Kedar Nath Bajoria And Anr. vs The State Of West Bengal on 23 April, 1954

Equivalent citations: AIR1954SC660, AIR 1954 SUPREME COURT 660

JUDGMENT

Jagannadhadas, J.

1. These two are appeals by special leave.

The two appellants herein along with two others were put up for trial before the Special Judge of the Special Court (Alipur), Calcutta, in respect of three charges, the first against all the four accused in respect of an offence under Section 120-B of the Indian Penal Code read with Section 420, I. P. C. and Section 5(2) of the Prevention of Corruption Act, 1947, the second as against Kedar Nath Bajoria, appellant in Cr. A. 84 of 1952 and his son Madan Lal Bajoria, in respect of an offence under Section 420 of the Indian Penal Code, and the third against Hari Ram Vaid, appellant in Cr. A. 85 of 1952, and his assistant, Inder Sain Bakshi, in respect of an offence under Section 5 (2) read with Clause (1) (d) of the Prevention of Corruption Act, 1947.

Kedar Nath Bajoria and Hari Ram Vaid were both convicted in respect of the charge under Section 120-B of the Indian Penal Code. Kedar Nath Bajoria was, in addition, convicted in respect of the charge under Section 420 of the Indian Penal Code, while Hari Ram Vaid was, also, convicted in respect of the charge under Section 5 (2) read with Clause (1) (d) of the Prevention of Corruption Act, 1947. They were both sentenced to imprisonment and fine. The other two, namely, Madan Lal Bajoria and Inder Sain Bakshi, were acquitted. As against the judgment of the trial Court there were two appeals, one by each, to the High Court. The convictions and sentences were affirmed in a common judgment of the High Court. Against the judgment of the High Court special leave was granted by this Court on two applications. These two appeals first came up for hearing before a Constitution Bench of this Court with reference to certain objections raised under Articles 14 and 20(1) of the Constitution. The objection under Article 14 was decided against the appellants by judgment dated the 22nd May, 1953. The objection under Article 20(1) which related only to the quantum of fine imposed on the appellant Kedar Nath Bajoria was allowed but did not affect his conviction. The judgment has been reported in -- 'Kedar Nath Bajoria v. State of West Bengal', (A). These appeals were accordingly directed to be heard on the merits and have come before us.

2. The appellant, Kedar Nath Bajoria and his son Madan Lal Bajoria were the owners of the firm, Kedar Nath Mohanlal. The firm was the Managing Agent of Shiva Jute Press Ltd., Cossipore, Calcutta. A number of godowns belonging to the Shiva Jute Press were requisitioned by the Government on various dates between March and November 1943 for military purposes. These included the roofs of godowns Nos. 19 and 20 (excluding the godowns underneath). The roofs

formed one continuous space and were known as roof No. 20 of the Press.

The said roof was requisitioned on the 6th March, 1943, and was under military occupation for over two years and a half. Possession of the roof was ultimately given up by the military on the 8th December, 1945. The charges against the appellants arise out of claims for compensation made by the firm Kedar Nath Mohanlal in respect of damage said to have been occasioned to the roof by misuse thereof by the military during their occupation, and also to the stock of jute belonging to the Press stored in the godown underneath consequent on leakage of water through the damaged roof during the rains. Two claims were successively put forward (1) in respect of damage to the roof, and (2) in respect of damage to the jute, the first in January, 1947, and the second in August, 1947.

The appellant Hari Ram Vaid who took charge as the Area Lands and Hirings Disposals Officer in September, 1946, and continued as such at the time when these claims were made and scrutinised had the duty of examining them and making his recommendations thereon to the higher authorities. In respect of the first, the claim was for Rs. 61,139/- and he recommended the payment of a sum of Rs. 47,550/-. This was ultimately sanctioned by the higher authorities and drawn by the appellant Kedar Nath Bajoria on the 19th May, 1947, from the Government. In respect of the second, the claim was for Rs. 1,62,175/- and the appellant Hari Ram Vaid recommended a payment of Rs. 1,28,125/-. While this second claim was still under scrutiny, the services of the appellant Vaid were terminated in May, 1948. His successor, P. W. 4, suspected that not only was this claim fraudulent, but that the previous claim and payment of Rs. 47,550/- in respect of the repair to the roof were also fraudulent. Investigation followed, which resulted in these proceedings out of which the present appeals arise.

3. In support of the prosecution case, a large volume of correspondence and other documents have been filed, and 15 witnesses have been examined. On behalf of the defence, some documents have been filed, but no witness has been examined. The case of the prosecution relating to cheating, criminal misconduct and criminal conspiracy, is sought to be made out not on any direct evidence but, as noticed by the High Court in its judgment, entirely from circumstances emerging out of the evidence in the case. In order to appreciate the circumstances relied on by the prosecution, it is necessary to have an idea of the evidence in its broad outlines.

4. The evidence relating to the claim for damage to the roof may first be considered. It consists mostly of correspondence between the firm Kedar Nath Mohanlal (hereinafter referred to as the firm) and the military authorities (hereinafter referred to as the military) between March, 1943, when the roof was requisitioned and May, 1947, when the money, allowed in respect of this claim, was drawn by the firm. On the 4th September, 1943, the firm wrote a letter to the military complaining that the work that was being carried on, on the roof, was of such a nature as to form a menace, and that the roof might collapse any moment. On the 21st November, 1943, the firm wrote another letter complaining that a big-size water tank was placed on the roof and was leaking profusely, and that it was damaging the jute stored in the godown underneath. On the 24th February, 1944, the firm wrote another letter complaining of percolation of water and risk of damage to jute. On the 25th March, 1944, they wrote another letter complaining that the roof had been greatly damaged by storing wood thereon and by carpenters working on it, and that this had resulted in vibration of the roof and the development of small holes therein. On the 9th June, 1944,

there is another letter from the firm stating that the rainy season had drawn near and demanding immediate repairs, and complaining of apprehension of great loss. On the 14th June, 1944 another letter was written asserting that the roof was given in sound condition, and that the condition of the roof had become deplorable and very risky by use (as aforesaid).

On the 21st June, 1944, (presumably for the first time), a reply was received from the military stating that the Garrison Engineer had been instructed to inspect and carry out the necessary repairs. There is another letter from the military on the 5th July, 1944, stating that necessary action for repair will be taken. No inspection or repair in pursuance of these letters appears to have been done at the time.

On the 12th July, 1944, the firm wrote to the military stating that "owing to storing of heavy materials and carpentry work done on the roof, the roof is badly leaking, and our stock of jute lying underneath in the godowns are constantly being saturated with water pouring through the roof and jute is being all damaged". On the very next day, the firm addressed two identical letters to different military authorities stating that in the rain of the previous day water came through the cracks in the roof in showers and considerable damage extending to over Rs. 50,000 was done to jute underneath, and the following was added: "Please note we hereby hold you fully responsible to compensate us 'in toto' for the loss incurred".

Then again on 17-7-1944, the firm wrote three similar letters to the authorities concerned stating that in spite of repeated complaints asking for repair of the roof nothing had been done yet, and that the position was worsening day by day, and that owing to heavy monsoonish weather, water was coming underneath in the godown where jute was stored, in showers, and that they had suffered heavy losses meantime as informed in their previous letter.

After these repeated letters, a reply was received from the Garrison Engineer, dated the 25th July, 1944, in which it was stated as follows:

> ".....the premises known as No. 19, Shiva Jute Press have been inspected by my A. G. E. 1.
>
> It is found that this building is not in the occupation of the Military authorities and has not been requisitioned. There would appear to be no reasonable claim on the D. D. for repairs to the roof, incidentally the cost of which is estimated to be approximately Rs. 8,000.
>
> The building is occupied by the owner; any liability or decision to repair or otherwise surely rests with him.
>
> Copy of the A. G. E.'s report is attached for your information".

The A. G. E. 1 referred to therein is one Arunachalam, who has been examined as P. W. 10. The substance of his report, Ex. 60, was that the roof itself was originally defective, and had further

deteriorated as a natural consequence of its use during the last one year, and that no damage had been caused to the roof by the keeping of the packing cases.

His report was also to the effect that the godown was visited by him with one Major Slater, that the godowns were found empty, and that there was no damaged jute anywhere, and that even if there had been any leakage in the roof, the jute could never have been damaged, and that the question, therefore, of damages could not arise.

5. Subsequent to this letter of the Garrison Engineer to the firm, no other correspondence between the parties is on the record until the 3rd March, 1945.

On this date there is a letter from the Garrison Engineer to the firm as follows:

> "Godown No. 19 is not in occupation by Government. The repair to the roof of this godown is the responsibility of the owners.
>
> Government cannot undertake any responsibility for the damage to owners' materials stored in these godowns due to their own faulty roofs".

The next letter that is on the record is one from the firm dated the 23rd November, 1945 to the Garrison Engineer, which is as follows:

> "We have to inform you that the above roof which is in your occupation has been severely damaged and 'rafters have fallen down' in the Godown below. We shall thank you to arrange for an early inspection of the roof. Meantime we hold you fully responsible for all the damages done and for all costs and charges as may be incurred for its repair".

Copy of this letter was sent to D. A. D., Lands and Hirings, Calcutta. On receipt of this letter, Major Mannings, D.A.D., Lands and Hirings, wrote a letter to the Garrison Engineer as follows:

> "Reference Messrs. Shiva Jute Press Ltd., letter No. SP/742 dated 23rd November, 1945, addressed to you and copy to this Service.
>
> Will you please carry out the inspection and submit a report to this office with your recommendations? In view of your letter dated the 3rd March, 1945, it would seem that this may not be a Government responsibility".

After this letter from the D.A.D. dated the 28th November, 1945, matters appear to have moved surprisingly quickly. It is in the evidence of one Captain P. C. Mitra examined as P. W. 7 that on 1st December, 1945, one Captain Morley brought and handed over to him a slip, which runs as follows:

> "Maj. Waters--phoned. He requests the area being given up at 11.00 hours.

Shiva Jute Press".

Captain Mitra also gave evidence that the said Captain Morley was accompanied by one H. P. Das and two other Marwari gentlemen. In cross-examination he stated that on that very day the owners of the Jute Press came to him in his office, and introduced to him H. P. Das as their representative, to whom delivery of possession might be made. It is also his evidence that on the 8th December, 1945, possession of godowns Nos. 16 and 17 and of roof of godowns Nos. 19 and 20 was handed over to H. P. Das on behalf of the Managing Agents, and that a certificate of delivery of possession, Ex. 55, and a clear discharge certificate, Ex. 54, relating thereto, were obtained from him under his signature.

It may be mentioned that thereafter the military seem to have realised that possession was handed over without a formal derequisitioning, and that steps should be taken to regularise it. This appears from two letters, Exs. A(21) and A(22) addressed in December, 1945, by Captain Morley to the Secretary, Requisition Board. But whether any and if so, what steps were taken thereupon, is not on the record.

Meanwhile, on the 13th December, 1945, a letter was addressed by Arunachalam to the Assistant Director, Lands and Hirings, in reply to his prior letter dated the 28th November, 1945. It is as follows:

> "This is to report that Godowns Nos. 19 and 20 of Shiva Jute Press are not in occupation by the Military.
>
> The roof of these Godowns is also not occupied by the Military Depot.
>
> On examination it was found that portions of the roofs were damaged due to the deterioration of Tee iron pieces supporting the flat tiles.
>
> Therefore the damages are due to inherent defects in the construction of the roof and the Military cannot in any way be held responsible for the damages or the repair of these private Godowns". Subsequent to this, it appears from Ex. 19 that the rest of the godowns of Shiva Jute Press which were in the occupation of the military were derequisitioned, and possession thereof was handed over to the firm on the 8th April, 1946. On the same date, a list of agreed damages presumably relating only to the property covered by Ex. 19 was drawn up specifying four items of damage. There is a letter on the record dated the 10th April, 1946 of the firm to the military claiming a total compensation of Rs. 300/- in respect of those four items.
>
> After this, there is nothing further on the record until the appellant Vaid comes on the scene, who as previously mentioned, came to this office in September, 1946. On the 28th December, 1946, he wrote a letter to the firm about the claim arising out of the list of damages prepared at the time of handing over of the other premises on the 8th April, 1946. In reply thereto, the firm wrote a letter dated the 14th January, 1947,

which is the substantial starting point of the events that led up to the present prosecution, and it is desirable to quote it in full.

"The Area Hirings Officer, A.D., Lands, Hirings and Disposals, Calcutta.

Dear sir, With reference to your letter No. Cal/318 dated 28th December 1946 we return the estimate for damages with the following remarks.

1. The removal charges for re-entry into the premises have been included in the estimate. This sum was allowed to us at the time of requisition vide L.A. Collector Memorandum No. 11-4-46/622 P dated 4th February, 1946.

2. The roof of Godown No. 20 was badly damaged on account of misuse by the military and was not repaired in spite of repeated warnings from us. Subsequently we have to carry out necessary urgent repairs ourselves, after the restoration of the property in order to run the Press immediately. The repairs carried out by us are still apparent and can be verified at sight.

3. Our actual expenses up to date are Rs. 21,500 and a further sum of about Rs. 18,700 is still to be spent to complete the repairs. Relevant documents are enclosed.

4. A separate claim due to leakage for the deterioration of goods stored under this roof is under preparation and will be submitted shortly.

Yours faithfully, Kedar Nath Mohan Lall, Managing Agents, Shiva Jute Press Ltd."

It may be observed that in the original of this letter the figures appearing in para. 3, appear to have been altered from Rs. 11,500 and Rs. 8,700 into Rs. 21,500 and Rs. 18,700.

On receipt of this letter, Vaid along with his assistant made a joint inspection, and prepared a schedule of the repairs to the roofs of godowns Nos. 19 and 20. This consisted of 12 items in respect of repairs to the roof of Godown No. 20 and 4 items in respect of repair to the roof of godown No. 19.

He wrote a letter to the firm on the 1st February, 1947, enclosing this schedule and asking for an estimate of the damages with reference thereto. The estimates, Ex. 26, series, were furnished claiming a sum of Rs. 61,139. This is said to have been checked up and admitted as correct to the extent of Rs. 47,550 by Vaid on the 17th April, 1947.

It has also to be mentioned that an advance receipt, Ex. 30, from the firm dated the 27th February, 1947, for this very sum of Rs. 47,550 is on the record.

On the 18th April, 1947, he put up the draft of a letter for the approval and signature of his superior, one Lt.-Col. Pettman, A.D., Lands, Hirings and Disposals through his immediate superior, J. K. Brittain. This was recommended by J. K. Brittain and forwarded to the higher authorities. Lt.-Col.

Pettman signed that letter and forwarded it to the D.D., Lands, Hirings and Disposals after obtaining the check of one R. B. Mukherjee in respect of the rent portion of the claim. On the basis of the above letter, payment of the compensation was sanctioned by Col. Bowden, and financial sanction given on the 12th May, 1947. In the usual course, payment by cheque dated the 19th May, 1947, in favour of the firm followed.

It may be noticed from the evidence of P. W. 1, Lt.-Col. Balakrishnan, that this claim was also recommended by another officer, Col., Wood, who was the superior of Vaid. This was in a separate note pinned in the main file of the office relating to this matter and the appellant Vaid complained during the investigation about its missing from the file.

The letter, Ex. 28, which is proved by P. W. 8 to have been typed from a draft of the appellant Vaid shows the case put up by him to the higher authorities in recommending payment of this claim. It is desirable to set it out, as it forms one of the main links in the prosecution case.

> "D. D. Lands, Hirings and Disposals, Eastern Command, 34, Park Street, Calcutta.
>
> Shiva Jute Press, Cossipur.
>
> 1. Please find enclosed claim for damages in respect of the above mentioned premises for according necessary financial sanction.
>
> 2. Out of the 24 Godowns and 5 covered Verandahs requisitioned, the owner has claimed damages only for the roofs of Godowns Nos. 19 and 20 which collapsed--in spite of timely warnings by the owner to the Military authorities--on account of storing, loading and unloading of heavy packages and doing carpentry work on these roofs.
>
> 3. The estimate submitted by the owner has been scrutinised by this office. The rates quoted by the owner were very high and much above the rates prevailing in the market. The rates allowed are reasonable and conform to the current market rates.
>
> 4. Shiva Jute Press was one of the best Press Houses that was requisitioned by the Military. Vide report dated 19th September, 1945 by Captain B. W. Fairs, A.H.O. Calcutta on Government File C-761/45 (A copy of para. 1 of the report enclosed).
>
> 5. In assessing the value due allowance has been given for depreciation, taking into consideration the value of the salvaged materials, the cost of dismantling and of cleaning and stacking the materials obtained therefrom and that of clearing and cleaning the site.
>
> 6. The roofs occupy an area of 17,283 sq. ft. 'and will have to be rebuilt'. Materials, especially iron which forms the main item are very difficult to obtain in these days and it will take sometime before the work of re-construction is taken in hand. Under

no circumstances the roofs can be completed before 2 or 3 months. Taking all these facts into consideration the owner has been allowed compensation for the loss of two months' rent for the period taken in repairing the damages.

7. The owner's original claim for Rs. 61,139 has been reduced and subject to the confirmation by appropriate financial authority agreed Rs. 47,550. This figure is considered reasonable in full settlement of the case and is recommended.

W. E. C. Pettman, Lt.-Col. R. E. A. D. Lands, Hirings and Disposals, (Calcutta area)".

What has been set out above is the summary of the correspondence which bears on the claim for compensation in respect of the alleged damages to the roof and incidentally also on the damage to jute.

6. It may be observed that Ex. 23 dated the 14th January, 1947, coupled with the statement in Ex. 26 shows that the substantial items out of the claim of Rs. 61,139 are two, viz. (1) repair in respect of damage to roof, Rs. 39,000 and (2) two months loss of rent during the period of repairs, Rs. 17,240. The details of the repairs shown in the statement, Ex. 26, indicate that compensation was claimed on the basis of rebuilding the roof. This is also the basis of the recommendation of Vaid to his higher authorities as appears from para. 6 of Ex. 28. It has to be noticed that in para. 2, he asserted that the roof had collapsed. The letter from the firm dated the 14th January, 1947, averred that the roof was badly damaged, and that after restoration of the property, some urgent and necessary repairs had to be carried on by the firm which are still apparent for verification, that in respect of such repairs a sum of Rs. 21,500 had already been spent and a further sum of Rs. 18,700 had still to be incurred, and that relevant documents were enclosed. Now the gravamen of the prosecution case is that the allegations of damage to the roof by misuse of the military as well as the allegation of collapse thereof are absolutely false, fraudulent and collusive and that there has been deliberate misrepresentation in this behalf, while it is the defence case that these allegations are substantially true and that there is no question of any misrepresentation, fraud or collusion.

7. In the view of the High Court, the evidence did not disclose that any damage to the roof worth the name was caused by the occupying military and the subsequent conduct of both the appellants was such as to lead to a reasonable and necessary inference that the claim in this respect was fraudulent and the result of a conspiracy.

It is remarkable that in this case there is no specific evidence, in the nature of contemporaneous reports or the like as to the condition of the roof (1) when it was taken over by the military authorities from the firm in 1943; and (2) when it was handed back by them to the firm in 1945; nor is there any direct and stacking the materials kind of use to which it was being put during this period. The conclusions in this behalf have, therefore, to be necessarily formed with reference to the assertions and counter-assertions in the correspondence already noticed and the subsequent con duct of the parties. The offences charged have, therefore, to be brought home to the appellants in the light of the principles laid down by this Court in -- 'Hanumant v. State of Madhya Pradesh', (B), as applicable to such cases.

8. Throughout the correspondence above noticed, the firm had been asserting that the roofs were taken possession of in good condition and this appears to be corroborated to some extent by the report, Ex. D, of one Capt. Fairs dated the 19th September, 1945, relating to the fixation of rent for these roofs. Therein he says that the roofs are "quite good storage space, although.....limited owing to its load-bearing capacity."

On the other hand, the report of Arunachalam, Ex. 60, in July, 1944, asserts that "the roof was already defective" and this has been reasserted by him in his letter Ex. 52 dated the 13 December, 1945, wherein he refers to "certain defects in the construction of the roof".

As regards the actual use of the roof during the period of military occupation, the correspondence indicates repeated assertions by the firm of its misuse by the military by way of loading heavy articles thereon and allowing carpenters to work and turning it virtually into a workshop and so forth. The correspondence also shows repeated assertions that consequent on such misuse the roof was considerably damaged. The replies of the military do not indicate any denial as to the nature of the use to which the roof was being put.

The damaged condition of the roof during the period of military occupation, whether or not as a result of misuse, is virtually admitted by the tenor of the correspondence. What appears to have been stressed on the side of the military is their non-liability on the ground (1) of the original defects in the roof, and (2) of the liability of the owner to keep his premises in reasonably good condition.

It is true, as stated by the High Court, that the visible damage to the roof that has been asserted in the correspondence is only that small holes and cracks had developed and that glossiness had disappeared and so forth. But the whole tenor of the letters shows that the complaint was of serious damage to the roof in the sense that it had become extremely leaky and liable to collapse any moment and that it was rendered unsafe and became a menace and that in fact some rafters had fallen down. It is hardly correct, therefore, to treat the correspondence as by itself negativing the factum of the roof having been seriously damaged during the period of military occupation.

Such oral evidence as there is, appears to indicate the contrary. Four persons who are said to have had occasion to see or inspect this roof at some stage or other, have been examined as witnesses, P. Ws. 1, 4, 7 and 10. Of these the evidence of P. Ws. 4 and 7 does not require serious consideration with reference to this portion of the case. P. W. 4's evidence is with reference to an alleged inspection made by him only for 10 or 15 minutes in May, 1948, of which he has kept no record and of whose details, he, as admitted in cross-examination, has no recollection.

P. W. 7 is a person connected with the handing back of the possession to the firm in December, 1945. His evidence as to his impressions of what he saw of the roof at the time, which might have been valuable, if he had made a formal note of it and put it on the record, is of no use both because of the absence of any record and also because he has admitted in cross-examination that he has no technical knowledge and took with him at the time a technical person for assistance, whose name he does not remember.

The main oral evidence in the case relating to the condition of the roof is that of P. Ws. 1 and 10. P. W. 10 was the Assistant Garrison Engineer of the military unit which was directly concerned with this roof. His evidence taken with his report, Ex. 60, if accepted at its face value, would seem to indicate that the damage complained of was such as would require only an expenditure of Rs. 8,000 for its repair at the time and that the cause of such damage was not the alleged misuse of the military but the original defective condition of the roof.

The High Court itself has, however, treated the evidence of this witness Arunachalam as not being such as would be safe to be acted upon. He was the person directly responsible for having to attend to the repairs of the roof in proper time, if the repeated allegations of misuse and the consequential damage to the roof happened in fact to be true. He may have been, therefore,--as the High Court thought--interested in minimising the damage and denying responsibility in view of the persistent complaints made by the firm remaining unheeded by himself or by his department for a considerably long time before he actually inspected and made his report, Ex. 60.

There remains the evidence of P. W. 1. He was a Lt.-Col., Assistant Director, Lands and Hirings, Disposals Service of the military and the appellant Vaid was his subordinate. He spoke to having inspected godowns Nos. 19 and 20 of Shiva Jute Press sometime in May, 1948. It does not appear from his evidence that he inspected this roof at any time during the course of its occupation by the military between the years 1943 and 1945. His evidence, however, has been relied upon by the prosecution to show that there was no collapse of the roof as stated by the appellant, Vaid, in his draft of the letter, Ex. 40, put up by him for the approval and signature of Lt-Col. Pettman. His evidence has also been relied on before us by the appellants as being a clear indication of the nature of the damage complained of and as substantially corroborating the defence case in this behalf.

In examination-in-chief he says as follows:

> "I inspected the roof of the godowns Nos. 19 and 20 of Shiva Jute Press sometime in May, 1948. I found the supporting members of the roof, T. Iron and all that sagging and stanchion also buckled and 20 to 30 brick courses of the wall had developed cracks. The roof was intact and did not collapse".

In cross-examination he says:

> "The stanchion buckled on account of the excessive load. I said in my evidence before the Magistrate that the roof should have, but did not, come down. The tee iron and other things support a roof. A particular tee iron supporting a roof if loaded excessively would bend.....I do not remember if any other stanchion was buckled or not. Buckling of a stanchion may be due to overloading or eccentric loading. The brick courses of the wall had developed cracks, owing to the tilting of the supporting members of the roof. The roof was unsafe. I cannot give any opinion as to whether the Godown could be safely used without dismantling or reconstructing the roof. I found some patch repairs on the roof".

In re-examination he says:

> "The godown was an old building. I cannot say definitely what was the cause of buckling of the stanchion".

This no doubt is not direct evidence as to the condition of the roof either in December, 1945, or when the roof was handed back to the firm or in January, 1947, when the claim for very substantial and heavy compensation on the footing of serious damage was specifically put forward by the firm. There being, however, no evidence that the roof was put to any other kind of use subsequent to the possession thereof having been handed back to the firm, this evidence may well be treated as corroboration of the truth of the complaint, which the firm had been throughout making, that the roof had been rendered extremely unsafe by the use which the military put it to, in spite of repeated warnings.

It was hardly fair, as the High Court has done, to treat this evidence as showing that the roof was in fairly good order, with only very few of the stanchions buckled up. Indeed, Lt.-Col. Balakrishnan's evidence is a clear indication that though in fact the roof did not collapse, the expectation of the collapse at any moment was not unreasonable and that the damaged condition of the roof had gone so far as to have developed cracks in 20 to 30 brick courses of the wall by, the date of his inspection and to render the claim of compensation, on the footing of rebuilding it, not unreasonable.

The question then in such state of evidence is not whether the damage of the nature and extent for which the claim was put forward by the firm has been made out by the defence, but whether the prosecution has made out that the damage was so negligible and unsubstantial, when compared to the actual claim put forward, as to lead to the inference that such claim was fraudulent. If the repeated complaint of the firm that the roof had become unsafe and was liable to collapse at any moment is not in itself proved to be false but if on the other hand it can be said to have been fairly corroborated by the evidence of Lt.-Col. Balakrishnan, though it be of a later date, it appears to be clear that on the evidence taken by itself and apart from the alleged subsequent conduct, it cannot be said to be a case of no damage worth the name for which a claim for compensation on the footing of the roof having become so damaged as to require reconstruction, was dishonest. Lt.-Col. Balakrishnan specifically says:

> "I cannot give any opinion as to whether the Godown could be safely used without dismantling or reconstructing the roof".

It is obvious that in such a situation a person concerned might have honestly thought that a fair compensation was to be assessed on the basis of reconstruction.

In this context it is relevant to notice that in a letter from the firm to the Secretary, Calcutta Hydraulic Press Association, Calcutta, dated the 16th March, 1946, marked as Ex. A (16), requesting them to obtain sanction for certain materials necessary for reconstruction of the roof, the firm states as follows within a few months after it was handed over:

> "The above roof was seriously damaged while in occupation of the military authorities. The condition is so precarious that the roof may give way any time. In the circumstances it has become imperative to demolish it and construct a new roof instead".

There is no reason to think that this statement made in a letter--not to the military--was not honest.

It is true that Balakrishnan does give evidence that the roof did not in fact collapse. But it is to be noticed that though Ex. 30 indicates an assertion of collapse of the roof, the firm have not made any such assertion in their letter dated the 14th January, 1947, which is the basis of their claim. All that the firm say therein is that the roof was badly damaged that it was not repaired in spite of repeated warnings and that they themselves had subsequently to carry out certain urgent repairs and that the repairs carried out by them were still apparent and could be verified at sight. Balakrishnan in his cross-examination also says that he found some patch repairs on the roof. It may be observed that the appellant Vaid also in his inter-office note, Ex. 1, dated the 30th October, 1947, (which will be referred to again in connection with the case for the claim for the damage to the jute) shows under heading V, sub-heading (iii) under item No. 2 thereof as follows:

> "This building has been inspected by me. The 'portion' of the roof where heavy materials were stored etc., has 'collapsed' while the other portion is still in good condition".

If this is taken in the light of the assertion made by the firm in their letter dated the 23rd November, 1945, that rafters had fallen down in the Godown below and with the fact of patch repairs having been observed by P. W. 1, Balakrishnan, it is not altogether improbable that there may have been a partial collapse of the roof.

It appears to us that the Courts below have been unduly influenced by the appearance of falsity of Vaid's statement that the roof had collapsed as constituting a deliberate misrepresentation on which the claim was made & sanctioned, without noticing that the firm was not a party to any such statement & that on the part of Vaid it may have been an over-statement for a partial collapse. In any case, the conclusion of the courts below as to non-existence of any damage worth the name is not based on a correct and reasonable reading of the evidence in the case. No doubt in fairness to the learned Judges of the High Court, it must be said that their conclusion in this behalf, though based on the view that the correspondence does not disclose any serious perceptible damage excepting a few cracks or holes etc. was to a much larger extent based on the two circumstances, viz. that a discharge certificate had been given by an Agent of the firm and that there was absolute silence of the firm for a year thereafter without any claim for damages.

It appears to us, however, that the proper way of looking at a case of this kind on the evidence actually adduced, is to see whether the evidence such as it is, apart from subsequent conduct, indicates that there was any serious damage and in case the evidence taken by itself is dubious to see whether the subsequent conduct is such as to show that the claim was in fact unfounded or so high and disproportionate as to lead to a reasonable inference of fraud. In our opinion, taking the

evidence above noticed by itself and apart from the alleged admission in the discharge certificate, which will be noticed presently, it cannot be said that this is a case of no damage worth the name and indeed there are fair indications, though not positive proof, that the case of the firm that the roof had, during military occupation, undergone substantial damage which rendered it quite unsafe for any further use without reconstruction was presumably true.

9. The next question is as to whether such damage was the result of misuse by the military.

As already stated, the military consistently repudiated their liability in a number of letters on two grounds. The first was that the original construction of the roof was defective. The only evidence in support of this is of P. W. 10, Arunachalam. That his evidence is not safe to be acted upon as held by the Court itself has already been noticed. The further assertions in the correspondence by the military as regards the original defective condition of the roof appear to be no more than a reassertion of the impression of Arunachalam as per his report, Ex. 60, of July, 1944.

On the other hand, as has already been stated, the report of Capt. Fairs is some indication of the likelihood of the truth of the assertion of the firm that the roof was in fairly good condition when the possession was given to the military. At any rate, if the repeated assertions of the firm in their correspondence that the roof was being used for loading heavy articles and was turned into a kind of workshop for carpentry was true, it is reasonable to think, in the light of the report of Capt. Fairs, that the roof was being put to use beyond its limited load-bearing capacity. If that be so, the continuance of such use by the military in spite of repeated complaints without examining whether the roof was fit for the kind of use to which it was being put, may well render the military liable for damage to the roof consequent on such use.

The non-liability of the military for the alleged damage was sought to be supported on the ground that it was the duty of the owner to keep his property in repair. The rental agreement entered into between the firm and the Government on the 31st January, 1946, has been relied on in this behalf. But this agreement was on the 31st January, 1946, nearly two months after the property had been handed back. The term therein relating to the liability for repairs cannot have any bearing as regards the past events and is unreal in respect of the future.

On the other hand it appears from an endorsement of the Land Acquisition Collector to the firm as early as on the 10th August, 1943, in reply to the firm's letter dated the 28th July, 1942, that the Government had undertaken that "special damage beyond usual wear and tear will be paid for". Whether in fact this undertaking would or would not have been enough to sustain the claim if the matter had been taken to a Civil Court is a different matter. But in view of this endorsement, it certainly cannot be said that any claim for the kind of damage which may in fact have occurred to the roof by the use thereof by the military can be said to be so unfounded as to make it out to be dishonest.

It appears to us, therefore, to be quite clear that on the evidence on the record which consists of the correspondence from March, 1943 up to the date of handing back of the premises in December, 1945, and the oral evidence of P. Ws. 1 and 10, it cannot at all be said that the claim for damages to

the roof on the footing of the roof standing in need of reconstruction was an unfounded or highly disproportionate claim when there was no damage worth the name and in spite of there being no liability for any such damage. It is right to observe at this stage that once it appears on the evidence that a claim for compensation on the footing of reconstruction of the roof is reasonable, there is nothing to show that the actual details of the estimates for such reconstruction which have been put forward by the firm and recommended for sanction by the appellant Vaid are inflated and dishonest. All that can be said is that the evidence is insufficient to come to a positive finding in favour of the appellants as to the existence of damage of the kind or magnitude claimed, if their claim had to be investigated in a Civil Court and there may be room for suspicion that it may have been over-stated. The question, therefore, is whether in this state of evidence which, at the worst for the defence, can only be considered as dubious, the circumstances emerging from subsequent conduct (including within such conduct the giving of a discharge certificate by their agent) are such as to enable the Court to form a positive and satisfactory conclusion that the claim was unfounded or so grossly disproportionate as to prove it to be fraudulent.

10. The circumstances relied on in this behalf may now be noticed. The most important out of them is the clear discharge certificate, Ex. 4, given by an Agent of the firm by name H. P. Das, wherein he acknowledges that possession of the godown was handed over to him in good condition and that he had no further claim in respect thereof against the Government of India. The 'bona fides' of this certificate has been strenuously challenged on behalf of the defence. In spite of such challenge, both the Courts below have accepted this document as proved to have been signed by H. P. Das and that finding has to be accepted.

There can also be no reasonable doubt that H. P. Das a person who, at the time, was connected with the firm, as appears from the evidence of P. W. 6 and as indicated by the fact that his name appears as that of an attesting witness in the memorandum of agreement, Ex. 44, dated the 15th December, 1943. The question, however, is whether he was an Agent of the firm authorised by it to take back delivery of the roof on their behalf and to give a clear discharge receipt.

Before this document and the recitals therein can be used as against the appellant Kedar Nath Bajoria in a criminal case, such agency must be satisfactorily proved or at least it must appear quite clearly not only that the owners may have been aware of the fact that the delivery was handed back to their employee on their behalf but of the fact that a receipt purporting to give a clear discharge was passed by him to the authorities concerned.

The only evidence as to the authority of this person on behalf of the firm is that of P. W. 7. He says that on the 1st December, 1945, one Capt. Morley came to him accompanied by H. P. Das and two other marwari gentlemen. He says that he made notes (Ex. 53/1) relating to the address and telephone number of H. P. Das and also the direction of the Shiva Jute Press and that he made these notes as he wanted to get in there and to make over possession to the representative of the owner of the Shiva Jute Press. He says in cross-examination that he gave verbal notice to the owners to be present at the time of the release (of the roof), that on the 1st December, 1945, the owners came to him to his office and introduced H. P. Das as their representative, to whom the delivery of possession might be made. He also says that so far as he remembers, H. P. Das, was introduced to

him as the Manager of the company and their representative. But he admits that he did not take any letter of authority from them regarding H. P. Das and also admits that at the time of delivery he was aware that the owners were claiming damage. This evidence is hardly sufficient to make out the authority of H. P. Das not merely to acknowledge receipt of the delivery when handed back but also to give a clear discharge certificate so as to bind the firm.

It is remarkable that P. W. 6 who was an employee of the firm for 15 years and who has given evidence that H. P. Das was an employee of the firm has not been asked whether he is not the Manager of the company and the representative of the firm if according to the evidence of P. W. 7, he was introduced as such by the owners of the firm.

It is somewhat surprising how the Courts below have accepted this evidence, which does not stand any scrutiny, as legally sufficient for using the discharge certificate against the appellant Kedar Nath Bajoria in a criminal case. No doubt the handing over of the possession of the roof in December, 1945, has not been repudiated and it does not appear that any rent was claimed by the firm on the footing of ignoring this delivery. It may, therefore, be reasonably assumed that H. P. Das did receive possession on the firm's behalf and to their knowledge. But this certainly is not by itself enough to make out the authority of H. P. Das to give a clear discharge of liability with a binding recital that the roof had been taken back in good condition. The bare recital of the roof being then in good condition in such a document is clearly not admissible as proof thereof.

On the other hand, in view of the persistent assertions of the firm as to the serious damage caused to the roof and in view of their very clear and categorical letter so late as November, 1945, i. e. within two weeks prior to the handing over of the charge, wherein they have complained of very severe damage having been caused and in view of their statement therein "we hold you fully responsible for all the damages done and for all costs and charges as may be incurred for its repair", it is difficult to believe that they would have authorised their agent to give away their case or that they would have kept silent without repudiating this discharge certificate, if they became aware that the said H. P. Das not only took back possession but also gave a clear discharge certificate with such recitals.

It is significant that there is no proof of even a copy of this certificate having been sent to the firm. There is no proof at all that the appellant was aware of such a discharge certificate with these recitals having been given.

Further, the circumstances under which delivery had been handed over and the method and the manner in which that was done are remarkable. 'Admittedly the usual procedure for such handing over was not followed. There has been no formal derequisitioning and none of the other formalities prescribed by the rules in this behalf have been observed. It may be recalled that on the receipt of the letter dated the 23rd November, 1945, from the firm Maj. Mannings addressed a letter to the Garrison Engineer directing him to carry out inspection and to submit a report with his recommendation. There is no evidence that any inspection was done in pursuance of this letter. But on the 15th December, Arunachalam wrote only a letter in reply thereto, which does not say that any fresh inspection has been carried out. In the letter it is stated that the godowns were not in the occupation of the military and that the roof of the godowns were not occupied by the military. In it is

further stated that on examination, portions of the roofs were found damaged due to inherent defects in the construction of the roof and due to the deterioration thereof and that the military could not be held responsible for damage or repair to these private godowns.

It is in between these two dates that the handing over of the premises and the obtaining of the clear discharge certificate from H. P. Das took place. That this was brought about in hot haste is quite clear from the very evidence of P. W. 7, who speaks of Capt. Morley coming up to him on the 1st of December, 1945, with a slip containing a phone message from Major Waters requesting that the area -- meaning the roof -- be given up at "eleven hours", presumably that very day. Why the military should have, instead of carrying out the orders of Maj. Mannings to inspect the roof and to send a report, precipitated this handing over without any formalities and on a phone message, when a serious allegation of rafters having fallen down and substantial loss having occurred was made a few days earlier and why in that situation they took a clear discharge certificate not directly from the owners of the firm themselves (who were throughout directly corresponding with them) but only from an alleged representative thereof without a formal written authority in this behalf has not been even attempted to be explained. We are, therefore, quite clear in our mind that while the actual handing over of the premises to H. P. Das on the 8th December, 1945, is beyond question and that H. P. Das may presumably have had authority to receive possession, the document Ex. 54, cannot be used as against the appellant Kedar Nath Bajoria as a circumstance against him with reference to the statements contained therein about the roof having been handed over in good condition and as to the acknowledgment therein that there was no further claim against the Government excepting in so far as arrears of rent claimed to that date.

In our opinion this document has been lightly accepted and wrongly used by the Courts below against the appellant Kedar Nath Bajoria without any sufficient and careful scrutiny of the entire evidence and the circumstances relating thereto.

11. The two most important circumstances, however, on this portion of the case, which even on a careful scrutiny, leave somewhat serious suspicion against the appellants and in particular as against appellant Vaid, are (1) the extraordinary conduct of Vaid in taking up and passing on to the higher authorities with his recommendation this claim for damages to the roof of godowns Nos. 19 and 20 by the appellant Kedar Nath Bajoria accepting it to the extent of Rs. 47,550, and (2) the making of a claim by Kedar Nath Bajoria for a heavy sum of Rs. 17,240 as two months' loss of rent during the period of repairs and the expenses and the recommendation thereof by the appellant Vaid.

As regards the first of these two circumstances, it is obvious that apart from any question as to whether the discharge certificate, Ex. 54, was 'bona fide' and operated to completely absolve the Government, the existence of that receipt in the relevant files, and the fact that there was nothing in the records before him to show that that certificate was repudiated, could not have escaped the notice of appellant Vaid.

Further there is a complete absence of any claim from the firm for over an entire year. These are 'prima facie' circumstances against the claim, which cannot have failed to attract his attention. In

this situation, the absence of any specific orders from the higher authorities to justify his taking up this claim for investigation and the fact that these two important circumstances do not appear to have been specifically brought to the notice of the higher authorities, are undoubtedly strong circumstances indicating something suspicious about appellant Vaid's acceptance and recommendation of this claim.

Again so far as the claim for two months' rent is concerned, it is to be noticed that the rent of the roof whose damage has been complained of was only Rs. 500 per mensem and the claim of Rs. 17,240 is obviously on the footing of two months' rent in respect of the entire premises requisitioned whose rent per mensem was Rs. 8,572. This claim appears wholly without any justification. The claim is statedly in respect of two months loss of rent during the period of repairs and the repairs are in respect of godowns Nos. 19 and 20. It may have been possible to say that the rent to be calculated should be not with reference to the roof but with reference to these godowns themselves for which no rent had ever been fixed.

But even so, there appears no justification for the amount claimed. The total area of the roof of the godowns (and hence presumably of the godowns) being 17,283 sq. ft. as-appears from Ex. 40, and the rent at the rate of Rs. 8 per 100 sq. ft. having been fixed in respect of other godowns (vide Ex. D, report of Capt. Fairs dated 19-9-1945), the firm may well have been justified in claiming about Rs. 2,800 by way of two months' rent for the godowns themselves. But how the claim for two months' rent to the extent of Rs. 17,240 was made and how it was recommended for Rs. 17,144 is not easy to comprehend.

12. Thus a careful scrutiny of the main features of the evidence relating to the claim for compensation arising out of the damage to the roof is concerned, the clear position that emerges is the following. (1) The evidence on the record sufficiently indicates that as a result of the use by the military, the roof of Godowns Nos. 19 and 20 of Shiva Jute Press was substantially damaged, (2) The claim for compensation on the footing of its requiring reconstruction cannot 'ipso facto' be said to be dishonest or fraudulent, though there is no clear proof of the extent of such damage, and (3) The conduct of the military in repudiating liability for this damage without in terms denying the misuse and the occurrence of some damage followed by the hurried handing over of the possession when the falling of the rafters was brought to their notice and an inspection and report was there upon ordered, and the taking of a dubious discharge certificate without complying with any requirements of formal derequisitioning and without taking a discharge certificate from the owners directly, strengthens the impression that the military authorities concerned with it, during that period, shirked responsibility and evaded the issue. On the other hand (1) the fact that the appellant Vaid took upon himself the responsibility of enquiring into and recommending the claim which, on the face of it, was shut out by the discharge certificate and the apparent delay, and (2) the fact that he chose to recommend, what appears to be an extravagant claim in respect of the item of rent, are matters for serious suspicion.

It must be noticed that these two circumstances are matters to be explained primarily by the appellant Vaid. So far as the first out of them is concerned, Vaid may be taken to have been examined about it under Section 342, Cr. P. C., though the examination is not so specific and

pointed as might have been desired. His explanation is that he was asked by his immediate superior, Brittain, to take up incomplete and undecided cases in the area and complete them. As pointed out by the learned Judges of the High Court, this, is not satisfactory enough to explain why he reopened the claim for the damages to the roof which so far as the papers in the office files were concerned, must have appeared to him to have been closed by the discharge certificate.

He, however, further explains that he put up a comprehensive note with the details of the case including the past history to Brittain for orders. He further says that the case was scrutinised by various other officers and that the case was fully scrutinised by Col. Wood, Deputy Assistant Director, who also dealt with it after investigation and after a personal discussion with Major Mannings who was responsible for the release of the godowns. He further says in his explanation that all the facts were recorded by Col. Wood in the file and that the same was found missing from the papers when he inspected them on the 28th May, 1948, for the purpose of furnishing his departmental explanation. That the claim did go up for the scrutiny of number of higher officers is indisputable. The letter Ex. 40, bears the endorsement of J. K. Brittain in the following terms:

> "Recommended and forwarded for approval and onward transmission".

Again the matter seems to have gone to R. B. Mukherjee, whose note Ex. O shows that he also checked the estimate. That Col. Wood had also recommended the sanction of the claim and that the same was missing from the files and that the appellant Vaid brought it to the notice of the officers concerned during the investigation is amply borne out by the evidence of Balakrishnan, P. W. 1. He says as follows:

> "During police investigation Vaid complained that a certain document in the file was missing. The pin with which it was attached to the file was there, but not the note itself. That note related to the settlement of this particular claim, that note was a recommendation of Mr. Woods for sanction of the claim".

P. W. 4, the successor of Vaid, who admittedly handled all the concerned files admits in his cross-examination that a number of pages in the office file relating to Shiva Jute Press were missing. For instance he says "in Part III (in the said file) I don't find pages 144 to 147..... I do not find page 141 in Part I". A suggestion was made that he removed that sheet, but he denied it.

If as Vaid explains, the higher officers did scrutinise the claim and went into the matters thoroughly, it is unlikely that the very circumstances which now appear to be against the appellants, viz. the fact of the claim having been taken up and investigated in the face of the discharge certificate and the fact of a heavy claim for rent in respect of the entire premises would not also have attracted the notice of the higher authorities. It cannot be assumed in a case of this kind, as the learned Judges of the High Court have done, that they merely passed on the recommendation of appellant Vaid without scrutiny believing in his honesty and reliability.

It is to be remembered that Vaid came to this office only in September, 1946, and there is no warrant for the assumption that the higher officers, to whom no dishonesty is imputed, merely trusted

appellant Vaid without any sufficient experience of him. Indeed even as regards the apparently untenable claim for two months' rent, the matter was specifically scrutinised by S. D. O., R. B. Mukherjee as appears from his note, Ex. O. It is to be noticed therefrom that his objection was not that an extravagant claim was made for rent in respect of the entire godowns derequisitioned and not merely in respect of the godowns Nos. 19 and 20 or the roof thereof, but that two months' rent had been claimed as against one month's rent. It is also to be noticed that there has been no misrepresentation made in respect of this claim for rent since this item as set out both in Ex. 26/3 and in the letter Ex. 40, shows that it is based only on the time required for repairs of the roof of godowns Nos. 19 and 20 and not of all the godowns. It cannot be, therefore, said to be clearly established that the higher authorities were misled by any false representation so far as this claim in respect of rent was concerned.

13. In addition to the above two circumstances a number of other circumstances, such as, the apparent alteration in the figures in the letter of the firm dated the 14th January, 1947, the passing of an advance receipt by the firm in February, 1947, for the very amount which appears to have been worked out and recommended by Vaid about six weeks later, the appearance which the sequence of the correspondence in this behalf at the material period between December, 1946 and May 1947, bears and the fact that so late as on the 19th May, 1947, in a formal document, Ex. 31, the schedule of damages for which the compensation of Rs. 47,550/- was recommended was based on the first inspection dated the 8th April, 1947, have all formed subject matter of serious criticism and comment in the judgments of the Courts below and have been relied on to show the fraudulent nature of the claim and to indicate conspiracy and misrepresentation. In respect of some of them, learned counsel for the appellants has suggested explanations. We have called for the original records and examined all of them carefully. To deal with all of them in meticulous detail will only further burden this judgment. It is sufficient to say that on an examination of the originals, some of the explanations suggested appear to be plausible, while others remain unexplained and that in our opinion, those that remain unexplained are not enough to create anything more than mere suspicion.

14. Now it is well-settled that before a person can be found guilty with reference to mere circumstantial evidence, each of the circumstances relied upon must be clearly established and the proved circumstances taken together must be such as reasonably to exclude the probability of innocence.

Keeping aside a number of minor circumstances on which the Courts below relied, the main circumstances on which their conclusions were based are, as already noticed above, (1) there was no damage to the roof worth the name, (2) at the time when the roof was handed back to the owners their authorised representative acknowledged that the premises was returned in good condition and gave a clear discharge certificate which has not been repudiated, (3) the appellant Vaid, without any authority or justification reopened a claim which on the face of it must have been found to have been closed and lightly accepted it, and (4) the appellant, Kedar Nath Bajoria, put forward an untenable claim for an extravagant amount of rent and the appellant Vaid lightly recommended it.

In our opinion, the first two have not been made out, while the third and fourth, though giving rise to serious suspicion, cannot in the circumstances of this case, be made the basis of conviction. The claim had clearly undergone the scrutiny of the higher officers who had the final responsibility to approve of the recommendation and to sanction payment. The report of one of them has disappeared from the relevant file. There is no explanation for this disappearance or for the non-examination of any of the officers concerned particularly of Col. Wood and Mukherjee. There is nothing to show that none was available for examination in person or even on Commission.

These features in the case cannot be lightly ignored as the learned Judges of the High Court appear to have done. One other feature is important and has to be noticed at this stage. In the entire evidence there is nothing to indicate that the appellant Vaid had in fact received any illegal gratification in respect of this transaction. Nor is there any suggestion that he was found in possession of resources beyond his means.

Taking all these features together, the circumstances actually made out fall far short, in our opinion, of establishing any dishonesty or fraud in respect of the claim for compensation due in respect of damage to the roof. There may be room for suspicion that the claim was rather over-rated and that the appellant Vaid was accommodating. But this is no substitute for proof of dishonesty and fraud. In our opinion both the appellants are entitled to the benefit of doubt in so far as the charges in respect of this claim are concerned.

15. The portion of the prosecution case arising from the claim made by the firm for compensation in respect of the alleged damage to the stock of jute stored within godowns Nos. 19 and 20, the roof whereof was in military occupation, and the evidence relating thereto may now be considered.

It may be re-called that throughout the correspondence, already previously noticed in detail, there have been repeated complaints of the likelihood of damage to the jute as also of such actual damage by rain and heavy leakage. Even as early as in their letters dated the 21st November, 1943, 24th February, 1944, 9th June, 1944, and 14th June, 1944, they complain of risk of damage to the jute by misuse of the roof.

In their letters of June, 1944, they drew attention to the fact that the monsoon season was fast approaching and that the rains would shortly set in and unless the roof was immediately repaired, heavy loss to their jute would ensue. On the 12th July, 1944, the firm wrote a letter stating as follows:

> "Owing to storing of heavy materials and carpentry works done on the roof, the roof is badly leaking and our stock of jute lying underneath in the godowns are constantly being saturated with water pouring through the roof and jute is being all damaged".

The very next day, they wrote another letter categorically asserting that in the rain of the previous day, water came through the cracks in the roof in showers and considerable damage extending to over Rs. 50,000 was done to jute stored underneath and it was further stated that the firm would hold the military liable to compensate them for the loss incurred. It was at about this time that there

was an inspection by Arunachalam whose report in this behalf is Ex. 60. A copy of it was communicated to the firm. The portion thereof relevant for the present purpose is as follows :

> "Regarding damages the godown was visited by me with Major Slater of the O. I. D. and a representative of the landlord. The godowns were found empty and there was no damaged jute anywhere. The O. C., O. I. D. considers that even had there been any leakage in the roof the jute could never have been damaged. Therefore the question of damages cannot arise. Should the landlord desire to use his Go-downs he may be asked to repair his bad roofs and the O. I. D. may be asked to vacate the roof".

Arunachalam does not speak to these details in the evidence he has given as P. W. 10. The statement in the above report that the godowns were found empty and that there, was no damaged jute any where cannot be taken to negative the appellant's assertion of actual damage having occurred, because there is no clear evidence as to the date on which this inspection was made. It may well have been that the inspection was after the alleged damaged jute was removed from the premises, as the firm in its letter claiming compensation in this behalf asserted. Nor is there any evidence of any serious enquiry having been made at the time as to the truth of this allegation of heavy damage.

The position, therefore, on the evidence, so far, is that the firm was throughout complaining of the possibility of serious damage to the jute as a result of leakage through the roofs and it did in fact assert such damage to the extent of over Rs. 50,000 having occurred as a result of heavy rains on the 12th July, 1944, and there has been no fair scrutiny of it but only a repudiation of liability. It may, therefore, be taken as probable that some damage to jute did occur at the time. But there is nothing fairly to indicate the extent or quantum thereof except the bare assertion in the letter of the 13th July.

It is to be noticed that there is no repetition of this assertion of damage to the extent of Rs. 50,000 in the only two subsequent letters on the record dated the 28th July, 1944 and 23rd November, 1945. The actual final claim made in August, 1947, is for a sum of Rs. 1,62,175 out of which the loss in respect of jute alone is put down as Rs. 80,000. This, on the face of it, appears to be extravagant. No doubt in the letter dated the 13th July, 1944, "damage to the extent of over Rs. 50,000" has been asserted and this may have been only approximate. But having regard to the normal tendency of persons in such situations, the figure of Rs. 50,000 originally mentioned, could by no means have been an under-estimate.

The damage was in respect of property belonging to the Press Company which was maintaining accounts and getting them audited. It may, therefore, be expected that the loss would have been shown in their books of account. But the reference to any such books for verification of the claim has not been suggested in the letter of the firm dated the 8th August, 1947, though various other materials were submitted as enclosures in proof of other allegations in the said letter.

But, what is even more relevant is that there is nothing to show that the appellant Vaid made any investigation of this claim, before recommending it. In respect of the claim for damages to roof he made a joint inspection (whether with or without authority) and as a technical man, may have felt

honestly satisfied that compensation had to be paid on the basis of reconstructing the roof and may have correctly estimated the requirements on that footing. In this matter of the claim for damage to jute there is nothing to show that the appellant Vaid called upon the firm to furnish any materials to support the claim as regards the quantum thereof. Thus unlike as in the earlier part of this case concerning the claim for damage to the roof, there is nothing in the evidence relating to this claim indicating the reasonable likelihood of damage to the jute of the extent actually claimed in 1947, except a bare and solitary assertion of heavy damage to the tune of Rs. 50,000. There is thus reason to think, on the evidence in the case (apart from any subsequent circumstances) that the claim has been very much inflated without any basis or foundation, though the occurrence of some damage may be true. The question then is whether the circumstances brought forward relating to this portion of the case are such as to lead to a clear inference that this claim is fraudulent and the result of a conspiracy.

16. The circumstances under which the claim was actually put forward and the evidence relating to the steps that followed, therefore, require careful consideration. In the letter dated the 14th January, 1947, addressed by the firm to the military, which was concerned mainly with the claim for compensation as regards the alleged damage to the roof, it was noted at the end thereof as follows:

> "A separate claim due to the leakage for the deterioration of goods stored under this roof is under preparation and will be submitted shortly".

There is no further mention of this during the entire period when the claim in respect of the roof was being considered and settled and finally paid. It is only after the compensation in respect of that claim was drawn in May, 1947, that the firm wrote a letter to the military dated the 7th August, 1947, wherein the specific claim relating to the damage in respect of jute purports to have been put forward. This is after the lapse of full three years subsequent to the occurrence of the claim and was 'prima facie' time-barred. Paragraph 9 of the said letter says:

> "We submit herewith our claim for damages with a request that you will please take early steps for its payment".

But curiously enough after receipt of this letter by Balakrishnan and after his forwarding it to the appellant Vaid, for necessary action under date 14th August, 1947, a letter dated the 19th August 1947, was addressed by Vaid to the firm marked Ex. 35 (1) which states as follows:

> "Details of claim referred to in para 9 of your above quoted letter have not been received. Please submit at an early date to enable this office to take action".

This omission, if true, is surprising. It is in reply to this reminder that the firm appears to have sent its schedule of claim, Ex. 37, as an enclosure to its letter Ex. 36 dated the 21st August, 1947, wherein they regretted not having sent their claim along with their previous letter through oversight. It is significant to notice at this stage that Balakrishnan who has apparently received the earlier letter of the firm dated the 7th August, 1947, and who has endorsed it over for necessary action to Vaid has not made any note that the statement of claim referred to in paragraph 9 thereof was not in fact

received along with it. Anyway, after the receipt of the fresh letter, Ex. 36, dated the 21st August 1947, with the enclosure, Ex. 37. Balakrishnan again endorsed it over for action to the appellant Vaid.

Vaid thereupon put up to Balakrishnan an inter-office note, Ex. 1, dated the 30th October, 1947, covering four pages of typed matter in original, and making out an elaborate case in support of the claim and recommending acceptance of the claim to the extent of Rs. 1,28,125/-. On receiving this Balakrishnan scrutinised it and put up a note to his superior authority Lt. Col. Bishop, pointing out that since the claim relates to damages in respect of movables consequent on bad maintenance of the roof which was requisitioned by the Defence Department, it should be dealt with by the Claims Commission.

In sending up this note to his superior authority, he made a significant observation therein in the following terms:

> "A casual reading of the report would appear to convey that the concerned A. L. H. O. (referring to the appellant, Vaid) is acting on behalf of the owner for settling the claim in the latter's favour".

There can be no doubt that a perusal of the inter-office note, Ex. 1, sent up by Vaid to Balakrishnan fully justified this remark.

When the claim was received by Lt.-Col. Bishop, he agreed with Balakrishnan's view that this claim was to be investigated by the Claims Commission. The claim was accordingly transferred to be dealt with by the Claims Commission by letter dated the 19th January, 1948, and it is while the matter was thus pending with them, that further suspicions against Vaid appear to have been aroused. His services were meanwhile terminated and the present prosecution started.

Now, apart from the extraordinary delay of over three years from July, 1944 to August, 1947, in putting forward this claim and the apparently hesitant manner in which this claim was first merely indicated in the letter of the firm dated the 14th January, 1947, and thereafter formally presented in detail after a further delay of over seven months and apart from the clear appearance of special pleading by the appellant Vaid in recommending this huge claim to a very substantial extent, which rightly attracted the attention of Balakrishnan, there are a number of other serious circumstances which have been relied on in the judgments of the Courts below and commented upon. They are the following.

> (1) In the office file relating to Shiva Jute Press, there was found a paper proved to have been in the hand-writing of the appellant Vaid and marked as Ex. 41, with the heading 'draft of note on the roofs of godowns Nos. 19 and 20 of Shiva Jute Press'. This contains virtually the whole case relating to the claim of the firm in this behalf. It has been suggested that this was the basis of the actual matter contained in the firm's letter dated the 7th August, 1947.

(2) There was also found in the same file a script proved to be in the hand-writing of Vaid, which is marked as Ex. 28, which notes certain details regarding the rates with reference to various items included in the statement of claim.

(3) All the files belonging to Shiva Jute Press containing the correspondence relating to the claims which form the subject matter of these proceedings were, in the course of investigation, found not in the Shiva Jute Press but in the premises of the appellant Vaid and seized from him. These files contain quite a large number of slips and notes in the handwriting of Vaid himself.

(4) In one of the files belonging to Shiva Jute Press which in the course of the search were recovered from the residence of appellant Vaid, there is a statement bearing date 8-8-1947 which contains all the details of the claim given in the final statement of claim marked as Ex. 37, excepting with some variations to be presently noticed.

17. All these circumstances have been strongly relied on by the courts below. Of these the second does not appear to be serious and the third may be easily disposed of. It appears from the record that before the services of the appellant Vaid were terminated and after suspicions against the 'bona fides' became aroused, Col. Augier, Deputy Director, Lands, Hirings and Disposals Services, Eastern Command, sent a letter to the appellant, Vaid, dated the 19th May, 1948, wherein he was called upon to furnish his explanation as regards the various suspicious circumstances against him relating to the claim in respect of damages to the roofs and damages to the jute and the appellant Vaid was given time until the 29th May, 1948, to furnish the explanation. Before the expiry of this date and before he furnished his explanation, the matter was reported to the police and Vaid was arrested.

Vaid, in his answers to questioning under Section 342 of the Criminal Procedure Code (and this was supported by the suggestion in cross-examination to the witness P. W. 4,) said that he had obtained from the proprietors of the firm of Managing Agents of Shiva Jute Press their files relating to this subject with a view to framing his explanation and made some notes thereon and that he was suddenly arrested before he could send up his explanation. This explanation appears plausible and accordingly this circumstance may be left out of account. But the other two circumstances above noted, viz. 1 and 4 are of a more serious nature.

18. There is considerable force in the suggestion made on behalf of the prosecution that Ex. 41 was the basis of the claim made in the firm's letter dated the 7th August, 1947. Ex. 41 is couched in the language of the draft of a letter of claim to be sent up by the firm. Not only does the matter therein appear to have been substantially comprised in and taken into the letter dated the 7th August, 1947, but Ex. 41 itself uses the first person in its language as shown by the words 'our' and 'us' in almost every paragraph. It cannot be doubted that whoever wrote it out must have meant it to be adopted substantially by the proprietors of the firm. It puts forward a claim of Rs. 80,000 under two heads.

This Ex. 41 is proved by P. W. 4 to be in the hand-writing of Vaid himself. Thus there is material upon which it can reasonably be said that the claim in the letter Ex. 34 dated the 7th August, 1947, was in fact inspired by the appellant Vaid. Learned counsel for the appellant explains this

circumstance by suggesting that Ex. 41 is only a note made by the appellant Vaid after receiving the detailed claim, Ex. 37, dated the 20th August, 1947, of the firm and that it contains an examination by Vaid the appellant Bajoria with reference to that statement of claim.

Learned counsel tried to explain the use of the words 'our' and 'us' in every one of the paragraph of this note, as merely showing that it was taken down by the appellant Vaid for his office reference, in the form of a statement of the appellant, Kedar Nath Bajoria. But this manner of making an office note by way of examination of a person by an administrative officer with reference to a claim before him is very curious and so unusual as not to be entitled to serious consideration. The fact that no signature of the person so stating has been taken to this note is sufficient to negative this suggestion. Further it is remarkable that this note shows at its end, loss under two items, one of Rs. 50,000 and the other of Rs. 30,000. The first refers back to the letter of 13th July, 1944, but for the second no support is indicated. This confirms the impression that at the very outset the claim was deliberately and grossly exaggerated, without any real basis.

19. The other circumstance which is even more telling is this.

As already stated, in the files of Shiva Jute Press there was a statement of claim bearing date 8th August, 1947, which is almost a complete copy of the final statement of claim dated the 20th August, 1947. (The date therein appearing as the 20th September, 1947, is said to be a mistake). The fact that a verbatim duplicate of the statement of the claim ultimately submitted is found in the files of the proprietors of the firm would not by itself be a matter for suspicion or comment because that may have been an office copy kept in their file for purpose of future reference. But what is telling and almost crucial is that a comparison of the two statements discloses that in respect of quite a number of items, the amounts in Ex. 37 have been simply doubled from what appear in Ex. 9, by the simple process of doubling the rate in respect of these items.

Thus for instance loading charges of Rs. 600 in respect of bales of jute which in Ex. 9 is shown at three annas per bale, has been shown in Ex. 37 as Rs. 1,200 at six annas per bale. Similarly the item of cartage shown as Rs. 1,600 in Ex. 9 at the rate of eight annas per bale has been shown as Rs. 3,200 at Re. 1 per bale. Like this, in respect of more than 10 items this process has been adopted and the net result is that a claim of Rs. 1,29,795 in Ex. 9 dated the 8th August, 1947, has been worked out as a claim for Rs. 1,62,175 in Ex. 37, dated the 20th August, 1947.

Thus there appears to have been a deliberate pushing up of the claim by over Rs. 30,000. The find of this paper, Ex. 9, in the files belonging to the Shiva Jute Press, seems to indicate that this was the original statement of claim which was sent as an enclosure to the letter of the firm dated the 7th August, 1947, as stated in paragraph 9 therein and that the present statement of claim, Ex. 37, was substituted therefore by the expedient of the appellant Vaid, writing to the firm that no statement of claim was received along with the letter dated the 7th August, 1947, and of asking the firm to make up this omission and that the appellant Bajoria falling in with the suggestion, sent a fresh letter with a fresh statement of claim which was substituted for the pre-existing statement, the original statement being returned to the appellant, Kedar Nath Bajoria.

Thus the two circumstances above noticed are definite and clinching circumstances as against the appellants, which lead to a reasonable and necessary conclusion that the claim put forward by the appellant, Kedar Nath Bajoria for compensation in respect of the alleged damage to the jute has been deliberately and fraudulently bolstered up, and was the result of a mutual arrangement and that the inter-office note, Ex. 1, put up by Vaid to Balakrishnan, which immediately aroused suspicion as being in the nature of a special pleading, was also the outcome of this arrangement. In the circumstances above noticed and subject to one lacuna to be presently stated, it appears to us that the Courts below were fully justified in coming to the conclusion that the claim in respect of the damage to the jute was a fraudulent one, which was put forward by the appellant Kedar Nath Bajoria and recommended by the appellant Vaid, as a result of a mutual arrangement between them.

20. The lacuna, however, is that there has been no questioning under Section 342 of the Criminal Procedure Code of the two appellants, Kedar Nath Bajoria and Vaid on this part of the case, as regards any of these adverse circumstances which form the basis of the conclusion of the Courts below on this claim. There is a complete lack of any reference to these matters in the questions put to either of the appellants under Section 342, Cr. P. C. This undoubtedly is a serious irregularity and cannot be lightly ignored.

If prejudice was thereby caused, such art irregularity would entail retrial in the circumstances of a case like this. But before a retrial can be ordered the Court must be clearly satisfied about prejudice having been caused.

In the course of the arguments before us when the above mentioned circumstances were relied on, against the appellants, their learned counsel has not been able to indicate to us the likelihood of any plausible and reasonable explanations which the appellants may have furnished about them on questioning. The appellants have been defended throughout and the unavailability of any likely and reasonable explanation even at this stage is a relevant consideration to determine the course to be adopted by an appellate Court when such a procedural lacuna is found. On the facts of this case we are not satisfied that any serious prejudice has been caused and that a retrial at this stage is likely to be productive of any fruitful purpose.

After giving our most careful and anxious consideration to all the circumstances of this case, and having regard to the fact that we are exercising our jurisdiction in an appeal by special leave, we do not feel called upon to interfere with the finding of the Courts below relating to this portion of the case namely the claim in respect of damage to jute.

21. It follows, therefore, that in our view the convictions and sentences of the two appellants respectively as regards the charges under Section 420 of the Indian Penal Code and Section 5(2) read with Clause (1)(d) of the Prevention of Corruption Act, 1947, cannot be maintained. But their convictions in respect of the charge of criminal conspiracy under Section 120-B, I. P. C., must be affirmed. Since the conspiracy which we accept is that which relates only to the claim as regards the compensation for the damage to jute and since the substantive offences themselves have not been committed, the sentences awarded by the Courts below in respect of this charge require modification. The Courts below have sentenced each of the appellants to rigorous imprisonment for

six months in respect of this charge. Having regard to the view we have taken, it is not necessary to maintain the sentences of imprisonment.

22. In the result the conviction of the appellant Kedar Nath Bajoria under Section 420, I. P. C, and his sentence therefore and the conviction of the appellant Hari Ram Vaid under Section 5(2) read with Clause (1)(d) of the Prevention of Corruption Act, 1947, and his sentence therefore are hereby set aside. But the conviction of both these appellants under Section 120-B, I. P. C, read with Section 420, I. P. C., and Section 5(2) of Prevention of Corruption Act, 1947 is maintained. The sentences in respect thereof are modified as follows. Appellant Kedar Nath Bajoria is sentenced only to a fine of Rs. 2,500/- and in default of payment thereof to rigorous imprisonment for three months. Appellant Hari Ram Vaid is sentenced only to a fine of Rs. 1,000/- and in default of payment thereof to rigorous imprisonment for two months. Bail bonds are discharged and excess fines if already paid will be refunded.