Sat Pal vs Delhi Administration on 29 September, 1975

Equivalent citations: 1976 AIR 294, 1976 SCR (2) 11

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, P.N. Bhagwati

PETITIONER:
SAT PAL

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT29/09/1975

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
BHAGWATI, P.N.

CITATION:
1976 AIR 294 1976 SCR (2) 11
1976 SCC (1) 727
CITATOR INFO :
F 1979 SC1848 (12)
RF 1986 SC 250 (39)
R 1986 SC1769 (5)
APL 1990 SC 209 (24)

ACT:
Evidence-Trap witnesses and witnesses with bad antecedents-Necessity for corroboration by independent evidence.
Evidence Act (1 of 1872) ss. 8 and 154-'Hostile' witness-Weight of evidence of-Silence as conduct.
Code of Criminal Procedure (Act S of 1898) s. 162-Statements recorded during investigation-Use of. C

HEADNOTE:
The appellant, an Assistant Sub Inspector, attached to the railway station was convicted under s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act, 1947, and s. 161, I.P.C. The evidence against him was that the arrested P.W. 1, took-away Rs. 30/- from him and demanded an

additional Rs. 70/- for releasing him. These facts were spoken to by P.W. 1 and P.W. 2 and P.W. 8 who were the women companions of P.W. 1. The evidence regarding the payment of Rs. 70/- and its recovery was spoken to by P.W. 7, a friend of P.W. 1 who brought the money, and P.W. 9, the Inspector attached of the AntiCorruption Police who set the trap for catching the appellant. Two items of circumstantial evidence on which the trial court relied were, (a) that P.W. 1 was found detained by the appellant at the Police Station. and (b) that the accused kept silent when P.W. 9 accused him of having taken a bribe. P.Ws. 3 and 4 were the panch witnesses who were present at the time of the recovery of the tainted currency notes from the appellant. They turned 'hostile' to the prosecution but in cross-examination, supported the prosecution regarding the silence of the appellant when accused of having taken the bribe. P.W. 3 further supported the prosecution to the extent that the solution turned pink when the hands and the pocket of the pants of the appellant were dipped in it.

The conviction of the appellant was confirmed by the High Court.

Allowing the appeal to this Court,

^

HELD: (1) I`his Court ordinarily does not review the evidence and disturb concurrent findings of fact unless the findings are clearly unreasonable or vitiated by illegality or material irregularity of procedure or are otherwise contrary to the fundamental principles of natural justice and fair-play. In the present case the trial court and the High Court have not only used the statements of certain witnesses in a manner which is improper or impermissible under the law, but also erred in accepting the testimony of interested witnesses without the caution and corroboration requisite in the peculiar circumstances of the case. [20B-D].

(2) There can be no general rule of universal application for weighing evidence. There ii also no absolute rule that the evidence of an interested , witness cannot be accepted without corroboration. But where the witenesses have poor moral fibre and have to their discredit many bad antecedents, and have a motive to implicate the accused, as P.W. 1, 2, 7 and 8 have against the appellant, it would be hazardous to accept their testimony in the absence of corroboration on crucial points from independent sources. [22G-H].

R. P Arora v. State of Punjab, A.I.R. 1973 S.C. 498, referred to.

(3) P.Ws. 1, 7 and 9 were concerned with the success of the trap laid for the appellant and as such were intersted witnesses. Qualitatively, the evidence of P.Ws. 1 and 7 was far inferior to the testimony of an ordinary interested witness. They were pimps haunting the railway station to solicit customers for P.Ws. 2 and 8. The accused was a

police officer with an outstanding and unblemished
12
record of l9 years service and was an obstacle to these witnesses in their. activities. It could not, therefore, be said that they had no motive to falsely implicate him. [20D-G; 2ZA-B].

(4) The sum of Rs. 30/- which was alleged to have been taken away by the appellant from P.W. 1 was not recovered from the appellant or from anywhere else in the police station. Further, according to P.W. 7, when the balance of Rs. 70/- had been paid, the appellant did not allow P.W. 1 to go away. Ordinarily such discrepancies and small improbabilities are not of much consequence; but when the witnesses are manifestly disreputable persons, their testimony must pass the test of severe scrutiny and even minor infirmities may assume importance. [22D-G].

(5) As regards P.W.9, though it has not been shown that he had any hostile animus against the appellant, or that he was friendly to P.Ws. 1 or 7, he was the Inspector of the Anti-Corruption Staff of Police who planned the trap, and was therefore, interested in its success. Although the power conferred on him did not extend to the investigation of an offence under s. 161, I.P.C.. he went ahead with the execution of the trap and the investigation. Not being an independent witness, this evidence could not furnish the kind of corroboration requisite in the circumstances of the case. [23E-H].

(6) As regard the circumstantial evidence. (a) the conduct of the appellant in detaining P.W. 1 for interrogation could be the innocent act of an honest and duty-conscious Police officer in view of the immoral activity of P.W. 1 and his companions P.Ws 2 and 8; and (b) assuming that the silence cf the appellant was admissible as conduct under s.8, Evidence Act, and not excluded as a statement under s. 162, Cr. P.C., its probative value in the circumstances. Of the case would be almost nothing. the appellant explained that he did not protest and resist out of fear, that P.W.9 might make matters worse for him even for getting bail. It would not be unusual, even for an innocent officer, to be frightened out of his wits on being suddenly accused of bribe-taking by a superior offal. [22B-C; 23D-E]

(7) Even in a criminal prosecution, when a witness is cross-examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as wiped off the record altogether. It is for the court to consider in each case, whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited, or can still be believed in regard to a part of his testimony. If in a given case the whole of the testimony of such a witness is impugned and in the process, the witness stands squarely and totally discredited, the Judge should as a matter of prudence,

discard his evidence in toto. [30D-F]

(a) Unlike the law in England, in India, the grant of permission to cross examine his own witness by a party is not conditional on the witness being declared 'adverse' or 'hostile'. In fact, in the order granting such permission it is preferable to avoid such expressions as "declared 'hostile," "declared unfavorable" etc. Whether it be tho grant of permission under s. 142, Evidence Act, to put leading questions or leave under s. 154 to ask questions which might be put in Cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the Court. The discretion is unqualified and untrammeled and is apart from any question of hostility. It is to be liberally exercised whenever the court from the witness's demeanour temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. The fallacy underlying the view that where a party calling the witness requests the court to declare him a "hostile" witness and with the leave of the court cross-examines the witness, the latter's evidence should be excluded altogether in criminal cases, stems from the assumption that the only purpose of cross-examination of a witness is to discredit him. There is another equally important object of cross-examination, namely to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of
13
the court, confronts his witness with his previous inconsistent statement he A also does so in the hope that the witness might revert to what he had stated previously, because, if the departure from the prior statement is not deliberate but duo to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. The rule prohibiting a party from putting questions in the manner of cross-examination or in a leading form to his own witness is relaxed not because the witness has already forfeited call right to credit but because from his antipathetic attitude or otherwise, the court may feel that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way. [26 E-H; 27 F-28 B].

(b) Section 154 speaks of permitting a party to put to his own witness questions which might be put in cross-examination. It is not necessarily tantamount to crossexamining the witness. Cross-examination, strictly speaking, can only be by the adverse party. Therefore, neither the party calling human, nor the adverse party is, in law, precluded from relying on any part of the statement

of such a witness. [28 C-E]. C

(c) The contention of the appellant that this Court in Jagir Singh v. State A.I.R. 1975 S.C. 1400, held that when a prosecution witness, being hostile, was cross-examined by the public prosecutor, his entire evidence is to be discarded as a matter of law, is misconceived. In that case the Court did not reject the evidence as a rule of law, but only after scrutinising it carefully came to the conclusion that the evidence should be rejected en bloc. 130 F-H;.

(d) Therefore, a part of the evidence of P.Ws 3 and 4 could be used or' availed af by the prosecution in support of its case. But, they contradicted substantially their previous statements, and as, a result of the crossexamination, their credit, if not wholly was substantially, shaken. Therefore, as a matter of prudence, on the facts of the present case, it would be hazardous to allow the prosecution to use stray sentences from their evidence as corroboration to support the evidence of the trap witnesses. [31 A-B].

(8) The High Court was also not competent to use the statements of these witnesses recorded by the police during investigation for seeking assurance of tbe prosecution story. Such use of the police statement is not permissible under the proviso to s. 162, Cr. P. C. They can be used only for the purpose of contradicting a prosecution witness in the manner indicated in s. 145 Evidence Act, and for no other purpose. [31 C-D].

(9) Further, there was the evidence of defence witnesses which was not successfully impeached by the prosecution in cross-examination. The High Court had not discussed thier evidence at all. If that evidence were to be believed the possibility of the tainted notes having been implanted by P.W. 7 from where they were recovered, could not be ruled out. [31 E-G]

Baikuntha Nath v. Prasannamoyi, AIR 1922, P.C 409; Prophulloa Kumar Sarkar v. Emperor ILR 58 Cal. 1404; Shobraj v. R. ILR 9 Patna 474; E. Jehangir Carna 1927 Bom. 501; Ammathayar v. Official Assignee 56 Mad. 7. Mebti v. R. 19 Pat. 369 Shahdev v. Bipti AIR 1969 Pat. 415; IL.R [1954] 4 Raj. 822(DB). Shyam Kumar v. E. (1941) Oudh 130; AIR 1955 NUC (Punj) 5715. AIR 1964 M.P. 30. In re Kulu Singh; Rana v. State AIR 1965 oriss 31; AIR 1960 Mys. 248; (1951) Ker. L.T. 471; AIR l953 J & K 41(DB); Narayon Nathu Naik v. Maharashtra State. [1971] 1 SCR 133 referred to. G

Observations contra in Luchiram Motilal v. Radhe Charan, (1921) 24 C.L.J. lO7. E. V. Satyendra Kumar Dutt, AIR 1923 Cal, 463; Surendra v. Ranee Dassi 47 Cal. l043; Khijiruddin v. E. AIR 1926 Cal. 139 and Panchanan v. R. 57 Cal. 1266, over-ruled.

JUDGMENT:

CRIMINAL APPELLATE JURIDICTION: Criminal Appeal No. 1 37 of 1971.

Appeal by Special Leave from the Judgment and order dated the 9th` March 1971 of the Delhi High Court-at New Delhi in Criminal Appeal No. 151 of 1970.

Frank Anthony) o. P. Soni and E. C. Agarwala for the Appellants.

V. C. Mahajan and R. N. Sachthey for Respondent. The Judgment of the Court was delivered by SARKARIA, J. This appeal by special leave is directed against a judgment of the High Court of Delhi upholding the conviction and sentence of the appellant under s. S(2) read with s. 5(1) (d) of the Prevention of Corruption Act and s. 161 Penal Code. The facts are these:

> On 16-1-1970, Ramesh-@ Kaka (PW l).Mst. Maya (PW2) and Jayna (PW 8) went to the Railway Station to receive one Mst. Mum taz, who was expected from Bombay by 1.45 p.m. train. Finding them loitering there, a constable of the Railway police took them to the appellant at the Railway Police Post where he was posted as an Assistant Sub-Inspector. The appellant gave a beating to Ramesh and demanded an explanation as to why they had come to the Rail way Station. Ramesh said that they had come to receive one Mst. Mumtaz, who was expected from Bombay by train at about 1.45 P.M. The appellant questioned if Mumtaz was being brought to Delhi for prostitution. Ramesh and his companions refuted the insinuation and informed the appellant that Mumtaz was a dancing girl and not a prostitute. The appellant then demanded a bribe of Rs. 100 from Ramesh and party, warning that in the event of non-payment, they would be Implicated in some case. Ramesh paid Rs. 30 there and then to the appeIlant. The latter insisted that they would not be released unless they paid the balance of Rs. 70/- on the suggestion of the women, the appellant detained Ramesh but let of the women with the direction to send the balance of Rs. 70/-. Mst. Maya and Mst. Jayna returned to their residence on G.B. Road and informed Dal Chand (PW 7) all about the incident. Mst. Maya then hand ed over Rs. 70/- to Dal Chand for securing the release of Ramesh. Dal Chand instead, went to the office of the Anti-Corruption Police where Inspector Paras Nath recorded his statement, Ex PW 3/A. The Inspector organised a raiding party. He summoned Surinder Nath (PW 3) and Sohan Pal Singh (PW 4), two clerks from the Sales-tax office. The recorded statement of Dal Chand was then read out to Dal Chand" and was admitted to be correct by him in the presence and hearing of the Panch witnesses. Dal Chand then produced seven currency notes of the denomination of Rs, 10/- each. The Inspector treated those notes with phenol-phythelene powder. He demonstrated to the witnesses how the fingers of a person touching a note treated with such powder would turn violet when dipped in a solution of sodium carbonate. The treated notes were then returned to Dal Chand with the direction that he should hand over the same to the appellant on demand. The Panch witnesses were instructed to keep close to Dal Chand to witness the passing of the tainted notes. The raiding party headed by Inspector Paras Nath, including Dal Chand and the panch witnesses then reached New . Delhi Railway Station at about 5.25 p.m. Dal Chand and Sohan Pal Singh were

directed to go ahead while the rest of the party took up positions nearby. Dal Chand and his companions found the appellant talking to some per-

son just outside the Police Post. After a couple of minutes when the A appellant was free from that talk, and was alone, Dal Chand approached him and said that he was the brother of Ramesh (PW 1) and had been sent by the women to pay him Rs. 70/- for getting Ramesh released. The appellant first demanded Rs. l00/- but later received Rs. 70/- from Dal Chand and put the currency notes in the left side pocket of his pants which he was then wearing. The appellant than told Dal Chand to go away, and assured the latter that Ramesh would be releated. The appellant then went into his room in the Police Post. Inspector Paras Nath and party followed the appellant into the room. Inside they found him sitting on a cot and Ramesh PW squatting on the floor. The Inspector disclosed his identity and accused the appellant of having received a bribe. The appellant kept mum. The Inspector then recovered the currency notes Ex. Pl to P7, from the pocket of the pants which the appellant was then wearing. He compared the numbers of the notes with those noted in the memorandum PW 3/P. They tallied. Pointing towards Ramesh, the Inspector asked the appellant as to who he was. The appellant replied that he (Ramesh) had been found loitering outside in suspicious circumstances and was brought for interrogation. The left hand fingers of the appellant were then dipped in a solution of sodium carbonate which turned pink. After preparing the seizure memo and the raid report (PW 9/A), the Inspector sent the same to the police Station for registration of the formal First Information Report.

After completing the investigation and securing the necessary sanction for prosecution of the appellant, he laid a charge-sheet against him in the court of the Special Judge, Delhi.

Examined under s 342, Cr.P.C., the appellant denied the prosecution case, and gave this version of the occurrence.

"I left the Police Post at 4.15 p.m. in uniform for patrol duty at the New Delhi Railway Station platforms because there is a heavy rush of trains at that time. I was sent for by the Incharge Police Post through Dev Raj Constable. I came to the Police Post through an entrance towards the plat form. At that time Incharge, Police Post was busy in a con versation on telephone. I was carrying a baton in my hand. I entered my room and placed the baton on the table. My room is hardly 8'x4 1/2. Just at that time Inspector Paras Nath came there and secured me near the door of my room. On a Pew occasions I did not oblige Inspector Paras Nath for getting seats reserved at the Railway Station for his friends and relatives. He had strained relations withme. I knew Dal Chand and Ramesh, They are pimps. They often used to come to the Railway Station to solicit customers who were visitors to Delhi. On a number of occasions I saw them ac companied by prostitutes of G.B. Road. I reprimanded them several times not to frequent the Railway platforms in that manner. They were out to

harm me. The recovered pants was hanging on a peg in my room and it was removed from there by the Inspector. I was wearing my uniform. No proceedings of the type mentioned above took place in my room. l got confused on seeing the Anti-Corruption Staff. I was afraid that they might create trouble for my bail and there fore I did not resist or protest. I have served in the Police Department for the last 19 years and there is not a single ad verse entry" major or minor in my service book. I am innocent."

In defence, the appellant examined five witnesses-all members of the Police force.

Head Constable Jabar Singh (DW 1) testified on the basis of the service record, that there was not a single adverse entry in the Character Roll of the appellant, and that no less than 60 commendation certificates, some of them accompanied by cash rewards, were awarded to. him since his joining the Police force on 7-6-1951. Constable Sardar Singh DW2, proved with reference to the official records brought by him that Ramesh (PW 1) was convicted and fined on 14-1- 1966 by a Delhi Magistrate under s. 12 of the Gambling Act. Constable Dev Raj, DW 3 of the Railway Police Post was examined to show that at the time of occurrence, the appellant was in police uniform and was not wearing the civilian clothes, including the pants from which the tainted currency notes are alleged to have been recovered. He testified that on 16-1-1970 at about 4.45 p.m., the Incharge Police Post directed the witness to convey a message to the appellant that he was wanted on the telephone to receive a call from his sister from Kirti Nagar. Accordingly, the witness went and conveyed the message to the appellant who was then in uniform, patrolling the Railway platform. Constable Muharrar Sujan Singh, DW 4, produced the Daily Diary of the Police Post, containing entry No. 40, showing that on 16-1-1970, the appellant had departed from the Police Post for patrol duty at 4.15 P.M. He. stated that there was a Standing order according to which all Police; Officers going on patrol were peremptorily required to go in uniform.

Om Prakash Sahni, DW 5, is an important witness examined by the defence. He is a Sub-Inspector who at the relevant time, was the charge of the Police Post of New Delhi Railway Station. His room in the Police Post is on one side of the verandah and that of the accused on the other side at a distance of hardly six feet. The dimensions of the room of the accused are 7'x6' and it has only one door which opens into the verandah. DW 5 completely discounted the prosecution version. According to him, on 16-1-1970, he was throughout present in his room from 1.30 P.M. to 5.55 P.M. During this period he did not see any stranger, or suspect in the room of the accused. The witness swore that between 5.30 P.M. and 6 P.M., the accused was on patrol duty. He further stated that at about 5.45 P.M. a telephone call was received from the sister of the accused from Kirti Nagar, whereupon he sent Constable Dev Raj to inform the accused about it. In response to the message sent by the witness, Sat Pal accused in Police uniform came from the side of the Railway platform to the Post. At that time" the witness was attending to another telephone message, consequently, the accused went into his room. The witness then left for patrol duty, after telling the accused about the telephone message.

The prosecution evidence which is the mainstay of the conviction of the appellant may be catalogued under these captions:

A. Direct Evidence

(i) Demand of the bribe: Evidence in regard to this fact was given by Ramesh, PW 1, Mst.

Maya, PW 2, and Mst Jayna PW 8.

(ii) Passing of tainted currency notes, P1 to P7 to the accused Evidence with regard to this fact was given by Dal Chand (PW 7) and Inspector Paras Nath, PW 9.

(iii)Recovery of the tainted notes from the person of the accused. Dal Chand PW 7 and Inspector Paras Nath PW 9 are the only witnesses who have deposed to this fact For proof of this fact, support has also been sought from the evidence of the hostile witnesses, PW 3 & 4. B. Circumstantial Evidence

(i) The circumstance that Ramesh was found detained by the appellant.

(ii) on being accused by the Inspector, that he had obtained a bride, the appellant kept mum and did not protest or refute the accusation.

It may be noted at the outset, that Surinder Nath, PW 3 and Sohan Pal Singh PW 4, who were supposed to be independent Panch witnesses of the trap, turned hostile to the prosecution and were thoroughly cross-examined by the Public Prosecutor with the leave of the court to impeach their credit. In cross-examination, Surinder Nath, however, said that when the Inspector accused the appellant of receiving a bribe, the latter kept mum. He further supported the prosecution to the extent, that when the fingers and the pant pocket of the accuscd were dipped in a solution of sodium carbonate, they turned pink. Excepting with regard to the reticence of the accused on the query made by the Inspector, Sohan Pal Singh, who was supposed to have kept close company with Dal Chand, did not support the prosecution at all.

The learned trial Judge found that "the complainant and party are "men of shady and questionable character" but according to him, that was no ground to discard their testimony. Referring to certain observations of Dua J. in Ram Sarup Singh v. The State,(,l) he held that persons with such shady characteristics fall easy victims to the illegal exploits of unscrupulous and dishonest officers. The Judge was further of the opinion that the testimony of the Panch witness Surindernath (PW3) also cannot be discarded straightaway on account of his having been cross-examined by the prosecution". He rejected the defence version propounded by DWs 3 and 5 and concluded that the evidence given by the PWs including Dal Chand, and Inspector Paras Nath, coupled with the compelling circumstantial evidence was (1) (1967) Cr. L. J. 744.

sufficient to establish the passing of the tainted notes to the accused and the subsequent recovery of the same from him. Calling in aid the presumption under sec. 4 of the Prevention of Corruption Act, he convicted the appellant under sec. 5(2) read with sec. S(l)(d) of the Act and under s. 161, Penal Code.

In appeal, the High Court affirmed the findings of the trial Court. In seeking support for the prosecution case from the evidence of the hostile witnesses, it went far ahead of the trial court. The High Court sought assurance from the statements of PW 3 and 4 thus:

> "After a detailed reference to the evidence adduced in this case-it becomes clear that P.Ws 3 and 4 in their statements under s. 161(3) duly proved in terms of the proviso to section 162 of the Code of Criminal Procedure, did support the version which was given at the trial by PWs. 1, 7 and 9. If it were open to an accused person to utilise the aforementioned proviso to urge that the contradictions point in a particular direction then it is equally open to the prosecution to urge that the contradictions establish on the record that the statement made earlier to which the statement made in court was contrary, was the one which was the correct statement."

Perhaps realising that in making use of the police statement it was going too far, the High Court then switched over to the alternative argument:

> "It is not only on the basis of the statements falling within the purview of the proviso to section 162 that I am coming to the conclusion that the prosecution has succeed ed in proving its case. Even otherwise I am satisfied that Ramesh was kept in custoday by the appellant whose hands, when dipped in the sodium carbonate solution turned pink. The same was the result when the pocket of Pant Exhibit P; 11 was dipped in the sodium carbonate 'solution."

Conceding that the testimony of the trap witnesses was interested testimony, the High Court held that it was not correct to say that their evidence cannot, as a matter of law, be accepted without corroboration. On this point, it referred to this Court's decision in Dalpat Singh v. State of Rajasthan.(1) Even so, according to the High Court the interested testimony of PWs 7 and 9 "received full corroboration from PW 1". The High Court summarily brushed aside the defence version without adverting to the defence evidence at all.

Mr. Frank Anthony, the learned Counsel for the appellant con tended (a) that the courts below erred in law in using the reticence of the appellant as evidence against him. This silence amounted to a statement made to the police in the course of investigation, and as such it was inadmissible, being hit by s. 162, Cr. P.C. (Reference (I) A. I. R. 1969 SC. 17.

has been made to Narasimham v. State(ll). In any case, this A reticent conduct of the appellant was not indicative of his guilt; (b) that the courts below have erred in using a part of the testimony of the hostile witnesses in support of the prosecution case. 'They had been fully cross-examined by the prosecution to impeach their credit, and indeed their evidence stood thoroughly discredited (For this proposition reliance has been placed on a recent decision of this Court in Jagir Singh v. The State (2); `(C) that the High Court has erred in using the police statements of P.Ws. 3 and 4 for seeking assurance and corroboration of the prosecution story. Such user is not permissible under the proviso to Sec. 162, Cr. P.C. (d) (i) that it was clear from the record that P.Ws. 1, 2, 7 and 8 are persons of low moral character and were haunting the Railway Station in connection with their

immoral trade, that the appellant was a stumbling block in the way of their immoral pursuits, and consequently these PWs had a motive to falsely implicate the appellant.

(ii) PW 9, who was an Inspector of Anti-Corruption Police was also a highly interested witness. His overzeal can be gauged from the fact that he investigated this offence under s. 161, Penal Code, although he was not duly empowered to do so. (iii) The evidence of these interested witnesses is replete with material discrepancies, and, as a rule of prudence, could not, in the absence of corroboration from independent sources, be accepted particularly when it stood sharply contradicted by the qualitatively better testimony of DWs 3 and S. (Reliance has been placed on R. P. Arora v. State of Punjab (3)" (e) That the trial Court erred in law in invoking the presumption under s. 4 of the Prevention of Corruption Act for convicting the appellant for an offence under s. 4(23 read with s. 4(1)(d) of the Act. In support of this argument, reference has been made to Sita Ram v. The State of Rajastkan.(4).

As against the above, Mr. V. Mahajan" the learned Counsel for the Respondent, submits that the evidence of the interested witnesses has been accepted by the courts below, and consequently this Court, should not in keeping with its practice, disturb these concurrent findings of fact. It is maintainted that there is no rule of law, that the evidence of an interested witness cannot be acted upon without corroboration, that, in any case, the evidence of, PWs 1, 7 and 9 was sufficiently corroborated by the circumstantial evidence consisting of the conduct of the accused in keeping mum to the accusation made by the Inspector and by the factum of. Ramesh's detention by the appellant. The said conduct of the appellant, proceeds the argument, was relevant under sec. 8, Evidence Act and was a detention pointer towards his guilt. Counsel has not tried to support the use of the police statements of PWs 3 and 4 made by the High Court. His point is that even without such support, the evidence on record was sufficient to bring home the charges to the appellant. Counsel has further invited our attention to the copy of the judgment of the Delhi High Court in Criminal Revision No. 505 of 1968 (Raj Kumar v. Staie) delivered on the 7th April 1970 (produced by the appellant's (1) A. I. R. 1969 A. P. 271. (2) A. I. R 197s S. C. 1400. (3) A. I. R. 1973 s. C.r498. (4) A. I. R. 1975 S. C. 1324 side in this Court) wherein it is recited that all Inspectors of Police in the Anti-Corruption Branch of the Delhi Administration have been authorised by an order dated March 21, 1968 passed under sec. 5A(l) of the Prevention of Corruption Act, by the Administrator of the Union Territory of Delhi to investigate offences under sec. 5(1)(d) of this Act. According to Counsel the mere fact that the authority given to Inspector Paras Nath did not extend to investigation of offences under sec. 161, Penal Code, would not vitiate either the validity of the trial or the probative value of his evidence.

It is true that ordinarily, as a matter of practice, this Court does not review the evidence and disturb concurrent findings of fact unless those findings are clearly unreasonable or are vitiated by an illegality or material irregularity of procedure or otherwise contrary to the fundamental principles of natural justice and fair-play. The instant case is one which falls within the exception to this rule. As shall be presently discussed, the courts below have adopted a basically wrong approach. They have not only used the statement of certain witnesses in a manner which is manifestly improper or impermissible under the law, but have also erred in accepting the testimony of interested witnesses without due caution and corroboration, requisite in the peculiar circumstances of the case. It is

therefore, necessary to have another look at the evidence and the salient features of the case.

We will begin with the evidence of the trap witnesses. They are Ramesh PW 1, Dal Chand PW 7 and Inspector Parasnath, PW 9. It cannot be gainsaid that all the three were concerned with the success of the trap and as such, were interested witnesses. What the courts below appear to have failed to note is that qualitatively, the evidence of these witnesses particularly PWs 1 and 7 was far inferrior to the testimony of an ordinary interested witnesse. While the trial court was unduly indulgent and modest in allowing these witnesses to pass under the euphemistic title of "questionable and shady ' characters, the High Court overlooked their antecedents altogether.

Evasive denials of Ramesh and company not with standing, sufficient material has been brought on the record from which it is clearly discernible that PWs Ramesh and Dal Chand are pimps and they were haunting at the Railway Station to solicit customers for Mst. Maya and Mst. Jayna.

The facts which have been elicited from Ramesh and company in cross-examination are these:ts There is an accommodation, com prising of one hall, and side-rooms on G.B. Road which is known as the Kotha (brothel) of Mst. Maya, Mst. Jayna, Mst. Maya and one Mst. Lachmi have been living together in these premises for the previous 8 or 9 years The rent of these premises for all the occupants is being paid by Mst. Maya. Mst. Lachmi is the mistress of Ramesh and the latter lives on her professional income. Mst. Maya is the keep of Dal Chand who maintains her servant. Mst. Jayna, also. Ramesh also claims to be a servant of Mst. Maya. He also lives in the Kotha (vide Dal Chand PW 7) . Dal Chand claimed that he was living separately at Pahar Ganj. But he admitted that he has been frequently visiting the Kotha of Maya and on the day of occurrence also he was there when, according to the witness, Mst. Maya came and informed him about the demand of the bribe by the appellant. Dal Chand stated that Ramesh was only a brother by courtesy. He admitted that Ramesh, Maya and Jayna were arrived by the Police under the Suppression of Immoral Traffic Act, and the charge against him and Ramesh was that they were pimps and their women companions were carrying on the profession of prostitution. He further admitted that in 1969, Mst. Maya was convicted under the said Act by a Delhi Magistrate. Ramesh and Maya both were being jointly prosecuted. (on the date of their examination) for an offence under the said Act. It is further admitted (vide Ramesh) that one Mst. Mumtaz, a dancing girl of Bombay, is the friend and she frequently comes and stays in the kotha of Mst. Maya. Ramesh was convicted for an offence under the Gambling Act also.

Viewed against this background, the suggestion made by the defence in cross-examination to these witnesses, that they were loitering at the Railway Station to procure customers for their immoral business could not be said to be devoid of substance. The purpose of their visit to the Railway Station at that busy hour, according to them was to see Mst. Mumtaz who was then expected to arrive from Bombay by train. This Mumtaz was not produced by the prosecution, though she was repeatedly summoned. In the circumstances, the defence version, that these persons were roaming there to hawk their "wares" does not fall beyond the orbit of reasonable probability. The above circumstances further lend assurance to the appellant's plea that he had on several occasions, previously, reprimanded these witnesses for visiting the Railway Station for immoral trade. Even, according to the prosecution, the appellant had rounded up Ramesh and party on the accusation

that they were soliciting, customers for their immoral business. Dal Chand state(1) that on being questioned by Inspector Parasnath, the appellant explained that since Ramesh was found loitering at the Railway Station in suspicious circumstances, he had been brought for interrogation. This explanation receives confirmation of Ramesh who stated that the accused had questioned him about the purpose of their visit to the Railway Station, and when the witness told him that they had come to receive Mumtaz, the accused, not being satisfied, asked whether she was also being brought for prostitution. The appellant had also threatened to prosecute and put them behind the bars.

The courts below have believed the word of these pimps and women of easy virtue that the appellant did all this to extort a bribe. The trial court- with reference to certain observations of Dua J. in Ram Sarups case, (ibid) treated the "shady and questionable characteristic" of these witness as a point in favour of the prosecution. lt argued that persons with such antecedents can be easily exploited by corrupt police officers for extorting bribes. Thus. in a way, what was a stigma, was considered a badge of honour. We are, with respect, unable to appreciate this reasoning. The observations in Ram Swarup's case, were not intended to lay down a rule of universal application. Indeed for weighing evidence there can be no specific canon. No generalisation is possible in such matters. each case has its own features and each witness his own peculiarities. Here was a police officer with an unblemished record, rather an outstanding record of 19 years' service. Such an officer would be least disposed to countenance pimping within his territorial jurisdiction. He must therefore have been an eye-sore to them. It could not therefore be said that these witnesses had no motive whatever to falsely implicate the appellant.

Thus the conduct of the appellant in restraining Ramesh for interrogation could be the innocent act of an honest and duty-conscious Police officer.

Then the evidence of these witnesses was replete with discrepancies, contradictions and improbable versions. PW 1 stated that they were all taken by a Constable to a room and there the appellant gave him a beating. This was in sharp conflict with the version of Mst. Jayna, that it was PW 1 alone who was first rounded up by the Cons table. Again, PW 1 would have it believed that he had Rs. 30/- in all with him which he gave to the appellant. This was sharply contradicted by Mst Jayna, according to whom, it was Mst. Maya and not PW 1-who had given this money to the appellant. In the context, it may be noted that apart from Rs. 70/- in tainted notes, the further sum of Rs. 30/- was not recovered from the appellant or from anywhere in the Police Post. The story of the advance payment of Rs. 30/- therefore does not inspire confidence. Further the conduct of the appellant in not releasing Ramesh forthwith even after the alleged receipt of Rs. 70/- as gratification, was not the natural conduct of a person whose demand for a bribe had been satisfied. Dal Chand has said that the appellant did not, on receiving the amount allow Ramesh to go away, but said that Dal Chand could go, and that Ramesh would be sent later on.

Ordinarily such discrepancies and small improbabilities in the evidence of witnesses are not of much consequence. But when the witnesses are manifestly disreputable persons, their testimony before it can be acted upon, must pass the test of severe scrutiny and in the process and in the context of the case even minor informities may assume importance.

It is true that there is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration. But where the witnesses have poor moral fibre and have to their discredit a heavy load of bad antecedents, such as those of PWs 1, 2, 7 and 8, having a possible motive to harm the appellant, who was an obstacle in the way of their immoral activities it would be hazardous to accept their testimony, in the absence of corroboration on crucial points from independent sources. If any authority is needed reference may be made to R. P. Arora v. State of Punjab(1), wherein this (1) A. I. R. 1973 S. C. 498.

Court ruled that in a proper case, the Court should look for independent corroboration before convicting the accused person on the evidence of trap witnesses.

Well then, was such corroboration of the testimony of the interested witnesses forthcoming in the present case ? In this connection, Mr. Mahajan referred to two circumstances: (1) the detention of Ramesh and (ii) the conduct of the appellant in keeping mum to the charge that he had received a bribe. Both these circumstances were not of a determinative tendency. Both were compatible with the innocence of the appellant. We have already discussed the first and found that instead of advancing the case for the prosecution it lends; assurance to the explanation of the appellant that Ramesh had been brought for interrogation as he was roaming there in suspicious circumstances.

As regards the reticence of the appellant on the query made by the Inspector, we do not think it necessary to burden this judgment with a discussion of the question whether this conduct amounts to a statement made to a Police officer in the course of investigation and as such, hit b sec. 162 of the Code of Criminal Procedure. Suffice it to say that even on the assumption that it was admissible as conduct-and not as a statement-under Sec. 8, Evidence Act, its probative value in the circumstances of this case would be almost nil. The appellant explained that he did not protest and resist out of fear, that the Inspector might make matters worse for him, even for getting bail. It would not be unusual even for an innocent officer to be frightened out of wits on being suddenly accused of bribe-taking by a superior officer.

Thus these two circumstances do not lend any assurance TO the testimony of the trap witnesses. Nor could such assurance be sought from the evidence rendered by Inspector Parasnath. True, that it has not been shown that he had any hostile animus against the appellant, though such an allegation was made. Nor has it been shown that he had long acquaintance or friendship with Dal Chand and party. But we cannot lose sight of the stark fact that he was an Inspector of the Anti-Corruption Staff of Police. He was the architect of the trap and the head of the raiding party. Although the power conferred on him under the order-dated March 21, 1968 by the Administrator of the Union Territory of Delhi, did not extend to the investigation of an offence under s. 161, Penal Code, yet, with zeal outrunning discretion, he went ahead with the execution of the trap and the investigation. Being deeply concerned with the success of the case, he was also an interested witness. Not being an independent witness, his evidence could not furnish the kind of corroboration requisite in the circumstances of the case This takes us to the evidence of the independent witnesses, PW 3 and 4. Both have not, in the main, supported the prosecution. With the leave or the court, the Public Prosecutor cross-examined and confronted them with their contradictory statements which they had made to Inspector Parasnath during investigation the question is, 3-L1276SCI/75 could the

court validly pick out tiny bits from their evidence and use the same to support the prosecution case ?

Relying on Jagir Singh v. State, (ibid) Mr. Anthony submits that when a prosecution witness, being hostile, is cross-examined by the Public Prosecutor with the leave of the Court, his entire evidence is to be discarded as a matter of law.

Since this vexing question frequently arises, and the observations made by this Court in Jagir Singh's case (ibid) do not appeal;- to have been properly understood, it will be appropriate to clarify the law on the point.

The terms "hostile witness", 'adverse witness", "unfavourable witness" "unwilling witness" are all terms of English law. At Common Law, if a witness exhibited manifest antipathy, by his demeanour, answers and attitude, to the cause of the party calling him, the party was not as a general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. This rule had its foundation on the theory that by calling the witness, a party represents him to the Court as worthy of credit, and if he afterwards attacks his general character for veracity, this is not only mala fides towards the Court, but, it "would enable the party to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him with the means in his hand of destroying his credit if he spoke against him" (see Best on Evidence" p. 630, 11th Edn.). This theory or assumption gave rise to a considerable conflict of opinion as to whether it was competent for a party to show that his own witness had made statements out of Court inconsistent with the evidence given by him in court. The weight of the ancient authority was in the negative.

In support of the dominant view it was urged that a allow party directly to discredit or contradict his own witness would tend to multi ply issues and enable the party to get the naked statement of a witness before the jury, operating in fact as substantive evidence, that this course would open the door wide open for collusion and dishonest contrivance.

As against this, the exponents of the rival views that a party should be permitted to discredit or contradict his own witness who turns unfavourable to him, argued that this course in necessary as a security against the contrivance of an artful witness, who otherwise might recommend himself to a party by the promise of favourable evidence and afterwards by hostile evidence ruin his cause. lt was reasoned further "that this is a question in which not only the interests of litigating parties are involved, but also the more important general interests of truth, in criminal as well as in civil proceedings, that the ends of justice are best attained by allowing a free and ample scope for scrutinising evidence and estimating its real value and that in the administration of criminal justice more especially the conclusion of the proof of contrary statements might be attended with "the worst consequences". Besides it by no means follows That the object of a party in contradicting his own witness is to impeach his A veracity, it may be to show the faultiness of his memory" (see Best, page 631, 11th Edn.).

The rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms hostile witness" and "unfavourable witness" and by attempting to draw a distinction between the two categories. A "hostile witness"

> is described as one who is not desirous of telling the truth at the instance of the party calling him, and an 'unfavourable witness' is one called by a party to prove a particular fact in issue or relevant to the issue fails to prove such fact, or proves an opposite fact (see Cross on Evidence, p. 220, 4th Edn. citing Stephen's Digest of the Law of Evidence) .
>
> In the case of an 'unfavourable witness', the party calling him as allowed to contradict him by producing evidence aliunde but the prohibition against cross- examination by means of leading questions or by contradicting him with his previous inconsistent statements or by asking questions with regard to his discreditable past conduct or previous conviction, continued. But in the case of a 'hostile witness the Judge could permit his examination-in-chief to be conducted in the manner of cross- examination to the extent to which he considered necessary in the interests of justice. With the leave of the court, leading questions could be put to a hostile witness to test his memory and perception or his knowledge of the facts to which he was deposing. Even so the party calling him, could not question him about his bad antecedents or previous convictions, nor could he produce evidence to show that the veracity of the witness was doubtful. But the position as to whether a previous inconsistent statement could be proved against a hostile witness, remained as murky as ever.
>
> To settle the law with regard to this matter, s. 22 of the Common Law Procedure Act, 1854 was enacted. It was originally applicable to civil proceedings, but was since re-enacted in s. 3 of the Criminal Procedure Act, 1865 and extended in identical terms to proceedings in criminal courts as well. P Section 3 provides:
>
> "A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony but before such last- mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement."

The construction of these provisions however, continued to cause difficulty, particularly in their application to 'unfavourable' witnesses.

In Greenough v. Eicles(1), these provisions were found so confusing, that Cockburn C. J. said that "there has been a great blunder in the drawing of it, and on the part of those who adopted it."

To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse' or "hostile". Whether it be the grant of permission under s. 142 to put leading questions, or the leave under sec. 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi) (2). The discretion conferred by s. 154 on the court is unqualified and untrammeled, and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witness's demeanour, temper, attitude, bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statements or otherwise, thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such permission, it is preferable to avoid the use of such expressions, such as "declared hostile", "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion, and conflict that had so long vexed the English Courts.

It is important to note that the English statute differs materially from the law contained in the Indian evidence Act in regard to cross examination and contradiction of his own witness by a party. Under the English Law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady antecedents or previous conviction. In India, this can be done with the consent of the court under s. 155. Under the English Act of 1865, a party calling the witness can "cross-examine' and contradict a witness in respect of his previous inconsistent statements with the leave of the court, only when the court considers the witness to be adverse'. As already noticed, no such condition has been laid down in secs. 154 and 155 of the Indian Act and the grant of such leave has been left completely to the discretion of the Court, the exercise of which is not fettered by or dependent upon the "hostility" or "adverseness" of the witness. In this respect, the Indian Evidence Act is in advance of the English law. The Criminal Law Revision J Committee of England in its 11th Report, made recently, has recommended the adoption of a modernised version of sec. 3 of the Criminal Procedure Act, 18-65, allowing contradiction of both unfavourable and hostile witnesses by other evidence without leave of the court.

(1) (1859) 5 C. B. N. 786. (2) A. I. R. 1922 Privy Council 409.

The Report is, however, still in favour of retention of the prohibition A on a party's impeaching his own witness by evidence of bad character.

The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for interpreting and supplying the Indian Evidence Act has been pointed out in several authoritative pronouncements. In Prophulla Kumar Sarkar v. Emperor(1), an eminent Chief Justice, Sir George Rankin cautioned, that "when we are invited to hark back to dicta delivered by English Judges, however eminent, in the first half of the nineteenth century, it is necessary to be careful lest

principles be introduced which the Indian Legislature did not see fit to enact". It was emphasised that these departures from English law "were taken either to be improvements in themselves or calculated to work better under Indian conditions".

Unmindful of this substantial difference between the English Law and the Indian Law, on the subject, the Calcutta High Court in some of its earlier decisions, interpreted and applied sec. 154 with reference to the meaning of the term "adverse" in the English Statute as construed in some English decisions, and enunciated the proposition that where a party calling a witness requests the court to declare him a "hostile" and with the leave of the court cross-examines the witness, the latter's evidence should be excluded altogether in criminal passes. This view proceeds on the doctrine enunciated by Campbell C.J. in the English case, Faulkner v. Brine(2), that the object of cross-examination of his own witness by a party is to discredit the witness in toto and to get rid of his testimony altogether. Some of these decisions in which this view was taken are: Luchiram Motilal v. Radhe Charan(3); E. v. Satyendra Kumar Dutt(4); Surendra v. Ranee Dassi,(5), Khijruddin v. E.(6), and Panchanan v. R.(7).

The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party With the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultiness of the memory in the case of such a witness would be another object of cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or in a (1) I. L. R. 58 Cal 1404. (2) (1858) I. F. & F.

254. (3) (1921) 34, C. I. J. 107. (4) A. I. R. 1923 Cal.

463. (5) 47 Cal. 1043. (6) A. I. R. 1926 Cal. 139.

(7) 57 Cal. 1266.

leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way.

Protesting against the old view of the Calcutta High Court, in Shobraj v. R. Terrel, C.J., pointed out that the main purpose of cross-examination is to obtain admission, and it would be ridiculous to assert that a party cross- examining a witness is therefore prevent ed from relying on admission and to hold that the fact that the witness is being cross-examined implies an admission by the cross examiner that all the witness's statements are falsehood.

The matter can be viewed yet from another angle. Section 154 speaks of permitting a party to put to his own witness "questions which might be put in cross-examination". lt is not necessarily tantamount to "cross-examining the witnesses". "Cross-examination" strictly speaking, means cross-examination by the adverse party as distinct from the party calling the witness Sec. 137, Evidence Acts. That is why sec. 154 uses the phrase "put any questions to him which might be put in cross-examination by the adverse party". Therefore. neither the party calling him, nor the adverse party is, in law, precluded from relying on any part of the statement of such a witness.

The aforesaid decisions of the Calcutta High Court were over ruled by a Full Bench in Praphulla Kumar Sarkar's case (supra). After an exhaustive survey of case law, Rankin C.J. who delivered the main judgment, neatly summed up the law at pages 1428-1430 of the Report:

> "In my opinion, the fact that a witness is dealt with under section 154 of the Evidence Act, even when under that section he is 'cross-examined' to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is moreover no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.`' After answering in the negative, the three questions viz., whether. the evidence of a witness treated as 'hostile' must be rejected in whole or in part, whether it must be rejected so far it is in favour of the party calling the witness, whether it must be rejected so far it is in favour of the opposite party, the learned Chief Justice proceeded:
>
> (1) I.L.R.9 Patna 474 "....the whole of the evidence so far it affects both parties favourably or unfavourably must go to the jury for what it worth..

If the previous statement is. the deposition before the committing Magistrate and if it is put in under section 288. Criminal Procedure Code, so as to become evidence for all purposes, the jury may in effect be directed to choose between the two statements because both statements are evidence of the facts stated therein. But in other cases the jury may not be so directed, because prima facie the previous statement of the witness is not evidence at all against the accused of the truth of the facts stated therein. The proper direction to the jury is that before relying on the evidence given by the witness at the trial the jury should take into consideration the fact that he made the previous statement, hut they must not treat the previous statement as being any evidence at all against the prisoner of the facts therein alleged In a criminal case, however, the previous unsworn statement of a witness for the prosecution is not evidence against the accused of the truth of the facts stated therein save in very special circumstances e.g., as corroboration under section 157 of his testimony. in the witness-box on the conditions therein laid down. If the case be put of the previous statement having been made in the presence and hearing of the accused, this fact might under section 8 alter the position; but the true view even then is not that the statement is evidence of the truth of what it contains. but that if the jury think that the conduct, silence or answer of the prisoner at the time amounted to an acceptance of the statement or some part of it, the jury may consider that acceptance as an admission [The King v. Norton, Percy Wililam Adams (1) & (2)], But apart from

such special cases, which attract special principles, the unsworn statement, so far as the maker in his evidence does not confirm and repeat it, cannot be used at all against the accused as proof of the truth of what it asserts."

We are in respectful agreement with this enunciation. It is a correct exposition of the law on the point.

(1) [1910] 2, K. B. 496. (2) (1923) 17, Crim. App. Rep.

77. The Bombay(1) Madras(2), Patna(3), Rajasthan(4), Oudh(5), Punjab(6), Madhya Pradesh(7), Orissa(8), Mysore(9), Kerala(10) and Jammu and Kashmir(11) Courts have also taken the same view.

In the case of an unfavourable witness, even in England the better opinion is that where a party contradicts his own witness on one part of his evidence he does not thereby throw over all the witness's evidence, though Its value may be impaired in the eyes of the Court (Halsbury, 3rd Edn. Vol. 15 Para 805).

In Bradley v. Ricardo(12), when it was urged as an objection that this would be giving credit to the witness on one point after he has been discredited on another, Tindal C.J. brushed it aside with the observation that "difficulties of the same kind occur in every cause where a jury has to decide on conflicting testimony".

In Narayan Nathu Naik v. Maharashtra State(13), the court actually used the evidence of the prosecution witnesses who had partly resiled from their previous statements, to the extent they supported the prosecution for corroborating the other witnesses.

From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record that part of his testimony which he finds to be credit worthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

It was in the context of such a case, where as a result of the cross examination by the Public Prosecutor the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. Stale (Delhi Admn.) (supra), with the aforesaid rule of caution-which is not to be treated as a rule of law in mind, said that the evidence of such a witness is to be rejected en block.

(1) E. v. Jehangir Cama 1927 Bom. 501.

(2) Amnnathayar v. Official Assignee 56 Mad. 7. (3) Nebti v. R. 19 Pat. 369; Shahdev v. Bipti AIR 1969 Pat.

415. (4) I.L. R. [1954] 4 Raj. 822 (D.B.) . (5) Shyam Kumar v.

E. (1941) Oudh 130.

(6) A. I. R. 1955 NUC (Punj) 5715; (7) AIR 1964 M. P. In re Kulu Singh.

(8) Rana v. State A.I.R. 1965 Orissa 31.

(9) A. I. R. 1960 Mys. 248. (10) [1951] Ker. L. T. 471. (11) A. T. R. 1953 J & K 41 (D. B.) (12) [1831] 8 Bing 57, 131 E. R. 321.

(13) [1971] 1 S.C.R. 133.

In the light of the above principles, it will be seen that, in law, a part of the evidence of the Panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public Prosecutor, could be used or availed of by the prosecution to support its case. But as a matter of prudence, on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination, their credit was substantially, if not wholly, shaken. The was therefore, not proper for the courts below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses.

Nor was the High Court competent to use the statements of these witnesses recorded by the police during investigation, for seeking assurance for the prosecution story. Such use of the police statements is not permissible. Under the proviso to s. 162 Cr. P.C. such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in s. 145, Evidence Act, and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance of the testimony of the witness in court.

Thus the evidence of these interested witnesses of the trap remains unconfirmed and uncorroborated by any independent evidence. In the peculiar circumstances of the case, we think that it would be highly unsafe to convict the appellant on the basis of their testimony particularly when P.Ws. 1, 7 and 8 are persons of bad antecedents and had a possible motive to see the accused removed permanently from the way of their immoral activity.

It is pertinent to mention here that the evidence of defence witnesses particularly that of D.Ws. 3 and 5 was not successfully impeached in cross-examination. The High Court has not touched their evidence at all. If the defence evidence were to be believed at the material time, the appellant was in police uniform patrolling the Railway platform and he was not wearing the pants from the pocket of

which the tainted currency notes are alleged to have been recovered. According to the appellant these pants were hanging on a peg in his room. Therefore the possibility of the tainted notes having been implanted by Dal Chand who appears to us a person with wit more and scruples less than the ordinary, cannot be ruled out.

For the foregoing reasons we would allow this appeal, accord the benefit of doubt to the appellant and acquit him of the charge levelled against him.

V.P.S. Appeal allowed.