Banwari Lal And Anr. vs State on 23 December, 1955

Equivalent citations: 1956CRILJ841, AIR 1956 ALLAHABAD 385

JUDGMENT

Sahai, J.

1. The two appellants, Banwari Lal and Mahendra Nath who are brothers, have been convicted by the Additional Sessions Judge of Agra for an offence under Section 420 I.P.C. and have been sentenced to three years' R.I. and a fine of Rs. 25,000/- each; in default of payment of fine they have been directed to undergo further R.I. for one year. Out of the fine, if realised, Rs. 48,000/- are to be paid to the complainant firm Makhanlal Radheylal. The appellants were further charged for an offence under Section 487 I.P.C. tout were acquitted of the same.

2. The facts of the case are that Banwari Lal appellant had a ghee-grading station at Khurja working under the style of Ghamandilal Banwarilal. The licence was suspended on 2-4-1946 under suspicion, because the accused showed having graded a quantity of ghee which appeared to the authorities to be impossible during the short period in which it was alleged to have been graded.

3. Thereafter, the accused shifted their business from Khurja to Agra and rented Mustajab building in Raja Ki Mandi which they not only used for their office and godown but also for their residence. The business in Agra was started in two names, namely, Mahendranath & Co. (for dealing with Bharat Bank Ltd.), and Ghamandilal /Banwarilal (for dealing with firm Makhanlal Radheylal). Firm Makhanlal Radheylal is a firm of money-lenders.

4. The two appellants on 16-5-46 entered into an agreement with the aforesaid firm Makhanlal Radheylal, The agreement was signed on behalf of the firm Ghamandilal Banwarilal by Mahendra Nath. This agreement is marked Ex. P. 1. There is no controversy that this document was signed by Mahendra Nath. From a perusal of the agreement Ex. P. 1 it will be manifest that the terms offered to the firm Makhan Lal Radheylal on behalf of the accused were very attractive.

According to this agreement a double advantage was promised in the shape of Arhat andinterest each at annas twelve per cent per month. The rent of the godown as well as the insurance charges of the goods insured therein were also to be borne by the accused. The accused further agreed that they would be responsible for any loss, damage or deterioration or other defect in quantity.

It was also agreed between the parties that the accused would obtain money to the extent of 75 per cent of the price of the tins of pure ghee that would be pledged with the creditor firm. The business between the two firms under the aforesaid agreement continued till October 1946 when the accounts were cleared leaving a debit balance of Rs. 29/- against the accused.

5. On 13-12-1946 a fresh agreement was entered into between the parties which is Ex. P. 2 on the record. This agreement was on terms similar to the previous one with this modification that the accused were given facility of storing the pledged goods in their own building at Raja Ki Mandt.

It was further agreed that the money will be paid on demand within twenty four hours. This agreement was signed by both the appellants, Banwari Lal and Mahendra Nath, on behalf of the firm Ghamandilal Banwarilal. In pursuance of this agreement nearly a lakh of rupees were taken by the accused on pledging tins of Ghee which were stored at Raja Ki Mandl.

6. It appears that the complainant did not agree, for some reason or the other, to enter into any further transaction by which the money was to be advanced to the appellant if the pledged goods were to be stored at Raja Ki Mandi. But they had no objection to advance money if the goods were stored at Yamuna Kinara godown.

On 7-2-1947 the accused pawned a railway receipt of 500 tins and took an advance of Rs. 40,000/-. It is alleged on behalf of the prosecution that on 5-3-1947 the accused took back the railway receipt and pledged 600 tins in lieu of that and further on the same date took a further advance of Rs. 8,000/- and gave -271 tins more as security.

7. It appears from the evidence on the record that as the accused were not returning the amount of loan by redeeming the pledged articles either in Raja Ki Mandi or in Yamuna Kinara godown, the proprietors of the firm Makhanlal Radheylal started making demands orally as well as in writing. While demand after demand was being made by the creditors' firm for return of their money the accused were continuing evading payment by giving evasive replies.

Some time in the month of May on account of heat it was found in the godown of Yamuna Kinara that Ghee was oozing out of some of the tins. On 24-5-1947 some of the tins Were exa-, mined and on examination it was discovered that the tins did not contain pure ghee but they contained some ghee at the top and lower Sown some sort of earth or other substance. Attempt was made by Amarnath to contact the accused appellants but they were not to be found.

On the same day Amarnath sent his Munim to the accused at Raja Ki Mandi. But the Munim on enquiry found that the accused had left their premises in Raja Ki Mandi with bag and baggage. Amarnath who was looking after the business of the firm Makhanlal Radheylal on behalf of his brother Raghunath Prasad got the tins of Ghee in Yamuna Kinara examined.

In the godown No. 3 in the Yamuna Kinara there were two lots of tins, 441 tins in one and 871 tins in another lot. He got some of the tins of the lot of 871 opened and on examination it was found that the tins did not contain ghee, but earth was found coming out of the tins. Amarnath's suspicion aroused that they were cheated. He sent for his brother Raghunath, who is the real proprietor, and after locking the go-down they proceeded to Mustajab building at Raja Ki Mandi which was found locked. They were informed there that the accused-appellants had gone away bag and baggage.

8. Amarnath and Raghunath having become convinced that they have been cheated by the appellants, as instead of pledging pure ghee as agreed to, they have pledged tins which contained sand, cement, saw-dust, and only a little ghee existed on the upper layer. They did not report the matter to the police but filed a regular complaint in the Court of the City Magistrate of Agra, on 26-5-47.

The complaint was filed through Jagan Pra-sad, Munim of the firm of Makhanlal Radhey-lal. The complaint narrated how the two appellants in the month of May 1946 came to the complainant firm and met its proprietor Raghunath Prasad and persuaded him to lend the money on certain conditions and some of the terms of the agreement were reduced into writing.

9. In pursuance of the aforesaid agreement it is stated that in the complaint, the accused pledged With the firm 4982 tins of alleged pure ghee & obtained a sum of Rs. 269,335/15/- on the security of the same. The tins of ghee used to be stored either in Mustajab building at Raja Ki Mandi or at the complainant's firm-godown at Yamuna Kinara.

It also appears from the complaint that the goods placed in the building at Raja Ki Mandi were put under the locks of the firm but the accused persons who had been in possession from before and were trading and living there used to supervise Raja Ki Mandi building.

10. Jagan Prasad in his complaint stated that some tins were examined on 24-5-47. It was thereupon discovered that the tins did not contain pure Ghee but they contained some Ghee at the top and lower down some sort of earth or other substance. The godown at Raja Ki Mandi was not inspected but it was apprehended that the situation regarding the tins of ghee may be similar to those found in Yamuna Kinara godown.

Upon these facts it was complained that the two appellants deliberately and fraudulently obtained the aforesaid sum of Rs. 2,69,335/15/-from the complainants' firm on different stages under their respective signatures, against the articles pledged by them which were not genuine.

11. Jagan Prasad, who had filed the complaint on behalf of the firm was examined on oath on the same day by the Magistrate and he corroborated the statement made therein. The Magistrate after entertaining the complaint directed Mr. Ganga Ram Deputy Collector to make an enquiry under Section 202, Criminal P.C. and submit his report to the Court concerned. In pursuance of the aforesaid order Mr. Ganga Ram inspected, the godown at Raja Ki Mandi on 28-5-1947 at 5-30 P.M. and godown No. 3 belonging to the complainant firm at Jamuna Ka Kinara on 4-6-47 at 3-45 P.M. There were two lots of tins; one containing 871 tins in lot A and another containing 448 tins in lot B. He found two of the tins of lot A already open and he further got some tins opened in his presence. All the tins which were opened contained some ghee and sand. In one of the tins he found some ghee on the upper part of the tin and then a layer of cement and then sand in the two third portion of the tin.

Mr. Ganga Ram got 900 tins opened in the godown at Jamuna Kinara out of which 766 tins were found to contain so-called ghee and the remaining 134 tins contained sand and other dirty

substance. He submitted his inspection not to the Court concerned on 19-6-47.

12. On receiving the report of Mr. Ganga Ram, the Court concerned on 21-6-47 directed summons to be issued to the accused and further directed issue of bailable warrants. After recording evidence the Magistrate framed a charge under Section 420 I.P.C. in respect of the lot of 871 tins placed in godown No. 3 in Jamuna Kinara building which, according to the Magistrate, constituted a separate identity.

The complainant filed a revision to the effect that the case required a deterrent punishment which a Magistrate could not award. The matter ultimately came to this Court and this Court directed the Magistrate to commit the case to the Court of session.

13. The charge framed by the Committing Court was amended by the learned Sessions Judge and after amendment it runs as follows:

> That you on the 5th March, 1947 with a common intention of you both at Jamuna Kinara cheated the complainant firm Makhanlal Radheylal by dishonestly inducing the delivery of Rs. 48,000/- against 871 tins of ghee as noted below, which you assumed contained pure ghee while they contained cement, sand and other impurities and thereby committed an offence punishable under Section 420/34, I.P.C.
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> Though the complaint was in respect of about 4982 tins on the security of which Rs. 2,69,335/15/-were said to have been taken, the controversy in this case was confined only to 871 tins which were stored in Jamuna Kinara godown and on the security of which the appellants had taken Rs. 48,000/- from the complainant firm.

14. After the inspection of the godown in Jamuna Kinara Mr. Ganga Ram locked the premises and after that the key remained either with him or in the Court. Most of the tins were sealed with Ag Mark labels of the Government of India. Information was sent to the Grading Department of the Government of India for the examination of the alleged seals on the tins in controversy. It appears that the Government of India deputed their Marketing Officer, Sri R. S. Bhatnagar, to do the needful.

15. It appears that on 25-9-47 Mr. R. S. Bhatnagar along with Mr. G. R. Yadav, the trying Magistrate and the proprietors of the firm Makhanlal Radheylal inspected the godown in Jamuna Kinara. Mr. Bhatnagar got some of the tins opened in his presence and found that most of the tins were merely empty and some tins had about half thick layer of Ghee and below the ghee was a layer of cement and below the cement was sand. He examined the seals also and found that some of the tins had genuine Ag Mark labels and proper adhesives and others had forged labels and covered with forged adhesives.

16. At a later stage Shri S. Goswami, a Magistrate of Agra, under the orders of the Additional District Magistrate also inspected the go-down at Jamuna Ka Kinara and prepared an inventory of the

goods. He inspected the godowa in the presence of Banwari Lal, one of the appellants who was accompanied by his counsel Mr. M. P. Mathur. The lot that was examined by him was one which is the subject matter of the dispute in this case i.e. the lot containing 871 tins. No objection was raised on behalf of the accused regarding the identity of the lot.

Mr. Goswami examined 846 tins out of 871 and sent 5 tins to the Court. Out of 841 tins 3 contained sand and the rest had some ghee at the top and thereafter some hard impuritive substance and then sand below. All these tins were sealed and had colours. Some of them had paper seals also under the colour.

17. A large number of witnesses have been examined on behalf of the prosecution to support its case. One group consists of Raghunath Prasad, the proprietor of the firm, and his brother Amar Nath and their two Munims Jagan Prasad and Shri Narain. The second group consists of those officers who conducted the examination of the godowns and the contents of the tins; namely, Shri Ganga Ram, Shri R. S. Bhat-nagar, Shri Goswami, and the third group consists of Roop Ram, Dhani Ram and Imami who were employed in the godown by the appellants.

The fourth group consists of the police officers who conducted the investigation, namely, Sita Ram Singh and Bhagwan Singh and the 5th consists of other witnesses who prove the agreement between the parties, the renting of the godowns and other matters.

18. When examined in the Court of the Committing Magistrate the appellants denied the charge. But they admitted that it was true that they accepted Rs. 40,000/- on 7-2-47 and delivered railway receipt for 600 tins and on 5-3-47 delivered 600 tins against the railway receipt. All the tins supplied by them properly bore Ag Mark seals and contained purchases from the Debi grading station the proprietor of which was Rai Sahib Ram Sarup. They further admitted the fact that on 5-3-47 they delivered another lot of 271 tins and took a further loan of Rs. 8,000/-on the security of the same.

When examined in the Court of Session, both of them took a complete somersault and denied that they had pledged 871 tins as security for Rs. 48,000/- taken by them, as they had admitted before the committing Magistrate. They stated that they did not pledge 871 tins with the complainant firm but they only pledged the railway receipt of 600 tins. They further asserted that they never pledged 271 tins against the advance of Rs. 8,000/- which admittedly they took.,

19. The trial Court, on a consideration of the entire materials on the record, came to the conclusion that it was established that the accused got the spurious tins manufactured on which they forged their Ag Marks seals and then pledged them with the complainant firm asserting at the time that the tins contained genuine stuff while they fully knew well that they did not and thereby cheated the complainant firm. Accordingly it convicted the appellants under Section 420 I.P.O. as stated.

20. The main question for consideration in this case is whether the disputed 871 tins as alleged by the prosecution were pledged by the appellants or not. Two more questions arise Whether the pledged tins when pledged, contained spurious materials or genuine stuff and that it was within the

knowledge of the accused that the tins that they were pledging did not contain genuine materials but spurious ones.

21. We propose now to examine the prosecution evidence to find out whether they have succeeded in proving the case against the appellants.

(After discussion of the prosecution evidence the judgment proceeded:) We are satisfied that on the evidence on the record the statement made by the accused in the Court of the Committing Magistrate that they pledged 871 tins and took back the railway receipt previously pledged was a correct one and further 871 tins which were found stored in Yamuna Kinara godown were the same which were pledged by them.

22. The next question for consideration is whether it is proved that the 871 tins contained spurious matters as alleged by the prosecution. (After discussing some more evidence the Judgment then proceeded). The evidence of these officers, who were independent witnesses coupled with the evidence of Amar Nath, Raghunath and the two Munims Jagan Prasad and Sri Narain conclusively proves that the disputed 871 tins not only did not contain genuine ghee but also most of them had forged Ag Mark labels.

23. The appellants have not adduced any evidence to prove that the contents of these tins were changed by the complainants themselves. We have no hesitation in rejecting this plea.

24. Shri Ganga Ram Was examined before the committing Magistrate, but he could not be produced in the Court of Session as he was lying1 very seriously ill at Bhowali Sanitorium and he was not in a fit condition to be examined before the Court of Session. His evidence was brought on the record under Section 33, Evidence Act.

Shri Jagdish Sahai vehemently objected to this use of the statement of Shri Ganga Ram, he contended that it could not be treated as evidence under Section 33 because he had been examined in the committing Magistrate's Court under Section 252 of the Code, that an accused has no right to cross-examine witnesses examined under Section 252 of the Code and that Shri Ganga Ram should have been summoned by the learned Sessions Judge for examination before him. He had objected before the learned Sessions Judge to the admissibility of Shri Ganga Ram's statement into evidence under Section 33, Evidence Act, but the objection had been overruled.

25. As regards the last contention we should point out that it was at the discretion of the learned Sessions Judge to admit the statement into evidence under Section 33, Evidence Act and that this Court cannot, and will not, interfere with the exercise of the discretion by him unless it was exercised arbitrarily or against the well-established principles of law.

Here it was found by the learned Sessions Judge that Shri Ganga Ram was an indoor patient in a sanatorium in Bhowali, that the evidence that he had given was more or less of a formal nature and was based upon a report made by him in writing long ago, that he had been cross-examined in the Court of the committing Magistrate and that no useful purpose would be served by insisting upon

his presence before him thereby causing delay.

It cannot be said that he exercised his discretion improperly or arbitrarily. Evidence is defined in Section 3, Evidence Act to mean and include "all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry." It is-laid down in Section 138, Evidence Act that a witness shall be first examined in chief, then cross-examined, and then re-examined.

The examination of a witness means, as laid down in Section 137, his examination-in-chief, his cross-examination and his re-examination. It follows that the provision that a witness shall be examined means not only that he shall be examined in chief but also that he should be permitted to be cross-examined and re-examined. No examination of a witness can be complete if the adverse party is illegally refused permission to cross-examine him or the party calling him is refused permission to re-examine him.

It is not necessary for the legislature to provide expressly for the cross-examination or the re-examination of a witness; it is enough if it lays down that a witness shall be examined. of course, the legislature is not debarred from enacting as special provision for the cross-examination of a witness if it considers it necessary in order to remove a possible doubt or by way of abundant precaution. A witness must be discharged after his examination is over and if the legislature desires to give a further right of cross-examination to the adverse party after the discharge, it has to enact a special provision to that effect.

But because such a provision is enacted it should not be thought that when there is no special provision for the cross-examination of a witness, the adverse party has no right to cross-examine him. We respectfully disagree from the Interpretation placed on Section 138 by Cuming and Lort-Williams J.J. in - 'Emperor v. C. A. Mathews' AIR 1929 Cal. 822 (A). The learned Judges observed on page 823 of the report that 8. 138 "deals not with the rights of the parties but only provides the order in which the proceedings are to be conducted."

The Evidence Act deals with the rights of parties in the matter of evidence; it is the Code of Criminal Procedure which lays down the procedure. Whether a party has a right to cross-examine the adverse party's witnesses or not has to be ascertained from the Evidence Act which is known to be exhaustive on the subject and not from the Code of Criminal Procedure which deals with the subject of evidence only incidentally.

If Section 138 does not confer the right of cross-examination upon the adverse party, there is no other provision which does so and it cannot be contended that there is no law which deals with the right of cross-examination. Of course, Section 138 also regulates the order in which a witness can be examined-in-chief, cross-examined and re-examined, but this is because the rights of the parties to examine in-chief, cross-examine and re-examine a witness accrue in certain order and a provision conferring the rights must at the same time regulate the order in which they are to be exercised.

26. Shri Ganga Ram was admittedly examined as a witness under Section 252 of the Code. Originally the trial commenced as a warrant trial under Chap, 21 and not as an inquiry in a sessions case under Chap. 18. According to Section 252 of Chap. 21 the Court should hear the complainant and "take all such evidence as may be produced in support. of the prosecution."

The word "evidence" means, as pointed out above, all statements which the Court permits or requires to be made it before it by witnesses. The statements of the witnesses include statements made by them in cross-examination and re-examination. There is nothing in Section 252 to suggest that the accused has no right to cross-examine the prosecution witnesses or that the word "evidence" means only the statements made by them in exanimation-in-chief.

The Magistrate has to decide after recording of the prosecution evidence whether there is any ground for presuming that the accused has committed an offence; he is not required by any law to believe the statements made by the prosecution witnesses and unless they are allowed to be cross-examined he cannot be in a position to decide to what extent they should be believed. If a charge is framed under Section 258, the accused has to be asked whether he wishes to cross-examine any of the prosecution Witnesses and the witnesses whom he wishes to cross-examine must be recalled.

Then the evidence of the remaining witnesses for the prosecution should be taken and after cross-examination and re-examination they should be discharged. In Section 256 there is a specific mention of the accused's right to cross-examine the prosecution witnesses and it has been interpreted to mean that he had no right to cross-examine the witnesses earlier.

For example, see - 'Brahmachari Ajitananda v. Anath Bandhu' AIR 1954 Cal 395 (B) in which Mitter J. agreeing with the decision in the case of 'C. A. Mathews (A)' held that an accused can cross-examine a prosecution witness only after the charge is framed. The word "only" used by the (sic) Judge is not to be found in Section 256, and we see no justification for importing it into the section. In - 'Lachmi Narain v. Emperor' AIR 1931 All 621 (C) King J. observed that since an express provision for cross-examination is made in Section 256 it suggests the inference that he had no right before the charge.

The learned Judge stressed the fact that Section 256 requires the Court to enquire of the accused whether "he wishes to cross-examine any of the witnesses" and not whether "he wishes to cross-examine further any of the witnesses." The Word "further" would have been inapt in some cases, and could not have been used by the legislature to cover all cases. Though an accused has a right to cross-examine a witness examined under Section 252 he is not bound to exercise it and if he has not cross-examined the witness, he cannot be asked whether he wishes to cross-examine him further."

If the word "further" were used by the Legislature it could very well be argued that the accused has no right to cross-examine a prosecution witness under Section 256 unless he has cross-examined him earlier under Section 252. In a warrant trial the accused knows what a case exactly he has to meet only after the charge is framed ; it is for this reason that he has been given an additional right

to cross-examine the witnesses.

If no additional right had been conferred upon him, he would have been obliged to cross-examine the prosecution witnesses at considerable length on all allegations made by them. He might not be able to anticipate what allegations-would be accepted by the Court and would be embodied in the charge and therefore would have been obliged to challenge all through cross-examination. In order to avoid such Waste of public time and labour the Legislature seems to have conferred upon him a right of further cross-examination after knowing what charge he has to meet.

The requirement that the remaining witnesses for the prosecution should be cross-examined and re-examined seems to be a superfluity. The. very next sentence lays down that the accused shall then be called upon to enter upon his defence and produce his evidence; there is no specific provision for cross-examination of his witnesses by the prosecution. Nobody can deny the right of the prosecution to cross-examine them. The accused has been given by Section 257 one more right of cross-examination of the prosecution witnesses.

The word "further" is not used in the section also, and if the provision that an accused after entering upon his defence can be allowed to summon a prosecution witness for cross-examination, does not lead to the inference, as it undoubtedly does not, that the accused had no prior right of cross-examining the witness, there is no reason why a similar provision in Section 256 should lead to inference that he had no right of cross-examination before the charge was framed,

27. In an inquiry into a case under Chap. 18 the accused has been specifically given the right to cross-examine the witnesses for the prosecution, vide Section 203(2). This provision seems to have been enacted in order to meet a possible argument that since this is only a preliminary inquiry and the Magistrate has not to weigh the evidence, the accused has no right to cross-examine the prosecution witnesses.

28. Sections 145 (4), 212, 244, 289 (which uses the words "examination of the witnesses for the prosecution") 291 (which also uses the words "examine any witness") 428, 464, 488 (6), etc. dealing with procedures in different kinds of cases simply require the Court to receive evidence. In these inquiries it has never been questioned that the witnesses who are examined by one party or the other are liable to be cross-examined by the adverse party even though the provisions do not expressly confer power upon it to cross-examine them.

29. In 'Rex v. Daya Shankar' in which the facts were exactly similar to those in the instant case the statement of a witness '(Mr. Thorpe) examined before the committing Magistrate under Section 252 was admitted into evidence under Section 33, Evidence Act. There, as in the instant case, the witness had been cross-examined before the Magistrate.

Our brother Agarwala, with whom P. L. Bhar-gava J. agreed was inclined to the view that an accused has a right to cross-examine a witness examined under Section 252 but refrained from expressing a definite opinion because the witness was actually cross-examined. The permission granted by the Magistrate to the accused to cross-examine him was thought to be equivalent to a right existing in

him to cross-examine him.

It is laid down in Section 33 that evidence given by a witness in a judicial proceeding is relevant for the purpose of proving in a subsequent proceeding the truth of the facts which it states, when the presence of the witness cannot be obtained without an amount of delay which the Court considers unreasonable under the circumstances of the case, provided that "the adverse party in the first proceeding had the right and opportunity to cross-examine." It is clear from this a right in the accused to cross-examine the witness.

The word "right" used in the section means a right conferred by a statutory provision such as that contained in Section 138 of the Evidence Act and not a right accruing from mere permission granted by the Court. With great respect to our learned brother we do not think that an accused acquires a right merely because the court permits him to cross-examine a witness. If a Court permits him to cross-examine a witness, it is nothing but giving him an opportunity of cross-examining him and Section 33 expressly requires a right in addition to an opportunity.

Daya Shanker was permitted by the Magistrate to and he did, cross-examine the witness, Mr. Thorpe; by this act, Daya Shanker availed himself of the opportunity, but we find it difficult to see that he also thereby exercised any right, unless of course he had a right apart from the permission.

30. Shri Jagdish Sahai had considerable difficulty in reconciling the provisions of Section 138, Evidence Act with his contention that a witness examined under Section 252 of the Code cannot be examined by the accused as a matter of right. He was driven to contend that the provisions of Section 138 are repealed by the subsequently enacted provisions in Section 256 of the Code.

There is no express repeal of the provisions of Section 138 and the presumption is against implied repeal. Actually there is no conflict between the two provisions and there is no necessity for implying repeal of the provisions of Section 138 by those of Section 2S6. If both the provisions can be applied, no repeal of one by the other can be implied at all.

If the provisions of Section 256 are correctly understood without importing any words in them, they, can be reconciled with those of Section 138 by inter-preting them to confer an additional right to| the accused, to cross-examine the prosecution wit-nesses. We think that the correct law regarding' repeal is laid down in the following opinion off Hughes, C.J., in - 'U.S.A. v. Borden Co. (1939) 84 Law Ed. 181 at p. 190 (E).

It is a cardinal principle of construction that repeals by implication are not favoured. When there are two acts upon the same subject, the rule is to give effect to both if possible _The intention of the legislature to repeal 'must be clear and manifest'...It is not sufficient... to establish that subsequent laws cover some or even all of the cases provided for by (the prior act); for they may be merely affirmative, or cumulative, or auxiliary'. There must be a positive repugnancy between the provisions of the new law, and those of the old.

Therefore the right conferred by Section 138, Evidence Act upon the accused to cross-examine a witness examined under Section 252 of the Code is not taken away by anything contained in Section 256 of the Code.

31. The statement made by Sri Ganga Ram before the committing Magistrate was rightly admitted into evidence toy the learned Sessions Judge.

32. We now propose to deal with the last point in the case; whether the appellants deliberately with the knowledge that the disputed tins did not contain genuine stuff pledged them with appellants.

33. On this point the prosecution has examined three witnesses, namely Roop Ram, Dhani Ram and Imami. According to the prosecution these witnesses were in the employment of the appellants - but this fact is denied by the appellants and their services were utilised in the manufacture of the spurious tins by the appellants. (After discussion of the evidence of these witnesses the judgment proceeded:) We are satisfled that it is fully established from the materials on the record that it was within the knowledge of the appellants when they pledged the disputed tins to the complainant that they did not contain genuine stuff. Their action was a deliberate one with the intention of cheating the complainant.

34. Besides Madan Lal and Ram Lal, the appellants have produced a number of witnesses in defence to prove their innocence. (After discussing the defence evidence His Lordship proceeded). In our opinion the evidence produced on behalf of the defence does not help them in-proving their innocence.

35. Sri Jagdish Sahai contended that the learned Sessions Judge was not authorized by the law to rely upon the statements made by the appellants before the committing Magistrate. He reasoned thus. The appellants were examined by the Magistrate under Section 256 because he was conducting the inquiry at that time under Chap. 10 and not under Chap. 18.

Under Section 287 of the Code "the examination of ¦the accused duly recorded by or before the Committing Magistrate shall to be tendered by the prosecutor and read as evidence." Since the appellants' statements were recorded not in commitment proceedings, they could not be tendered in evidence under Section 287. We have no difficulty in repelling the contention.

The words "the committing Magistrate" are used in Section 287 of the Code simply to mean the Magistrate who commits the accused for trial and not necessarily the Magistrate who holds an inquiry under Chap. 18. An accused can be committed for trial not only by virtue of the pro-visions of Section 213 contained in Chap. 18 but also by virtue of those of Sections 346 and 347 of the Code. The Magistrate who commits an accused to trial under Section 346 or Section 347 is a committing | Magistrate within the meaning Section 287. The words "committing Magistrate" are not used anywhere in Chap. 18 and there is no justification for saying that only that Magistrate who commits under Section 213 is a committing Magistrate.

36. Sri Jagdish Sahai next contended that the provisions of Section 342, Criminal P.C. are ultra vires the Constitution as infringing the guarantee of Article 20(3). We reject this argument also for the reasons given by us in our judgment in - Banwarilal v. The State' (S) AIR 1956 Ml 341 (F).

37. In our opinion there is overwhelming evidence on the record to establish the guilt of the appellants and they were rightly convicted by the Court below.

38. In the result we dismiss this appeal and maintain the conviction and sentences passed upon the appellants. The appellants are on bail. They shall surrender to their bail to serve out the rest of the sentence.

39. Learned counsel for the appellants prays that we should certify that this is a fit case for appeal to the Supreme Court. No valid grounds have been made out for granting such a certificate.

40. The prayer for certificate is accordingly rejected.