to note how he dealt with Lahiri's notes. "These payments", he said, "do not form the subject of separate charges, but evidence of these payments has been let in firstly as proof of the conspiracy and secondly under sections 14 and 15 of the Evidence Act as facts tending to show the intention or lack of good faith of the parties in connection with the payment of Rs.500 in May, 1941, which forms the subject matter of the separate charge." In the result the learned Magistrate, while disbelieving the explanation given by the defence in regard to the cheque for Rs.500 (the subject of the separate charge), did not consider that an offence had been proved under section 161 but held that it was quite clear that an offence under section 165 had been committed. Accordingly without formally amending or re-framing the charges, he convicted both Gill and Lahiri of conspiracy under section 120B read with section 165 and he also convicted Gill on the separate charge under section 165 and Lahiri on the separate charge under section 165 read with section 109. He sentenced Gill to simple imprisonment for three months and to a fine of Rs.210 under section 165 and Lahiri to a similar term and fine. He passed no separate sentence on the conspiracy charge.

Both Gill and Lahiri appealed to the High Court against conviction and sentence, while the Provincial Government applied for enhancement of sentence. By its judgment dated the 12th April, 1946, the High Court (Blank and Ellis, JJ.) set aside the convictions on the separate charges but maintained the convictions on the charge of conspiracy under section 165 read with section 120B, and sentenced each of the accused to three months' simple imprisonment. The opinion of the High Court in regard to the separate charge may be summarised by saying that in the view of the Court the accused had given an explanation of the transaction, the truth of which it was not for them to prove beyond all reasonable doubt, and that on the evidence it was not possible to find that the transaction was more than suspicious. If so, it appears to their Lordships to follow that the High Court neither disbelieved the explanation nor (which comes to the same thing) thought that there was reasonable ground for disbelieving it. In the case of the High Court also it is important to note how Lahiri's notes were dealt with. "In our opinion", they said, "the entries in the note-book together with the entries in the counterfoils are explicable only on the hypothesis that Lahiri gave the amounts mentioned to Gill and we agree therefore with the learned Magistrate's finding that the conspiracy is established." This makes it clear that Lahiri's notes were admitted as evidence not only against Lahiri but also against Gill on the conspiracy charge, and the question at once arises upon what ground they were so admissible.

The High Court also had to consider the questions of general importance indicated earlier in this judgment. They were (1) whether sanction was necessary to the institution of proceedings against Gill and (2) assuming that it was necessary whether the sanctions in fact given justified cognisance being taken of the altered charges under section 161 read with section 120B and further whether in any event sentence for an offence under section 165 read with section 120B could be justified.

Upon these questions the High Court held (a) that sanction was not necessary under section 270 of the Government of India Act, (b) that sanction was necessary under section 197 of the Code of Criminal Procedure, but that (c) the sanction in fact given was sufficient to cover the subsequent proceedings. Their view was that when the sanction had been granted "the bar of taking cognisance was lifted . . . and thereby the provisions of the Code of Criminal Procedure were attracted". And they held that all subsequent proceedings were authorised by that Code.

After some delay owing to an abortive petition to this Board which was dismissed on the ground that the High Court had not withheld its certificate under section 205 of the Government of India Act, 1935, Gill and Lahiri, having obtained the proper certificate, appealed from the judgment of the High Court to the Federal Court of India.

On the 11th December, 1946, the Federal Court (Spens, C.J. and Zafrulla Khan and Kania, J.J.) dismissed both appeals and it is convenient to state what matters appear to have been raised before that Court and how they were dealt with.

In the first place the Court (whose judgment was delivered by Zafrulla Khan, J.) dealt with the so-called constitutional question which arose under section 270 of the Government of India Act. The Court held that no consent was necessary for the institution of proceedings in respect of an offence under section 120B read with section 161 "inasmuch as an agreement by a public servant to receive illegal gratification and the receipt of such gratification by him cannot be said to be acts done or purporting to be done in the execution of duty". In coming to this conclusion the Court followed its own earlier decision in *Huntley's* case, 1944, F.C.R. 262. Secondly (though earlier in its own judgment) the Court held that, even if sanction under section 270 was necessary, the sanction given was adequate and no further sanction was necessitated by the order of the High Court whereby the case was remanded for trial on fresh charges.

Next with regard to the sanction under section 197 of the Code of Criminal Procedure, the Court, while thinking it unnecessary to discuss or determine the necessity for such sanction, was of opinion that (as in the case of the sanction under section 270) the sanction which was in fact given enabled the Chief Presidency Magistrate to take cognisance of the offences set out in the sanction and that the subsequent course of the proceedings would be regulated and was justified by the relevant provisions of the Code of Criminal Procedure. The Court did not specifically refer to section 230 of that Code, which deals with the question of a new or altered charge in cases where sanction is necessary, but their Lordships do not doubt that it was this section (amongst others) that the Court had in mind.

Finally the Court dealt with the competence of the Magistrate to record a conviction under section 120B read with section 165 when the charge was for an offence under section 120B read with section 161 and after a close analysis of the relevant offences held that under section 238 of the Code such a course was justified.

The Court stated that no other issue was raised before it. This statement was challenged by counsel for the appellants who urged that at any rate an attempt had been made to argue the question arising upon the admissibility of evidence to which reference has been made.

From the order of the Federal Court an appeal has by special leave been brought and has now to be considered by their Lordships and they would first observe that, inasmuch as there was not (as is sometimes done) any special limitation imposed upon the subject matter of appeal, it must be open to the appellants to rely upon any ground of appeal which would normally be open to them. They do not think it right, therefore, to exclude the argument upon the admissibility of evidence, which in truth is not only of vital interest to the appellants but also raises a question of general importance.

Upon the questions raised before the Federal Court their Lordships are of the following opinion.

The necessity of a sanction under section 270 of the Government of India Act was expressly disclaimed by counsel for the appellants. It is sufficient, therefore, for their Lordships to say that they see no ground for challenging the decision of the Federal Court in *Huntley's* case, which in this case the Court has followed. If this is so, it is unnecessary to consider the scope of the sanction that was in fact given.

The Federal Court has not expressed an opinion upon the necessity of a sanction under section 197 of the Code, but, as the High Court has expressed the view that such a sanction was in this case necessary and upon this much-vexed question the Board has heard full argument, their Lordships think it right to express their own view.

In the first place their Lordships find it impossible at least in relation to an offence of this character to distinguish between section 270 and section 197. The words in section 270 "in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown" appear to them to have precisely the same connotation as the words in section 197 (1) "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". It is idle to speculate why a change of language was made. But, if a temporal meaning is not given, as in their Lordships' view it clearly should not be given, to the words in section 197 "while acting, etc.", it is in their opinion impossible to differentiate between the two sections. In the consideration of section 197 much assistance is to be derived from the judgment of the Federal Court in *Hori Ram Singh v. R.*, 1939, F.C.R. 159, and in particular from the careful analysis of previous authorities which is to be found in the opinion of Varadachariar J. Their Lordships, while admitting the cogency of the argument that in the circumstances prevailing in India a large measure of protection from harassing proceedings may be necessary for public officials, cannot accede to the view that the relevant words have the scope that has in some cases been given to them. A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a judge neither acts nor purports to act as a judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited, think it sufficient to say that in their opinion no sanction under section 197 of the Code of Criminal Procedure was needed.

This being their opinion, it is not strictly necessary to consider the second point that was raised, viz., whether, if a sanction was necessary, the subsequent proceedings were justified by the sanction that was in fact given. But they think it desirable to say that upon this question they fully concur in the judgment of the Federal Court in this case. Section 230 of the Code of Criminal Procedure is clearly part of the code which becomes operative when once a sanction has been given under section 197, and, as has been pointed out in the earlier part of this judgment, the whole of the facts, which would justify equally a charge under section 120B read with section 420 and a charge under section 120B read with section 161, are stated in the complaint originally filed by the Deputy Superintendent of Police, which at the same time exhibited the sanctions already obtained. It is an inference, which at this late stage of the proceedings cannot properly be challenged, that the same facts were before the sanctioning authority when the sanction was given. If it was desired to raise such a question, that should have been done at the earliest moment when the prosecution could have supported by evidence the inference which even without it can fairly be drawn. Their Lordships were pressed by learned counsel for the appellants with the recent decision of the Board in *Morarka's* case, but in that case the facts were wholly different and the decision gives no help to the appellants. Their Lordships are therefore of opinion that, if any sanction under section 197 was necessary, such sanction was given as justified the Court in taking cognisance of the altered charges.

The question then arises whether the Court, having proper cognisance of the proceedings, ought to have convicted the appellants of conspiracy and for the purpose of this question it is immaterial whether the conviction was under section 120B read with section 161 or with section 165. It is here necessary to recapitulate certain facts. The learned Chief Magistrate found the appellants guilty of the specific charges alleged against them under section 161. And it may well be that, disbelieving the explanation which Gill gave of the transaction the subject of that charge, he had reasonable ground in connection with the conspiracy charge for believing that Gill and Lahiri had conspired to commit the offence which was the subject of that charge, so that under section 10 of the Indian Evidence Act the notes made by Lahiri were admissible in evidence against Gill. That section, so far as relevant, provides that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by one of them, is a relevant fact against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. But it must be observed (a) that apart from the evidence relevant to the specific charge there was no other competent evidence upon which such a reasonable ground for belief could be rested and (b) that the notes were clearly not admissible against Gill unless section 10 could be invoked. It was plainly admitted by counsel for the respondent that it was upon section 10 only that he relied for the admission of such evidence, though it is not clear what course was taken in this respect in the Courts of India. Upon the case going to appeal, the High Court accepted or at least did not reject the explanation given by Gill in regard to the specific charge, and having accepted it were left with nothing upon which they could found the belief that Gill and Lahiri were conspiring to commit an offence. But without this belief they could not under section 10 justify the admission of Lahiri's notes as evidence against Gill and without such evidence they had no material upon which they could convict him of conspiracy. The case undoubtedly presents some curious features and learned counsel were not able to refer their Lordships to any case in the Courts of India where a similar set of circumstances had been reviewed. But it appears to their Lordships that just as a trial-judge may admit evidence under section 10, when he has such a reasonable ground of belief as is postulated, yet must reject it if at a later stage of the trial that reasonable ground of belief is displaced by further evidence, so the appellate Court, which has from the outset refused that belief, must refuse also to admit evidence which was admissible only upon the footing of the belief being entertained. It is not the true view that in a conspiracy charge of this kind evidence once admitted remains admissible evidence whatever new aspect the case may bear whether in the original or the appellate Court.

Applying this principle to the present case, their Lordships are of opinion that the conviction of Gill cannot be sustained and, since the charge is one of conspiracy, it follows that Lahiri's conviction also falls.

In this view of the case it is unnecessary to consider the final question that was raised whether, upon the assumption that the Court had proper cognisance of the case, a conviction could be recorded not under section 120B read with section 161 but under section 120B read with section 165 and their Lordships express no opinion upon it.

For the reasons above appearing their Lordships will humbly advise His Majesty that these appeals should be allowed and the convictions of the appellant Gill and the appellant Lahiri under section 120B read with section 165 of the Penal Code quashed.

In the Privy Council

H. H. B. GILL AND ANOTHER

v.

THE KING

DELIVERED BY LORD SIMONDS

Printed by His MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1948