

Pyarey Mohan And Ors. vs State on 4 November, 1955

Equivalent citations: AIR1956ALL358, 1956CRILJ687, AIR 1956 ALLAHABAD 358

JUDGMENT

Kidwai, J.

1. The six appellants in these three appeals were employed in the North-Eastern Railway (then known as the Avadh and Tirhut Railway) at the Goods' Shed at Cooperganj in Kanpoor.

2. Pearey Mohan, appellant in Criminal Appeal No. 197 of 1954, had been posted as inspector in overall charge of the shed for several years and he continued to occupy this post till 19-7-1947, when he was transferred. He was re-transferred to Coopergunj on 13-10-1947 and continued to occupy this post till after 30-5-1948.

3. Pearey Mohan had under him about 25 , chaukidars 6 or 7 peons and about 40 clerks including Ram Daur Misra, S. N. Pathak, and, Kamta Parsad, appellants in Criminal Appeal No. 198 of 1954, who were loading foreman (or clerk), relieving clerk and General Shed clerk respectively, and the appellants in Criminal Appeal No. 345 of 1954, Salig Ram and Ram Karan Misra, who were General Shed clerk and Trains Clerk respectively.

All of them, except S. N. Pathak were at Coopergunj for the full period between 30-5-1947, and 30-5-1948. Pathak was there only from 12-10-1947 to 15-1-1948. During the period mentioned above there was great difficulty in procuring wagons for the transport of general merchandise --a difficulty which became more accute with the lifting of controls.

4. The prosecution case was that, taking advantage of this difficulty, the accused entered into a conspiracy not to allot wagons or book goods without exacting bribes. The public waa greatly harassed and some merchants and Forwarding Agents (colloquially called Dallals) made repeated representations to the Railway authorities. They petitioned the District Traffic Superintendent of Gonda, the General Manager, and even the Railway Member and the Governor-General. They also complained to the local Congress Committee and published articles in the newspapers.

Enquiries were held but they led to no result. Eventually in June, 1948, an anonymous letter, Ex. 283, was sent to the Special Police Establishment at Delhi (and copies were sent to various High Authorities). The complaint was principally directed against the bribery, corruption nepotism and high handedness of the Goods Inspector.

5. Inspector Ahberan Singh (P.W. 53) made preliminary enquiries and on 20-7-1948, he submitted a report Ex. 284 against Piare Mohan Srivastava and "some of his subordinates" in which Sri Ram Udit Misra, Secretary Emergency and Grievance department of the Kanpur City Congress Committee was named as complainant since enquiries had been made principally from him This document was treated as the first information report (vide Ex. 285) of an offence under Section 161 I.P.C., and Section 5, Prevention of Corruption Act (2 of 1947). In this report there is no mention of any conspiracy.

6. Inspector Ahberan Singh, having obtained the permission of the District Magistrate of Kanpur as required by Section 5(4) of Act 2 of 1947 (vide Ex. 286(a)) commenced regular investigations. He investigated only for a short time and then handed over charge to Chaudhery Ram Pratap Deputy Superintendent of Police, P.W. 57, who was assisted by Sub-Inspector Parwani, P.W. 50, & Assistant Sub-Inspector Sadhu Ram, P.W. 54, both of whom worked under the directions of Chaudhery Ram Pratap but carried on independent investigations also, under permission accorded by the District Magistrate of Kanpur (vide Exts. 287 (a) and 295 (a), dated 27-11-1948 and 10-2-1949).

Eventually, on 2-3-1950, the sanction of the General Manager of the Oudh & Tirhut Railway for the prosecution of the appellants was accorded and a charge sheet was submitted against them.

7. Originally B. N. Chaube, who was sometimes head loading clerk and sometimes assistant goods clerk, was also involved but he died during the investigation and he could not be prosecuted.

8. The case of the prosecution as elaborated was that, in accordance with the conspiracy, of which all the appellants and others were members, Ram Daur Misra used to collect the bribes in respect of the allotment of full wagons (or full loads); S. N. Pathak used to collect bribes in respect of other goods, e.g. sacks of corn, bales of cotton, drums of oil etc; while the other members of the conspiracy would collect bribes as and when they could.

All the money collected was pooled and handed over to Piarey Mohan who distributed it to whomsoever he liked and he gave as much as he liked, keeping a good percentage for himself and for the ostensible purpose of passing on to the higher authorities in some form or other.

9. The accused persons were all prosecuted by the Special Police under Section 120B, I. P. C. and Section 5(2)/5(1)(a) and (d), Prevention of Corruption Act. They denied their guilt and they denied that they either entered into any conspiracy to receive bribes or had in fact received bribes from any one of the numerous witnesses produced before the Magistrate. Piarey Mohan stated (Ex. 370) that he was a strict officer and showed no leniency either to the staff under him or to the Forwarding agents who tried to commit all sorts of irregularities, e.g. booking under false names, for their private gain.

Consequently the Railway servants formed a clique against him and assisted in the hatching of a conspiracy against him by the disgruntled Forwarding Agents which resulted in his prosecution. He claimed in fact to be a victim of his efficiency and honesty.

10. Ram Daur Misra, Salig Ram, S. N. Pathak, Kamta Prasad and Ram Karan Misra, took the same pleas and added that they were being prosecuted because they refused to give false evidence against Piarey Mohan -- Vide Exs. 371 to 375. ,

11. The learned Special Magistrate committed all the accused persons to stand their trial under Section 120B, on the allegation that they had "on or about the dates between 30-5-1947 and 80-5-1948 agreed to book goods and despatch them only on taking bribes and that in pursuance of that agreement each of you realised bribes and shared it in that period....."

12. Each of the appellants was also charged under Sections 5(2)/5(l) (d) of Act 2 of 1947 with specific facts of bribe taking (of which full details are given in the charge and in the judgment of the learned Sessions Judge) and also under Section 5(2)/ (5X1) (a) of the Act on the allegation that they habitually accepted bribes.

13. In the Sessions Court the prosecution produced voluminous documentary evidence and altogether 58 witnesses. Out of these witnesses P.W. 24, Daya Shankar, P.W. 38, P. C. Mitra, Railway Sectional Officer, P.W. 52 Bishnath Prasad Srivastava, P.W. 55 Constable Om Prakash and P.W. 56 Head Constable Rikhi Ram are formal witnesses.

P.Ws. 14, 15, 26, 27, 30, 31, 32, 33T 35, 36, 39, 40 41 and 42 Ram Shanker, Suraj Prasad, Banwarj Lal, Debi Prasad, Sukh Lal, Durga Shankar, Sri Nath Tiwari, Babu Ram, Gaya Prasad, Kailash Nath Tewari, Gaya Prasad Sharma, Ved Prakash, Sarswati Parsad and Gur Dutt Sharrna, are Forwarding Agents who claim that they personally paid over the bribes to one or other of the appellants.

14. P.W.S. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 16, 17, 18, 19, 20, 21, 22, 23, 26, 28, 29 and 34 Radha Krishna, Kailash Nath, Ram Chandra, Rampal, Ram Autar, Inder Chand, Jageshwar Prasad, Banwari Lal, Sheo Narain, Prabhu Dayal, Lachhmi Narayan, Chandra Sewak, Maiku Lal, Mahadeo Lal, Ram Chandra, Sarveshwar, Ganpati Rai, Hari Kishen, Bhoj Raj, Wadi Lal, Sri Ram, Kastur Chand, Sheo Prasad Tulsian, Lachhmi Narayan and Bhagwati Prasad are either partners or Munims of various firms of Commission Agents carrying on business in Kanpur and other places, in grain, oil, cloth, cotton, Gur and Sugar. They have produced their account books (of which relevant extracts transliterated into Hindi are also on the record).

15. P.W. 43 Ram Udit Misra was the Secretary of the Kanpur Congress Committee (Grievances and Complaints Emergency department). He was treated in the report of Inspector Ahibaran Singh as the Complainant.

16. P.Ws. 37, 44, 45, 47, 48, 49, 51 and 58, Kamla Charan, Ram Khilawan, Gauri Shankar, Paras Nath Srivastava, Ram Lochan Singh, Debi Saran, Balwant Singh and Mukerji are persona who were at the relevant time, the subordinates of Piarey Mohan and some of them even say that they participated in the distribution of the bribes received.

17. P.Ws. 50, 53, 54 and 57 Sub-Inspector A. K. Parwani, Inspector Ahibaran Singh, Sub-Inspector Sadhu Ram and Chaudhery Ram Fratap Singh, Deputy S. P. are the police officers who investigated

the case at some stage or other.

18. P.W. 46 J. K. Menta, Railway Sectional Officer, attached to the Special Police Establishment, also assisted in the investigation.

19. The accused adopted the same attitude that they had adopted in the Committing Magistrate's Court. Kamta Prasad and Pathak also pointed out that they could not have joined in a conspiracy with Piarey Mohan who had complained against them to the higher authorities and against whom they had complained. The defence also produced a considerable amount of documentary evidence but it produced no witness.

20. The learned Sessions Judge, after a careful consideration of the relevant evidence of the case of each of the accused persons found that it was not established that Piarey Mohan had personally received any bribes but that he, was guilty of the conspiracy with which he was charged. He was accordingly acquitted of the charges under Sections 5(2)/5(1)(a) & (d) of Act 2 of 1947 but he was convicted under Section 120B, I. P. C. read with Section 5 of Act. 2 of 1947 and sentenced to 5 years' R.I.

21. Ram Daur Misra and S. N. Pathak were convicted in respect of all the charges. The learned Sessions Judge considered that one sentence in respect of all the charges would be proper since the same act constituted the various offences. He accordingly sentenced each of them to 2 years' R.I. in all.

22. Ram Karan, Kamta Prasad and Salig, Ram were convicted under Sections 5(2)/(5) (1) (a) and (d) of Act 2 of 1947. Kamta Prasad was sentenced to 1 year's R.I. and the other two were fined Rs. 300/- each.

23. All the convicted persons have appealed and their cases have been argued fully before me. Before proceeding to examine the evidence, it would be as well to clarify the legal position and to give a summary of the procedure adopted for the booking of goods at the Coopergunj Goods Shed and the clerks entrusted with various, duties.

24. The finding that the sanction granted by the General Manager to prosecute the appellants was valid has not been challenged before me. It was, however, contended that, in view of the definition contained in Section 137 (1) and (4) Railways Act, the appellants were not public servants.

The learned Sessions Judge over-ruled this contention and in Criminal Appeals Nos. 374 and 376 of 1954, P. R. Chaudhry v. The State (A)', I have discussed this matter and have held that, having regard to Section 2 of the Act read with Section 21, Penal Code, a Railway servant is a public servant within the meaning of Act 2 of 1947 and proceedings may be taken against him under the Act. It is not necessary to repeat the reasons which I have set out in that case.

25. The next legal point that was taken before me, as it was taken before the learned Sessions Judge, was that all the evidence produced in this case is that of accomplices and is not supported by any

independent corroborative evidence. It was, therefore, contended that it is insufficient to justify a conviction. The learned Sessions Judge met this argument by

(a) holding that a conviction may legally be based on the uncorroborated testimony even of accomplices, if the evidence is reliable:

(b) that the Dallals and merchants" were in this case victims and not accomplices since the payment of bribes by them was not voluntary: and

(c) that there is sufficient corroborative evidence available in the present case.

26. It is necessary to examine the law on this subject more closely and to determine what is the kind of corroboration required for the evidence of an accomplice.

27. The learned Additional Government Advocate placed great reliance upon Section 133, Evidence Act, which provides: -

"An accomplice shall be a competent-witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice".

28. There may be cases in which the testimony of an accomplice is such that it may be accepted as by itself sufficient to justify the conviction of an accused person but we must not lose sight of Section 114, Illust. (b) according to which the Court may presume "that an accomplice is unworthy of credit, unless he is corroborated in material particulars".

29. In -- 'Mahadeo v. The King', AIR 1936 P. C. 242 (B) which was an appeal from the Supreme Court of Fiji their Lordships of the Privy Council say at page 246 of the report:

"It is well settled that the evidence of an accessory... must be corroborated in some material particular not bearing upon the facts of the crime taut upon the accused's implication in it, and further that the evidence of one accomplice is not available as corroboration of another: (The King v. Baskerville (1916) 2 K. B. 658 (c)).

This Rule as to corroboration as was pointed out in the case just cited, long a Rule of practice is now virtually a Rule of law, and in a case like the present, it is a Rule of the greatest possible importance, the position being that there are three persons all implicated in a crime and one of them or two of them exculpates himself or themselves by fastening the guilt upon the other. In the present case, moreover, all the persons concerned had originally given false statements and belonged to a class of persons who are at the best not reliable witnesses."

30. In a later case which went up from Patna Bhuboni Sahu v. The King A. I. Rule 1949 P. C. 257 (D) their Lordships of the Judicial Committee say, at page 258, with specific reference to Section 133

and Section 114, illust. (b), Evidence Act:-

"Reading these two enactments together, the Courts in India have held that whilst it is not illegal to act upon the uncorroborated testimony of an accomplice, it is a Rule of prudence so universally followed as to amount almost to a Rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused; and further that the evidence of one accomplice cannot be used to corroborate the evidence of another accomplice.

The law in India, therefore, is substantially the same on the subject as the law in England though the Rule of prudence may be said to be based upon the interpretation placed by the Courts on the phrase "corroborated in material particulars" in illust. (b) to Section 114".

At page 259 their Lordships further say:

"An accomplice cannot corroborate himself; tainted evidence does not lose its taint by repetition. But in considering whether the evidence of the approver given before the Committing Magistrate was to be preferred to that which, he gave before the Sessions Court the Court was entitled to have regard to the fact that very soon after the occurrence he had made a statement in the same sense as the evidence which he gave before the Committing Magistrate".

31. Their Lordships then approved of the attitude adopted by the High Court in considering; how far the evidence was corroborated against each of the accused persons.

32. The same matter was considered by the learned Judges of the Supreme Court in-- Rameshwar Kalyan Singh v. State of Rajasthan', AIR 1952 SC 54 (E), in which the question was as to the value to be given to the evidence of the victim of rape. Their Lordships held that the victim cannot be deemed to be an accomplice. They proceed as follows: --

"The Rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained.

The tender years of the child, coupled with other circumstances appearing in the case, such for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only Rule of law is that this Rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them There is no Rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.

I turn next to the nature and extend of the corroboration required when it is not considered safe to dispense with it. Here, again, the Rules are lucidly expounded by Lord Reading in (1916) 2 KB 658 (C) at pp. 664 to 669. It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the Rules are clear.

First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Heading says:

'indeed, if it were required that the accomplice should be confirmed, in every detail of the crime, his evidence would 'not be essential to the case; it would be merely confirmatory of other and independent testimony'.

"All that is required is that there must be 'some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it'.

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

33. In the case of -- 'Kashmira Singh v. State of Madhya Pradesh', AIR 1952 SO 159 at p. 163 (F) their Lordships of the Supreme Court held: --

"That brings us at once to the Rule that save in exceptional circumstances one accomplice cannot be used to corroborate another nor can he be used to corroborate a person who though not an accomplice is no more reliable than one".

34. In the recent case of -- 'Shiv Bahadur Singh v. State of Vindh. Pradesh', AIR 1954 SC 322 (G) their Lordships held that a person who offers a bribe merely as a part of a scheme to lay a trap is not accomplice since he was not a willing party to the payment of a bribe but he had a different object namely to entrap the accused. They held that such evidence was that of partisans and could not be relied upon without independent corroboration.

They further held that the evidence of a Magistrate and police officers who took part in the trap was also tainted and could not be used to corroborate the evidence of the bribe giver, nor could the conduct or the reports of the bribe giver made from time to time to his master and those in authority be sufficient corroboration.

35. From the perusal of these decisions it is clear that, if the Forwarding Agents are treated as accomplices -- a matter which I shall discuss later---, their evidence must receive independent corroboration in respect of each of the accused persons from evidence which is not tainted before prudence will allow it to be accepted.

In such circumstances the evidence of one Forwarding Agent will not be sufficient to corroborate the evidence of others, nor will complaints made by them earlier to the authorities be corroboration of the nature required. If the evidence of the Forwarding Agents or one or more of them is of such exceptional character as to indicate that it must be true, a conviction based on that evidence will not be illegal but in considering this fact care must be taken not to allow the mind to be influenced by general allegations of wholesale bribery rampant in the Railway Goods booking department.

As their Lordships of the Supreme Court are careful to point out in the case of AIR 1952 SC 159 at p. 160 (F) in connection with the approach to the evidence in the case of a particularly brutal murder: --

"The murder was a particularly cruel and revolting one and for that reason it will be necessary to examine evidence with more than ordinary care lest the shocking nature of the crime might induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and the law".

36. Again the fact that, if a strict view is taken of the Rule that independent corroboration is necessary of an accomplice's evidence, it will be difficult to secure convictions in bribery cases, cannot be allowed to influence the mind of a Judge. It is the right of every citizen to demand that duly constituted Courts should protect his liberty unless he is proved by good and untainted evidence to have committed a crime.

The Courts cannot allow suspicions, however strong, supported by tainted evidence to take the place of proof because it is difficult to find good evidence to justify the conviction of an accused person. That really means that the Judge makes up his mind -- on what material is not known -- and then relies upon evidence which is either tainted or unreliable and in any case falls below the standard required to justify a conviction in order to support his own conclusions.

Such an approach to a criminal case is against all accepted judicial principles. It is because of this very difficulty that Sub-section(3) exists in Section 5, Prevention of Corruption Act. In the present case there is no material on the record which would justify the application of that provision.

37. The learned Sessions Judge has held that in the present case the evidence of the Forwarding agents and the Commission Agents (or merchants) is not that of accomplices because they were forced to pay the bribes and might be considered to be the victims rather than participators in the crime. This contention has been pressed before me also.

This is not a case of the nature of -- 'Shiv Bahadur Singh's case (G)'. In that case no bribe was actually meant to be given : money was handed over merely to create evidence. In the present case

there is no dispute that the money was given deliberately by the givers as a bribe. As to whether this was under duress and, if so, what is its effect will be considered when dealing with the evidence.

38. The question as to whether the evidence relied upon as corroborative is in fact such will also be considered when dealing with the evidence.

39. I shall now set out the procedure adopted for the booking of goods at the Coopergunj Goods Shed. Goods were booked either as full wagons (called "full loads") or as packages (referred to as "smalls") for stations close to Kanpur called "S.Q.T." or "small quick transit". Owing to the shortage of wagons quotas of wagons for each class of goods were fixed by the Traffic Manager at Gorakhpur, who used to alter the number of wagons for each class of goods from time to time--vide Ex. 23 F dated 5-2-1946.

Further there is a limit placed on the amount of goods that could be sent by one individual or firm. "Smalls" were limited to 27 maunds and no one could get more than one full load on any day.

40. As late as 1946 conditions at the Goods Shed were chaotic and there was confusion in the Working which gave rise to many complaints --vide Ex. D-189, D/- 18-10-1946 from the Goods Inspector (Piarey Mohan) to the Traffic Manager, Gorakhpur. Later on a system was adopted and that system is explained in two notes, one written by Piarey Mohan to the District Traffic Superintendent Gonda (vide Ex. D-76 dated 21-4-1943) and the other by Mr. Thriphthop A.T.S., Gonda, to the same officer (vide Ex. D-100 dated 5-5-1948).

I, however, prefer to refer to the evidence of Mr. Kamla Charan, P.W. 37, in this matter, since It gives the same facts and it cannot be said to be biased in favour of the accused, there being ample documentary evidence on the record to indicate that Kamla Charan and Piarey Mohan were on bad terms and that the latter was constantly trying to get the former punished and transferred. Moreover, Kamla Charan held "the post of Head Goods Clerk at Cooperganj between 1943 and 1949 and officiated for Piarey Mohan whenever he was absent.

He states: --

"In the morning people used to queue up with Forwarding Notes. This occurred all along, not only in my officiating period. When Forwarding Notes were presented, two clerks were there--the clerk in charge of the Goods Shed and the registration clerk. By the clerk in charge of the Goods Shed I mean the "loading-in-charge". When a forwarding Note was presented, the registration clerk used to accept it and give it a number, entering it in a book.

Then the loading-in-charge would write down the date on which the goods should come with his signature. The forwarding Notes were returned to the public at 4 or 5 p.m. If there was any dispute after that the forwarding note would be produced before the Goods Inspector but not otherwise.

If there was any alteration or cancellation in the forwarding Note, it would be put before the Goods Inspector. The loading-in-charge or whoever be deputed would see the risk note and the condition of the goods and would get the goods loaded. If there was any dispute at the time of delivery of goods, it was the Goods Inspector's duty to attend to it".

41-46. Apart from the two documents to which I have referred (Exs. D-76 and D-100) this evidence is fully corroborated by P.W. 47 Parasnath who worked in the Goods Shed and sometimes also as the priority (or forwarding Note) registration clerk. (After discussing the evidence, the judgment proceeded:)

47. It has been explained that the Forwarding Notes were not returned till 5 P.M. because it could not be ascertained till that time whether the requisite number of wagons would in fact be available. The mere allotment of wagons by the Traffic Manager was not enough; the wagons had also to get to Kanpur. Some were sent empty and it was expected that others would be available as a result of unloading at Kanpur. The situation was, therefore, uncertain and could not be finalised till 5 to 6 P.M. -- Vide P.W. 45 Gauri Shanker.

48. It is true that there is also considerable evidence to show that no system was followed and confusion continued. One of such witnesses is P.W. 51 Balwant Singh, Traffic Inspector. He was posted to Coopergunj in May 1948 in the place of Piarey Mohan but his transfer was held in abeyance when he got there and Piarey Mohan was reposted. He felt it necessary to submit a report of which Ex. 274 is a copy.

It is significant to note that the original of this report which was supposedly prepared for the higher officers could not be traced either at Gorakhpur or at Gonda -- vide Ex. 303. Further Ex. 274 was brought to the Committing Magistrate's Court by Balwant Singh without it being summoned. This report refers to the chaotic conditions prevailing at Coopergunj and how Balwant Singh had been able to bring order out of chaos within a week of his arrival.

In his statement in court he said that everything was in a chaos and no order or set procedure was observed. Forwarding Agents were fighting at the booking office window for priority. It is difficult to believe this witness and his like in the face of the testimony to which I have already referred, particularly when it is admitted he never took charge and had, therefore, no locus standi to interfere. Moreover P.W. 37 Kamla Charan, who was admittedly in charge, during Piarey Mohan's absence specifically contradicts these allegations.

49. There is some evidence to show that the priorities used to be assigned by Piarey Mohan himself and that he made the entries allotting dates to -various persons in the priority registration Register. This is belied by the statements of various persons who were far from being friendly to Piarey Mohan, to which I have already referred.

Of course Piarey Mohan was in general charge. He had to exercise supervision and it is inevitable that he should sign the register when he checked it but it could easily have been established whether

he fixed priorities or not by producing the register itself. This has not been done and the only inference that can be drawn is that it would not have shown that Piarey Mohan allotted and would have established what Kamla Charan, P.W. 37, stated namely that the loading-in-charge assigned priorities or that it was only a case of first come first served.

50. In a register which has been produced and which might be treated as the Forwarding Note registration (or priority) register, Ex. 245, Piarey Mohan has not signed but various head loading clerks have signed practically every entry. This bears out the statement of Kamla Charan and the other witnesses already mentioned and negatives the allegation that Piarey Mohan allotted priorities.

51. As to the procedure followed when the goods actually came to the station although it can be gleaned from the oral evidence, it will be best to quote Ex. D-76 which gives it succinctly at one place. It is there stated:

"If the goods are not brought the following day, the consignments are treated as cancelled and they are not allowed admission on the subsequent day. When the consignment is duly brought the registration clerks at the gate weigh the consignment, check the condition and after execution of the necessary risk Note, it is registered in the "T 80 B" (which appears to be Ex. 282) and the Forwarding Note is handed over to the Markman who puts the marks on the packages and gives the pillar number on the Forwarding Note and passes it on to the registration clerk after which the Forwarding Notes are sorted out and kept by the head loading clerk and passed on to the loading clerk the next day for arranging loading -- after loading is done and guidance prepared and necessary columns filled in by the loading clerk, the Forwarding Notes are sent to the Octroi Section for levy of octroi and then they are sent to the Outward Goods Booking Office where rates are fixed after checking by the Head Goods Clerk and Forwarding Notes are sent to the Index clerk for indexing. After they are indexed, they are passed on to the receipt clerk who issues the receipts on the basis of the entries....."

Goods had to reach the Goods Shed by 5 o P.M. otherwise they were not admitted -- vide P.W. 17 Ram Chandra. The goods were booked in the serial order in which they were entered in the register mentioned above -- vide P.W. 25 Banwari Lal P.W. 30 Sukhlal, P.W. 33 Baboo Ram & P.W. 36 Kailash Nath Tiwari; all Forwarding Agents.

52. I have already stated what was the position occupied by each one of the accused persons. It is clear from the evidence -- vide P.W. 41 Saraswati Prasad -- that at no time during this period did any of the accused persons occupy position of head loading clerk or "loading-in-charge".

Ram Daur Misra actually dealt with "full loads" but it was his duty to enter in the register -- T 80 B, all goods, whether full loads or small which were brought to the station (-- this was after the Forwarding Notes had been passed). It was then for him to get the full loads loaded serially as entered in the register. He did not deal with the registration of Forwarding Notes -- vide P.W. 30,

Sukhlal, and P.W. 33 Baboo Ram, both Forwarding Agents.

53. Kamta Prasad worked as the Forwarding Notes (or priority) registration clerk, a task which he performed under the direct supervision of the head loading clerk or "loading-in-charge". Ram Karan Misra was the trains clerk and he "looks after the placement of inward loaded wagons in the different sheds and lines, and draws out empty wagons and places them for loading as per requirements". -- vide Ex. 100, report of Mr. Thriptrhop AT.S. Gonda dated the 5th May 1948.

Shambhu Narain Pathak and Salig Ram performed miscellaneous duties.

54-62. I come now to consider the evidence generally in the light of the above back ground. The first class of evidence to which I shall refer is that of Railway servants. (After discussing the evidence, the judgment proceeded:)

63. A consideration of the evidence of this group of persons indicates that there were strong reports that bribes were being paid to various persons in the Goods Shed but all evidence of payment to any person, except ' perhaps Ram Daur Misra, is hearsay and cannot be used against any of the accused persons. About these witnesses the learned Sessions Judge remarks that they may well have been as guilty of bribe-taking as the accused themselves and may have been induced to give evidence by a promise express or implied of pardon.

64. The next category of witnesses is of the Forwarding Agents who claim to have paid bribes to various persons. These are P.Ws. 14, 15, 25, 21, 30, 31, 32, 33, 35, 36, 39, 40, 41 and 42, Ram Shankar, Suraj Prakash, Banwari Lal, Debi Prasad, Sukh Lal, Durga Shanker, Srinath Tewari, Babu Ram, Gaya Prasad, Kailashnath Tewari, Gaya Prasad Sharma, Ved Prakash, Saraswatt Prasad and Gur Dutt Sharma.

Of these P.W. 15 Suraj Prasad and P.W. 3 Babu Ram depose to having paid bribes to Chaube (now dead) and they may be left out of consideration. P.W. 27 Debi Prasad paid no bribe to anyone because too much was demanded. If the evidence of the remainder of these persons is accepted there can be no doubt that the case against all these persons, except Salig Ram, is fully established. In order to determine the value of this evidence it is necessary to determine certain matters: --

(1) Can these persons be said to be accomplices?

(2) If so, has their evidence received sufficient independent corroboration? And (3) If there is no sufficient corroboration, is the evidence of such a character to be accepted without corroboration?

65. With regard to the first point the learned Sessions Judge says: --

"In the present case there can be no doubt that the dallals and merchants were in no way willing participants in the offence but were victims of it, inasmuch as they were forced to pay the bribes to secure the wagons for their goods, the only alternative being to close down their business with customers on the O.T.R. altogether".

66. According to this view no person who gives a bribe can ever be guilty of the offence of abetment of a crime under Section 161, I. P. C. because no one pays a bribe wholly voluntarily but does so only to save time or trouble for himself or to secure some advantage.

67-70. Undoubtedly during the period covered by the charge there was a great shortage of wagons. Not all merchants or Forwarding Agents could get wagons whenever they wanted them. Did it follow from this that the majority of merchants dealing with customers on the O.T.R. had to close down their business? Moreover if this was so then the bribe was paid not by reason of any compulsion but because the persons paying wished to gain an advantage over those who did not pay.

This did not make the bribe payers victims but wrong-doers Who sought by abetting a criminal act to gain a financial advantage over their more honest brothers. As P.W. 36 Kailashnath Tewari, the principal witness to the giving of bribes says, "Merchants wanted to get as many wagons as possible -- and the Railway staff used to explain how to get more than one wagon per day". (After discussing the evidence of the rest of the witnesses in this category of witnesses, the judgment proceeded:)

71. It is indeed difficult to treat such persons as the victims of Bribery. They took full advantage of the alleged corruption to enrich themselves and cannot be treated as anything other than accomplices.

72. Here it will not be out of place to remark that even the merchants whose business would supposedly be ruined if they did not pay bribes made money out of the so-called illicit payments. P.W. 2 Kailash Nath of Kailash Nath Purshottam Das had to pay Rs. 1507- to his forwarding agent & in the Bijak which he sent to his customer he entered Rs. 2107- as "Rail Kharch". P.W. 4 Rampal, Munim of Gayadin Kailash Nath admits that his firm charged three or four annas per bag over & above the sum paid to Forwarding Agent.

P.W. 5 Ram Autar of Bishambhar Nath Dwarika Nath admits charging two annas per bag over and above the sum paid to the Forwarding Agent. P.W. 19 Ganpat Rai of Purshottam Das Ganpat Rai states that he charged more as "Rail Kharch" than he paid to the Forwarding Agent in order to cover "bad debts". Thus it is clear that the real victim was the customer and no one else.

73. The next question is whether there is sufficient independent corroboration. In considering this aspect of the matter the learned Sessions Judge seems to have lost sight of the principle that the corroboration must be on some material particular not only bearing upon the facts of the crime but "upon the accused's implication in it." It may be -- though I must not be taken so to hold -- that there is sufficient corroboration of the general allegation of bribery, but is there, any corroboration that any of the accused persons accepted bribes?

74. The learned Sessions Judge has sought corroboration from the following sources: --

(1) The Account books of the merchants:

(2) Statements of Munims or merchants who accompanied Forwarding Agents to negotiate the settlement of bribes:

(3) Written complaints made by some merchants, Munims, and Forwarding Agents to the higher authorities or to Piarey Mohan himself:

(4) The statement of P.W. 43 Mr. Ram Udit Misra, Secretary of the Complaints and Grievances Department of the Kanpur Congress Committee; and (5) Statement of Railway officials.

75-81. The account books of the merchants are of no value even to corroborate the general allegation as to bribery. Of course, it could not be expected that sums of money paid as bribes could be entered in them clearly and it may well be that such expressions as "Rail Kharch", "ladai kharch" etc. include bribes paid but we have the evidence of the merchants and Munims in this

-- except for a few with whom I shall deal with later -- that this item of expenditure included all the expenses incurred for the despatch of articles except perhaps, octroi -- the commission of the Forwarding Agents, the labour charges and all items of miscellaneous expenses and that the only knowledge that the merchants had about bribes was because the Forwarding Agents said that they were paid. (After discussing the evidence, the Judgment proceeded:)

82. I quite agree with the learned Sessions Judge's remarks that it is not possible to believe that such a large number of merchants conspired to fabricate account books in order to implicate the appellants. I cannot hold that the merchants' books are fabricated but, as I have already stated, taking the books at their face value, in the light of the statements of the witnesses mentioned above, they do not provide corroboration even for the general assertion that bribes were paid much less do they provide any corroboration of the statement that it was the appellants who received bribes.

83-90. Again, very few of the items of the payment in the merchants' books tally with the alleged dates and rates of payment of bribes. In order to get over this difficulty a case was set up that there were current accounts between the Forwarding Agents and merchants on one hand and Forwarding Agents and the bribe-takers on the other. This would necessitate the maintenance of some sort of accounts by the Forwarding Agents, and some supposed accounts have been produced. The necessity for accounts could be greater in the case of persons like Kailash Nath Tiwari, P. W. 36, who allegedly made lump sum payments to settle the bribe-accounts . and did not pay for each merchant separately. It is, however, remarkable that no merchant had any Khata in the name of his Forwarding Agent so that it could not be ascertained from his books how much was paid by the merchants and how much was accounted for. (After discussing the evidence, the judgment proceeded:)

91. There is, however, one class of evidence of merchants which might have had great corroborative value if it were to be believed, although it was contended that even this would not be independent corroboration required by the Rule of prudence since it is evidence of abettors. Since I am of the opinion that the witnesses to whom I will now refer cannot be believed, I leave the point of law

undecided. (After discussing the evidence the judgment proceeded;) 92-103. It is clear that a large number of persons have added sentences to their statements to show the connection of Piarey Mohan and to prove the conspiracy although no such statements were forthcoming before the police. The reason for this is clear.

Originally there was no report against Piarey. Mohan (or anyone else) for conspiracy. It seeing however, that later the weakness of the case against Piarey Mohan as to the receipt of the bribes was discovered and so a case of conspiracy has been engrafted and consequently additions have been made to the statements of the witnesses to rope in Piarey Mohan. Every one of the witnesses who have deposed about this matter has been the victim of Piarey Mohan's strictness in enforcing Rules. Such evidence is quite worthless.

104. Another category of evidence which is relied upon for the purposes of corroboration consists of the mass of complaints made by Kailash Nath and other Dallals to various authorities and to the press. Apart from the fact that, in accordance with the decision of the Supreme Court in the case of AIR 1954 S.C. 322 (G), these statements cannot be called independent corroboration, they are now admittedly exaggerated and incorrect and are the result of vendetta against Piarey Mohan as will hereafter appear.

105. There remains only the evidence of Ram Udit Misra, Secretary of the Kanpur Congress Committee (Complaints and Grievances Emergency Department). His evidence is only to the effect that Forwarding Agents and merchants complained that they had to pay bribes. The written complaints were not traceable in his office owing to re-organisation. He, however, made inquiries and submitted a report to the President of the Kanpur Congress Committee - Ex. 268 - and to the Secretary Railway Board -- Ex 269.

In these reports he takes care not to take responsibility for any statement on himself but takes refuge behind the expression "it is said". Although Ram Udit Misra went to the Goods shed often, he does not depose to anything from personal knowledge and his evidence is purely hearsay.

106. The last point that calls for consideration is whether in the present case the evidence of the Forwarding Agents is of such a character as to inspire confidence and to justify conviction on their uncorroborated testimony.

107. Witness after witness has stated that Piarey Mohan was very strict with his subordinates and with the merchants & Forwarding Agents. There is also ample evidence to show that the Forwarding Agents were committing all sorts of fraud & irregularities, e. g., getting bogus Forwarding Notes passed vide P. W. 22 Wadi Lal, P. W. 27 Debi Prasad & P. W. 36 Kailash Nath, They also split consignments in various names so as to get round the Rule limiting the maximum weight of goods that could be booked by one person on one day.

The result was that many complaints used to be made & P. W. 36 Kailash Nath admits that Piarey Mohan made reports against him to the police. Disputes about goods were also constantly cropping up and Piarey Mohan was not prepared to show favour to the Forwarding Agents.

108. Occasional complaints had been made of corruption even since 1945 - vide Exts. 171 to 173, 345, 347 and 255 to 256. These complaints became Intensified after Piarey Mohan began to take steps to bring the corruption of the Forwarding Agents under control. They took the shape of newspaper articles and complaints to all higher authorities from January 1948 onwards - vide Exts. 12, 202 to 216, 350, 351, 353, 211/1 to 217. They were written either by P. W. 27 Debi Prasad Shukla, President of the Forwarding Agents' Association or by P. W. 36 Kailash Nath Tiwari, Assistant Secretary, and made all sorts of allegations, many of which the gentlemen concerned were not prepared to repeat on oath.

109. On the other side Piarey Mohan was bent upon either forcing the Forwarding Agents away from his goods shed or at least compelling them to get licenses. His efforts became more determined after he had been sent to ascertain, the system of working at the Hawrah Station. In the beginning of 1948 Piarey Mohan convened several meetings of the representatives of various Merchants' Chambers of Kanpur.

The Kanpur Kapra Committee and the Kanpur Kerana Merchants' Association were invited to send representatives but they did not do so - it is alleged - by reason of the efforts of P. W. 36 Kailash Nath Tiwari. At such meetings Piarey Mohan pointed out that there were general allegations of corruption among the staff but that the real culprits were the Forwarding Agents who utilised the cliques in the Goods shed for their own purposes and took bribes in the name of the staff.

The committees made a large number of suggestions for dealing with the situation - Exts. D-73 to D 78. One of the proposals which Piarey Mohan made was that Forwarding Notes should be sent through the Merchants Chambers or through persons who were authorised by merchants under their own signature to present notes.

110. Piarey Mohan did not wait for the decision of the higher authorities for the enforcement of his proposals. He put up a notice that all Forwarding Notes should bear the seal of the shopkeeper sending them and signature either of the manager or a partner of the firm-vide P. W. 36, Kailash Nath Tiwari. He also arranged with the Galla Sangh and the Kapra Committee to send forwarding notes direct - vide P. W. 16 Mahadeo Lal. The two associations, however, did not act according to this arrangement and although the system remained in force for a few months, it had eventually to be abandoned owing to the opposition of the merchants and Dallals - vide P. W. 22 Wadi Lal.

111. In the full scheme which he eventually put forward on return from Calcutta (Ex. D-73) Piarey Mohan suggested

(a) Registration of Forwarding Agents on payment of fees after verification of their character s

(b) No Forwarding Agent should be allowed to represent more than eight shops: and

(c) "To minimise chances of corruption there should be a definite understanding to the railway from the shop as to the remuneration paid to the Dallals as their commission. This will be a check upon Dallals and will discourage them in charging Exorbitant remuneration in the name of the Railway

Staff as they are said to be doing. This will have to be done through the Chambers of Commerce etc."

112. Further he sent numerous letters complaining of the conduct of certain individual Forwarding Agents- vide Ext. D-105 (against Sitla Sahai) and Ex. D 107 (against Kailash Nath Tiwari) both written in January 1948 and Ex. D 182 dated 21-4-1948 (against Saraswati).

It is clear, therefore, that, whatever the motive might be, there was a bitter quarrel between the Goods Inspector and the Forwarding Agents in which more responsible Merchants' Chambers at Kanpur supported the Goods Inspector. The suggestions of Piarey Mohan would undoubtedly greatly limit the money making capacity of the Forwarding Agents and was bound to be resented by them.

113. The attitude of the Forwarding Agents is clear from the fact that when Mr. Thriphthop A. T. S. went to inquire and asked P. W. 36 Kailash Nath whether he wanted a confronted inquiry or a confidential one, he was told that a confidential Inquiry was desired - vide Ex. 211.

Similarly when Mr. Dhir D. T. S. went to inquire and met a delegation of Forwarding Agents he felt it necessary to inquire from members of the staff about the allegations of the Forwarding Agents. This was resented by the Forwarding Agents - 5 or 6 of the witnesses in the present case including P. W. 36 Kailash Nath were members of that delegation - and when Mr. Dhir pointed out that the other side must also be heard the delegation came away - vide Ext. D-101 dated 18-3-1948.

These- two reports clearly indicate that the Forwarding Agents were not prepared to allow anyone to make a real inquiry but only wished an inquiry such as that of Ram Udit Misra; that is to say one in which the accused were not to be present and were not to be heard. It is obvious that they realised the falsity (or the weakness) of their own allegations.

114. Further the evidence of this class of witnesses is on the face of it not of such a character that implicit reliance can be placed upon it.

115. Having held that the evidence of the various categories of witnesses produced in this case is not of such a character as to justify the conviction of any of the accused it is not necessary for me to say anything about the individual case of each of the accused. I will, however, remark that even if the statement of the prosecution witnesses had been acceptable, Saligram could, in no case, have been convicted because, even according to P. W. 36 Kailash Nath, he was paid Rs. 25/- to be distributed among all the clerks of the Goods shed on the occasion of the Holi festival. It was a petty sum and it was not given to him "as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person".

Salig Ram was not even mentioned by P. W. 30 Kailash Nath to the police as one of the bribetakers.

116. Ram Daur Misra had, according to many witnesses, nothing to do with the registration of Forwarding Notes- Vide the witnesses to whose testimony reference has already been made in

dealing with procedure. His signing of the risk notes is no corroboration of his collecting bribes because this was in accordance with the normal procedure vide P. W. 36 Kailash Nath Tiwari.

117. It is impossible to believe that S. N. Pathak and Piarey Mohan could be any parties in one conspiracy. They belonged to rival groupa in the Goods Shed and Piarey Mohan Was constantly complaining against Pathak and eventually succeeded in getting him transferred.

118. Kamta Prasad worked as Priority Registration Clerk and might conceivably have taken bribes but he worked under the supervision of a superior officer and he was not accused either by P. W. 37 Kamla Charan or P. W. 56 Mukerji of collecting bribes.

119. The material evidence against Piarey Mohan consists of the statements which were never made before the police and they are the statements of persons who suffered losses, or apprehended them, from Piarey Mohan's actions and strict control.

120. Ram Karan Misra has really been convicted on the basis of a Parcha which is admittedly in his hand-writing and which was admittedly given to Kailash Nath at his request. It shows the number of wagons supplied to him. Kailash Nath says that this was for the purpose of paying a bribe at annas eight per wagon and Ram Karan gives another explanation. It is remarkable that it is only Kailash Nath who claims to have made such a payment to this accused.

121. The result is that I allow all the three appeals, set aside the conviction of Piarey Mohan, Ram Daur Misra, S. N. Pathak, Kamta Prasad, Salig Ram and Ram Karan Misra, and the sentences passed upon them. They are all on bail. Their bail bonds are cancelled and they need not surrender.

122. I cannot take leave of this case without recording my appreciation of the exhaustive manner in which the learned Sessions Judge has dealt With the case and the systematic manner in which the record has been arranged. Although I have not agreed with the conclusions of the learned Sessions Judge, I have derived assistance from the judgment.

123. I am also grateful to Messrs H. K. Ghosh. P. C. Chaturvedi, Ram Asrey Misra and their Juniors for the clear and succinct manner in which they have placed the cases of their clients before me and the diligence with which they have classified the evidence.

124. I am equally grateful to the learned Additional Government Advocate, Mr. P. N. Chaudhry for the assistance which he has rendered me. Mr. Khanna, who conducted the case for the prosecution in the lower court and constable Yudishtir who assisted, were fully acquainted with the entire bulky record and could at short notice place before me all the material which I required for the comprehension and decision of the case.

125. The learned Additional Government Ad vocate prays for leave to appeal. There is no sufficient reason to grant leave which is according ly refused.