Roshan Lal & Ors vs State Of Punjab on 3 December, 1964

Equivalent citations: 1965 AIR 1413, 1965 SCR (2) 316, AIR 1965 SUPREME COURT 1413, 1966 MADLJ(CRI) 144, 1966 (1) SCJ 233, 1965 2 SCR 316

Author: A.K. Sarkar

Bench: A.K. Sarkar, N. Rajagopala Ayyangar, R.S. Bachawat

PETITIONER:
ROSHAN LAL & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
03/12/1964

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
AYYANGAR, N. RAJAGOPALA
BACHAWAT, R.S.

CITATION:
1965 AIR 1413 1965 SCR (2) 316

ACT:
Indian Penal Code, 1860 (Act 45 of 1860), s. 201-Removal of evidence of crime to screen offender-Maximum punishment under section whether to be with reference to offence found to have been committed or offence 'believed' to have been committed.

HEADNOTE:
The three appellants were prosecuted for various offences under the Indian Penal Code and acquitted by the trial court. On appeal, the High Court of Punjab convicted one of the appellants under ss. 330 and 348 of the Code and all the appellants under s. 201 of the Code while acquitting them in respect of the charge under s. 304. The sentence passed under s. 201 was three years rigorous imprisonment each, the court holding that the appellants had removed evidence of the offence culpable homicide. In appeal to the Supreme

Court by special leave, the appellants contended that the only offences proved to have been committed were under ss. 330 and 348 and therefore the fourth paragraph of s. 201 applied and under it the sentence could not exceed one-fourth of the longest term of imprisonment of the offences under ss. 330 and 348 which worked out at one year and nine months. The contention of the respondent State on the other hand was that the term of imprisonment that could be imposed under s. 201 did not depend on the actual offence committed the evidence of which had been destroyed but on what the accused believed that offence to have been and therefore the sentence imposed in the present case was fully within its terms. It was stressed that the words in the first paragraph of s. 201 were "knowing or having reason to believe that an offence had been committed," but in the second paragraph the words were "knows or believes to have been committed."

HELD (Per Rajagopala Ayyangar and Bachawat, JJ.) (i) The expression "knowing or having reason to believe" in the first paragraph and the expression "knows or believes" in the second paragraph are used in the same sense. If it be supposed that the word "believes" was used in a sense different from the expression "having reason to believe", it would be necessary for the purpose of inflicting punishment upon the accused to prove that he "believes" in addition to "having reason to believe". We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved. [324 A-D]

(ii) If the contention of the State were to be accepted, the erroneous belief or delusion of the accused would furnish the measure of punishment 2nd he would be punishable under the second paragraph with imprisonment extending to seven years. On this interpretation it is possible that a person who removes the evidence of an offence may be liable to a heavier punishment than the person who committed the main offence as when the actual offence committed is under s. 323 but the accused under s. 201 removes the blood-marks caused by the offence in the belief that they were caused by murder. It does not stand to reason that s. 201 provides for punishing a minor offence more severely than the principal offence. [325 B-D]

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Chinna Gangappa, In re : I.L.R. (1931) 54 Mad. 68, considered and interpreted.

(iii)The word "offence" wherever used in the first, second, third and fourth paragraphs of s. 201 means some real offence which in fact has been committed and not some offence which the accused imagines to have been committed. In the present case it had not been established that the offence under s. 304 was committed by the appellants or by anybody else. Only offences under ss. 330 and 348 I.P.C.

has been proved to have been committed. [324 G-H]
(iv)By the same act, namely, burning of the dead body of Raja Ram, the appellants caused the evidence of two offences namely s. 330 and 348 to disappear. Taking a strict view of the matter it must be held that by the same act the appellants committed two offences under s. 201. But normally, no court should award two separate punishment& for the same act constituting two offences under s. 2o1. Under s. 330 the maximum punishment is seven years' imprisonment and therefore the accused are liable to a maximum of one-fourth of seven years' imprisonment i.e. one year and nine months. [327 A-C]
Per Sarkar, J.-(i) There is no reason to dispute the proposition that there must first be an actual offence in order that there may be evidence of it which is destroyed. But this does not furnish an answer to the contention for the State. Suppose an offence is committed but is believed to be of a graver nature than it actually is. There can be no objection in principle in such a case to a law which makes the punishment of the person who destroys the evidence of that offence to depend on what he believed it to have been. [320 C-F]
(ii)But even if the interpretation suggested for the state were accepted the sentence imposed in the present case could not be upheld. In order that that interpretation might assist the State it has to be shown that the appellants believed that an offence under s. 304 had been committed so that the case could he brought under paragraph 3. The High Court had not come to a finding that an offence under S. 304 had been committed by the appellants, in fact they were acquitted of that charge. The most that can on the facts be reasonably said against the appellants is that they knew or believed that an offence of grievous hurt had been committed under s. 325. The longest term of imprisonment for that offence being seven years, the appellants could at the most given under the fourth paragraph of s. 201 one-fourth of that term, namely, one year and nine months. [321 G-H; 322 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 197 of 1964.

Appeal by special leave from the judgment and order dated May 21, 1964, of the Punjab High Court in Criminal Appeal No. 598 of 1963.

.lm15 N. S. Krishna Rao and Girish Chandra, for the appellants. R. N. Sachthey, for the respondent.

SARKAR, J. delivered a separate Opinion. The Judgment of Rajagopale Ayyangar and Bachawat JJ. was delivered by Bachawat J.

Sarkar J. There are three appellants in this case. They had been prosecuted for various offences under the Indian Penal Code and acquitted by the trial Court. On appeal, the High Court of Punjab convicted the appellant Roshan Lal, a Sub- Inspector of Police, under ss. 330 and 348 of the Code. The High Court also convicted all the three appellants under s. 201 of the Code. This appeal is against the judgment of the High Court with special leave. That leave was however confined only to the question as to the legality of the term of imprisonment imposed under s. 201.

The High Court found that Roshan Lal, with a police party which included the two other appellants one of whom was an Assistant Sub-Inspector and the other a police constable, arrested a man called Raja Ram on a public street on suspicion that he was an opium smuggler, took him to his house and when no contraband opium was found there, the appellant Roshan Lal got very angry and hit him on the head with his baton which injured his eye. In respect of this injury the appellant Roshan Lal was convicted on one count under s. 330 of the Code. After this beating Raja Ram was taken by the police party to the police station and kept confined in a room there for the night and was there beaten by Roshan Lal assisted by some policemen. It was however not found that the other two appellants had taken any part in administering this beating to Raja Ram. In respect of this beating the appellant Roshan Lal was convicted by the High Court on a second count under S. 330 read with s. 34 of the Code and also under s. 348 for wrongful confinement of Raja Ram with a view to extort a confession. Next morning Raja Ram was found dead in the room in a pool of blood. The three appellants thereafter carried his dead body to a jungle, burnt it up and collected the bones and ground them in a pestle and mortar and threw the remnants in a canal. In respect of the disposal of the body and thereby destroying the evidence of the offences committed upon Raja Ram the appellants were convicted under s. 201 of the Code. Each of the appellants was sentenced for the offence under s. 201 to rigorous imprisonment for three years. The only question in this appeal is whether the appellants could havebeen awarded a sentence of imprisonment for three years underS. 201. That section is in these terms S. 201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any infomation respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. The appellants contend-Id that the sentence imposed was not justified by the section, for the offences found to have been committed were under ss. 330 and 348 and, therefore, the fourth paragraph of the section applied

and under it the sentence could not exceed one-fourth of the longest term of imprisonment for the offences under ss. 330 and 348. It was said that on this basis, the longest term of imprisonment that could be imposed in the present case would be one year and vine months and not three years as was done. The contention of the respondent State was that the term of imprisonment that could be imposed under S. 201 did not depend on the actual offences committed the evidence of which had been destroyed but on what the accused believed that offence to have been and therefore the sentence imposed in the present case was fully within its terms and the matter had to be governed by the third paragraph of the section. Learned advocate for the State contended that the words "the offence" in the third and fourth paragraphs meant the offence mentioned in the second paragraph. The second paragraph speaks of "the offence which he knows or believes to have been committed" and therefore the word "offence" in the last two paragraphs must refer to the offence which the person accused under S. 201 either knew or believed to have been committed. It seems to me that so far the contention of the State is unassailable. It is not necessary to consider a case where it is known what the offence committed is, for it is not disputed that the punishment has there to depend on that offence. The argument on behalf of the State was that if S. 201 did not intend that punishment under it could be made to depend on the belief as to the offence committed, then the words " which he .... believes to have been committed" would be rendered completely otiose. It was said that an interpretation cannot be accepted which would result in a part of the language used being rendered ineffective. As at present advised, I am inclined to agree with this reasoning though for reasons later discussed, I find it unnecessary to express a final opinion on it on the present occasion. On behalf of the appellants it was contended first, that in order that an offence under s. 201 might be committed there must be another offence actually committed. It was indeed so held by this Court in Palvinder Kuer v. State of Punjab(1) and by a full Bench of the Allahabad High Court in Empress of India v. Abdul Kadir(2) I find no reason to dispute that proposition. There must first be an actual offence in order that there may be evidence of it which is destroyed. Further it cannot be the intention of a law creating criminal offences that a person may be guilty only because he believed that what he was doing constituted an offence though it was not in fact so. Both these aspects of the question were mentioned in the judgment of the Allahabad High Court. But I am unable to see that the fact that an actual offence has to be committed furnishes an answer to the contention for the State. Suppose an offence is committed but is believed to be of a graver nature than it actually is. There can be no objection in principle in such a case to a law which makes the punishment of the person who destroys the evidence of that offence to depend on what he believed it to have been. The person is not being convicted under that law because he believed what he was doing was an offence while it was in fact not; he did commit an actual offence by destroying the evidence of another actual offence and all that the law does is to permit the imposition of a term of imprisonment according to his belief. Learned advocate for the appellants then said that in view of the words "having reason to believe that an offence has been committed" in the first paragraph of the section the contention on behalf of the State could not be accepted. It was said that if the contention of the State was accepted, it would be necessary to prove two states of mind, namely, first that he had reason to believe that an offence had been committed and secondly, what his belief as to the kind of that offence was. It was said that that would be anomalous. But this argument is to my mind unavailing, for the acceptance of the State's interpretation of the section does not (1) [1953] S.C.R. 94,102.

(2) [1880] I.L.R. 3 All. 279.

lead to the conclusion that two states of mind of the offender have to be proved before an offence under the section can be punished. It seems to me that it may legitimately be said that the words "having reason to believe" had been used in the first paragraph which set out the elements constituting the offence, to provide the requisite guilty mind. Without such provision, if evidence of an actual offence was destroyed by a person without his having reason to believe that an offence had been committed and, therefore, without believing that he was destroying evidence of that offence, he would have been made liable though he had no guilty mind. That would be contrary to the principles of criminal law. Then I find it difficult to conceive that if a person has reason to believe that an offence had been committed, he would not at the same time have formed a belief as to the kind of that offence. If a person has reason to believe that an offence has been committed, he necessarily would have reason to believe what the offence committed was. "Having reason to believe that an offence has been committed" only means that a person must be taken to have believed that an offence has been committed. The latter is no different from the expression "the offence .... which he believes to have been committed"

> which occurs in paragraph 2 of the section. Therefore I think that the expressions "having reason to believe" and "he believes" refer to the same state of mind; proof of one is proof of the other. It does not seem to me that any anomaly can arise from the acceptance of the interpretation of the section suggested by learned advocate for the State. I have said that I am inclined to agree with learned advocate for the State but I think it right also to observe that I find it difficult to imagine that it can ever be found that a person guilty of an offence under s. 201, believed the offence of which he had destroyed the evidence, to have been of a higher degree than it actually was. That, however, is only a matter of proof. But even if we were to accept the interpretation suggested for the State, I think, we cannot in the present case uphold the sentence imposed. In order that that interpretation might assist the State, it has to be shown that the appellants believed that an offence under s. 304 had been committed so that the case could be brought under paragraph 3. The High Court had not come to a finding that an offence under s. 304 had been committed by the appellants; in fact they were acquitted of the charge under that section for causing the death of Raja Ram. The High Court did not even find that the appellants believed that an offence under s. 304 had been committed. All that the High Court said was that "Raja Ram met his death by violence", without indicating who had committed that violence. It may be that the violence only caused a grievous hurt. The most that can on the facts be reasonably said against the appellants is that they knew or believed that an offence of grievous hurt had been committed on Raja Ram under s. 325. The longest term of imprisonment that can be imposed under that section is seven years. The appellants could not most be given under the fourth paragraph of s. 201 one-fourth of that term, namely, one year and nine months. A similar view was taken, it seems to me rightly, In re Chinna Gangappa(1).
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> I would, therefore, reduce the sentence passed under s. 201 to one year, nine months.

Bachawat, J. Appellants, Roshan Lal, Lachhman Singh and Kulwant Rai were police officers attached to the police station, Jaito in District Bhatinda. Roshan Lal was the Sub-Inspector and Station House Officer, Lachhman Singh was the Assistant Sub-Inspector and Kulwant Rai was a foot constable. The appellants were charged with diverse offences under ss. 330, 348, 330/ 34, 304, 342, 201 and 342/34 of the Indian Penal Code. The Trial Judge acquitted all the appellants. On appeal, the High Court found that on December 24, 1961 at Raja Ram's house, Roshan Lal for the purpose of extorting information from Raja Ram as to the illegal possession of opium, gave a danda blow to Raja Ram and injured his eye, and had thereby committed an offence under s. 330, and that Roshan Lal was responsible for the illegal confinement of Raja Ram at the Jaito police station, and together with other police officers for the be labouring of Raja Ram during- the night between the 24th and 25th December, 1961, and thereby committed offences under ss. 348 and 330/34. Accordingly, the High Court convicted Roshan Lal of the offences under ss. 330, 330/34 and 348 and passed appropriate sentences on him for those offences. The High Court also found that all the appellants "knowing or having reason to believe that an offence has been committed and with the intention of screening the offender from legal punishment caused the evidence of an offence of culpable homicide and of offences under ss. 330 and 348 of the Indian Penal Code to disappear by burning clandestinely Raja' Ram's dead body." On this finding, the High Court convicted all the appellants of the offence under s. 201 and sentenced them to undergo rigorous imprisonment for three years. The High Court directed that the substantive sentences of Roshan Law under ss. 340, 348 and 201 would run consecutively. All the appellants (1) [1931] I.L.R 54 Mad. 68.

now appeal to this Court by special leave, limited to the question of the legality of the sentence imposed under s.

201. The High Court found that Raja Ram met his death by violence on the afternoon of December 25, 1961. The appellants were charged under s. 304 for the offence of culpable homicide of Raja Ram not amounting to murder, but were acquitted on that charge. It was not established that the offence under s. 304 was committed by the appellants or by anybody else. Section 201 presupposes a real offence, the evidence of which is made to disappear. As the appellants could not be convicted for causing the evidence of an imaginary offence under s. 304 to disappear, they must be taken to have been convicted under s. 201 for causing the evidence of offences under ss. 330 and 348 to disappear. That they knew or believed those offences to have been committed is not disputed by Mr. Girish Chandra Now, the longest term of im- prisonment for an offence under s. 330 is seven years. Mr. Girish Chandra, therefore, argued that the appellants could be punished under the fourth paragraph of s. 201 with imprisonment for a term extending to one-fourth part of seven years and no more.

Mr. Sachthey, learned counsel for the State, contended that though by the first paragraph of s. 201, the conviction of the accused is dependent upon his "knowing or having reason to believe that an offence has been committed", the second paragraph indicated that his punishment is according to "the offence which he knows or believes to have been committed", that the second paragraph uses

the somewhat different phrase to indicate that the punishment depends not so much on what offence, in fact, was committed, but on what the accused knew or believed to have been committed, that the appellants believed that not only the offences under ss. 330 and 348 but also the offence under s. 304 had been committed, and they are, therefore, liable to be punished under the third paragraph of s. 201 with imprisonment extending to three years. In support of his contention, Mr. Sachthey relied on Chinna Gangappa, In re(1). He rightly pointed out that the High Court proceeded on the assumption that the appellants had reason to believe that an offence under s. 304 also had been committed. The correctness of this assumption is not challenged by Mr. Girish Chandra. We, therefore, proceed on the footing that this assumption is correct. Nevertheless, we cannot accept the construction of s. 201 suggested by Mr. Sachthey and his contention that the appellants are punishable under the third paragraph of s. 201 with imprisonment extending to three years.

(1) [1931] I.L.R. 54 Mad. 68.

Section 201 is somewhat clumsily drafted, but we think that the expression "knowing or having reason to believe" in the first paragraph and the expression "knows or believes" in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe that an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under s. 20 1. If it be supposed that the word "believes" was used in a sense different from the expression "having reason to believe", it would be necessary for the purpose of inflicting punishment upon the accused to prove that he "believes" in addition to "having reason to believe". We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind if proved. In the instant case, the High Court recorded the finding that the appellants knew or had reason to believe that an offence had been committed. It did not record a separate finding that the appellants knew or believed that an offence was committed. If Mr. Sachthey's argument were accepted, the appellants would escape punishment altogether. But, in our opinion, it was not necessary to record such a separate finding.

The first paragraph of s. 201 lays down the essential ingredients of the offence under s. 201. It must be proved first that an offence has been committed. See Palvinder Kaur v. State of Punjab(1) and Empress of India v. Abdul Kadir(2). Secondly, the accused must know or have reason to believe that the offence has been committed. Thirdly, the accused must either cause any evidence of the commission of that offence to disappear or give any information respecting the offence which he knows or believes to be false. Fourthly the accused must have acted with the intention of screening the offender from legal punishment. By the second, third and fourth paragraphs, the measure of the punishment is made to depend upon the gravity of the offence. The word " offence" wherever used in the first, second, third and fourth paragraphs means some real offence, which, in fact, has been committed and not some offence which the accused imagines has been committed. The punishment depends upon the gravity of the offence which was committed and which the accused knew or had reason to believe to have been committed. If an accused on seeing blood marks on the ground-made as a result of an offence punishable under s. 323, erases the blood marks with the intention (1) [1953] S.C.R. 94, 102.

(2) [1880] I.L.R. 3 All. 281.

of screening the offender whom he erroneously believes to have committed the offence of murder, he could be convicted only on the footing that an offence under S. 323 was committed and that he acted with the intention of screening such an offender believing that such an offence was committed, and he may be punished accordingly under the fourth paragraph with imprisonment extending to three months; but he could not be convicted on the basis of his having screened a murderer merely because he wrongly imagin- ed that an offence of murder had been committed. If the contention of the State were to be accepted, the erroneous belief or, delusion of the accused would furnish the measure of punishment, and he would be punishable under the second paragraph with imprisonment extending to seven years. It is difficult to impute such an intention to the legislature, and to hold that the minor offence of screening an offender under s. 201 is punishable more severely than the main offence committed by the main offender. It does not, in our opinion, stand to reason that s. 201 provides for punishing a minor offence more severely than the principal offence. In the case of Chinna Gangappa, In re(1), the accused was charged also with the murder of his wife, but was acquitted on that. The death of the woman was due to blows by sticks or stones on her head. The accused knew the person who inflicted the injuries; nevertheless, with the intention of screening the real offender he gave false information that he suspected that the woman had been stung by a scorpion or bitten by a snake. The Sessions Judge, while acquitting the accused of the charge of murder, convicted him under ss. 201 and 203 of the Indian Penal Code and sentenced him to rigorous imprisonment for five years. On appeal, the Madras High Court reduced the sentence to one year's rigorous imprisonment. Mr. Sachthey relies strongly on the following observations of the High Court :

> "It is clear that for the purpose of calculating the punishment to be awarded under section 201, it is necessary for the Court to decide, not so much what offence the evidence of which has been concealed-has been committed, as what offence the accused knew or had reason to believe had been committed."

We do not think that the passage supports the contention of Mr. Sachthey. It is clear that in this passage the Judges had in their mind the first paragraph of S. 201 and not the second paragraph, as suggested by Mr. Sachthey, for they refer to the offence which the accused "knew or had reason to believe had been com-

(1) [1931] I.L.R. 54 Mad. 68.

mitted". Literally read, the passage may suggest that the guilt under s. 201 does not depend on what offence the accused knew or believed to have been committed and only the measure of punishment depends on that fact. We cannot agree with this construction of the passage. But we think that in the context of the entire judgment the passage really means that both the conviction and punishment under s. 201 depend not so much on what offence was, in fact, committed but on what the accused knew or had reason to believe to have been committed, and whore a major offence was committed but the accused knew or believed that only a minor offence had been committed, it would be the minor offence that would furnish the measure of punishment; for the Judges went on to say From

that point of view we cannot on the evidence say that more is proved than that the accused knew that some one had hit his wife and that she had died in consequence. We are unable to conclude that he knew that the person who struck her had the criminal intention of killing her. It must have been clear however to the accused that his wife had died as a result of the blows given and that she at least suffered grievous hurt, and "that is punishable under section 325, Indian Penal Code, with imprisonment for seven years.

Under section 201 the accused is then liable to be sentenced to a maximum of one-fourth of that seven years. 'Me learned Sessions Judge has sentenced the accused to rigorous imprisonment for five years. At the most he can be sentenced to one year and three-

fourths. We think that it will be sufficient if he undergoes imprisonment for one year and we reduce the sentence accordingly."

It is reasonable to think, though the judgment is not explicit on this point, that the High Court found that the offence of grievous hurt under s. 325 had been committed in the presence of the accused, and the accused knew that the offence had been committed and was, therefore, punishable with one-fourth of the maximum imprisonment of seven years provided for the offence under s. 325. In this view of the matter, the ultimate conclusion of the Madras High Court may well be supported, though we cannot agree with the entirety of the observations.

Mr. Sachthey next contended that the appellants having caused the evidence of the two offences under ss. 330 and 348 to disappear, committed two separate offences under s. 201 and are punishable accordingly. Now, by the same act, namely, burning of the dead body of Raja Ram, the appellants caused the evidence of two offences to disappear. Taking a strict view of the matter, it must be said that by the same act the appellants committed two offences under s. 201.' The case is not covered either by S. 71 of the Indian Penal Code or by S. 26 of the General Clauses Act, and the punishment for the two offences cannot be limited under those sections. But, normally, no Court should award two separate punishments for the same act constituting two offences under s. 201. The appropriate sentence under s. 201 for causing the evidence of the offence under S. 330 to disappear should be passed, and no separate sentence need be passed under s. 201 for causing the evidence of the offence under s. 348 to disappear. The maximum sentence for the offence under s. 330 is imprisonment for seven years, and under the fourth paragraph to s. 201, the appellants are liable to be sentenced to a maximum of one-fourth of seven years of imprisonment. The facts of the case call for the maximum sentence. Accordingly, the sentence passed on the appellants for the offence under S. 201 should be reduced to a sentence of one year and nine months. Mr. Girish Chandra attempted to argue that the entire conviction of Roshan Lal under s. 201 was illegal. But it is not open to him to argue this point, as the special leave is limited to the question of the legality of the sentence only. We are also not disposed to grant him leave to challenge the legality of the conviction at this stage.

In the result, the appeal is allowed in part, and the sentences passed on the appellants for the offence under S. 201 of the Indian Penal Code are reduced to rigorous imprisonment for one year and nine months. In other respects, the judgment under appeal is affirmed. Appeal partly allowed.

Sup./65-5