Nageshwar Shri Krishna Choube vs State Of Maharashtra on 19 September, 1972

Equivalent citations: 1973 AIR 165, 1973 SCR (2) 377, AIR 1973 SUPREME COURT 165, 1973 4 SCC 23, 1973 MADLJ(CRI) 256, 1973 2 SCR 377, 1973 (1) SCJ 598, 1973 SCC(CRI) 664, 1973 MAH LJ 144, 1973 MPLJ 240, 1973 ACJ 108, (1972) 2 SC WR 845, 1974 MADLW (CRI) 108, 1973 75 BOM LR 483

Author: I.D. Dua

Bench: I.D. Dua, J.M. Shelat, Hans Raj Khanna

PETITIONER:
NAGESHWAR SHRI KRISHNA CHOUBE

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT19/09/1972

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SHELAT, J.M.
KHANNA, HANS RAJ

CITATION:
1973 AIR 165 1973 SCR (2) 377
1973 SCC (4) 23

ACT:
Indian Penal Code (Act 45 of 1860) s. 304 A-Rash and negligent driving-Available material evidence not produced by prosecution-Reliance on nature of accident by Courts-Propriety-Rejection by Courts of defence evidence-Impropriety of use of intemperate language by Courts.

HEADNOTE:
The appellant was driving a bus, which mounted the footpath, dashed against an electric pole, aid a person, who was near the electric pole, was knocked down dead as a result of the pole falling on him. Four other persons were injured by the bus hitting them. Three of these persons were examined as

prosecution witnesses, but the evidence on behalf of the prosecution did not throw any right on the precise circumstances in which the bus happened to mount the footpath. According to the appellant, he was driving the bus at a moderate speed when suddenly the fourth of the injured persons, who was not examined as a witness, came running in his attempt to cross the road. The appellant took a turn to avoid him and also applied his brakes, but the accident happened because of circumstances beyond his control. He also examined one witness on his behalf who generally supported his version. The trial court passed strictures on the defence witness and convicted the appellant under s. 304A I.P.C. On appeal, the High Court, while emphasising on the perfunctory character of the investigation, also passed strong strictures against the defence witness and confirmed the conviction of the appellant, on the grounds, that the electric pole would not have fallen unless the bus was going at a high speed when it hit the pole, that assuming the pedestrian came running across the road the appellant was in a position to see him and could have come to a complete stop if he was reasonably careful, and that the appellant must have continued to run the bus at full speed expecting the pedestrian to stop. The High Court wanted to examine the injured pedestrian as a Court witness, but did not do as the defence objected.

Allowing the appeal to this Court under Art. 136 of the Constitution,

HELD : (1) The High Court should have examined the court witness. The failure to do so on the ground that the defence objected to such examination was not a proper approach, because, parties cannot control the Court's discretion to have any additional evidence considered by it to be necessary in the interests of justice. Justice would fail not only by unjust conviction of the innocent but also by acquittal of the guilty for unjustified failure to produce available evidence. [387G-H]

(2)The fact that this was not the first time when investigation in a caselike this had been utterly perfunctory was no ground for convicting the accused. [386G-H]

(3)Assuming that the High Court was right that the road at the time was more than normally crowded it was still a question for consideration as to from how much distance the appellant would have been able to see a pedestrian who was running to the road, an aspect which was not adverted to by the High Court. [386E-F]

378

(4)The judgment of the trial Court and of the High Court proceed principally on assumptions not fully supportable on the material on the record. Merely because the nature of the accident, prima facie requires an explanation from the driver would not be sufficient to sustain his conviction, if the truth of his explanation which was not liable to

rejectionoutright could have been appropriately judged if the evidence left out by the prosecution had been produced. [387A-E]
(5) Evidence which was material,. such as the evidence of the pedestrian and the passengers in the bus had not been collected by the investigating agency, and the reasons given for not examining the injured pedestrian are wholly unconvincing. The evidence actually produced', has not established the appellant's guilt beyond reasonable doubt., [387C-F]
(6)The Investigating Officer has acted without the requisite sense of responsibility essential for fair and just investigation into serious accidents like the present. He had not taken photographs of the position of the vehicle, the electric pole, and the position of the victim, but bad produced, instead, a most unsatisfactory rough sketch. There was no evidence of relevant factors such as the height of the kerb, the state of traffic on the road, the condition of the brakes, and of the probable speed of the bus which could have been ascertained by measuring the tyre marks on the road. [383G-H; 386A-C]
(7)Assuming the testimony of the defence witness did not impress the courts below they should have expressed their opinion in temperate language with judicial restraint. [388D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Cr. A. No. 209 of 1969. Appeal by special leave from the judgment and order dated August 14, 1969 of the Bombay High Court in Criminal Appeal No. 552 of 1968.

H.R. Pardivala, D. N. Mishra and J. B. Dadachanji, for the appellant.

S.K. Dholakia and B. D. Sharma, for the respondent. The Judgment of the Court was delivered by DUA, J.-This is an appeal by special leave under Art. 136 of the Constitution from the judgment of the Bombay High Court upholding on appeal the appellant's conviction by the Presidency Magistrate, 12th Court, Bandra, Bombay under S. 304A, I.P.C. and sentence of rigorous imprisonment for 18 months and fine of Rs. 1,500/-, in default further, rigorous imprisonment for four months.

According to the presecution, on July 2, 1967, at about 4.15 p.m. the appellant was driving a B.R.S.T. motor bus bearing no. BHQ 1019 along the southern side of Tilak Road from east to west. When the bus suddenly mounted the southern footpath and', dashed against an electric pole felling it fell down, the bus stopped. A person who was near the electric pole was knocked down dead as a result of the electric pole falling on him. His right hand was severed, his head crushed with the brain matter sticking on to the wall near the electric pole. It was a double decker bus.' One Harbansingh

Ramsingh (called bhaiya) also sustained injuries as a result of having been hit by the bus.

According to the appellant, he was driving the bus at a mo- derate speed from east to west along the southern side of Tilak Road when suddenly a bhaiya, in his attempt to cross the road, came near the right wheel of the bus. He was noticed by the appellant when he was about 3 ft. away from the front right portion of the bus. In order to avoid him the appellant applied his brakes and took a turn to the left, thereby mounting the southern footpath and it was in these circumstances that he struck against the electric pole. The accident, according to his plea, occurred because of circumstances beyond his control. The Presidency Magistrate did not believe the defence version and observed;

> "According to the accused he was going at a speed as if he was approaching a bus stop. If that were so and if Harbansing was crossing the road from north to south as alleged by the defence and if the accused applied his brakes after seeing the bhaiya, then it is hard to see how the bus did not stop there and then. The bus however went on to the southern footpath and dashed against the electric pole with such a force that it was uprooted. The fact that the accused was not able to halt the bus there and then show that the bus was in good speed. The accused could not control its speed in time. If therefore hold that the prosecution has established its case against the accused."

On this reasoning, finding the accused guilty, the trial court convicted and sentenced him, as already noticed. It may be pointed out that the accused was also charged under ss. 273 and 338, I.P.C. but the court did not consider it proper to impose separate sentences under these sections. On appeal to the High Court the learned Chief Justice, after considering the arguments urged before him, observed that in the circumstances of the case it was impossible that Harbansing could come within 3 ft. of the bus in question before the accused first saw him. Even after the accused had realised the danger be could have, according to the learned Chief Justice, avoided climbing on to the footpath and injuring the pedestrians there, after knocking down the electric pole, had it not been for the speed of the bus which Prevented him from controlling the vehicle. The learned Chief Justice considered it unimaginable that the electric pole would be completely uprooted unless the bus was in considerable speed when it hit the pole, the heavy nature of the vehicle notwithstanding. This by itself, the High Court observed, was one of the factors which establish the rashness and negligence of the accused. The High Court opined that it must have taken quite some time for the bhaiya to cross 3 5 ft. of the road (the road was stated to be 35 ft. wide) even though he was running. If, therefore, the man stated running from the northern end of the road the vehicle must have been at least 50 or 60 ft. away from the point of impact. The driver of the bus, had he, been reasonably careful, could have brought the bus to a complete stop in a distance of about 50 or 60 ft. and avoided the collusion even assuming the bhaiya was running fast. This is another factor which, according to the learned Chief Justice, reflected the negligence on the part of the accused person. The defence witness (K. G. Joshi) deposed that the accused had not blown any horn. This version also, in the opinion, of the High Court, lent some ,support to the negligence on the part of the accused. The High ,Court in the end observed "Though no doubt the burden of proof in a criminal trial is upon the prosecution, the facts pertaining to the accident in the present case are so eloquent and glaring that they speak for themselves. Even assuming that `Harbansing came running from the north to the

south across the road as the accused says, he was in a position to have seen him start running and to have brought his bus under control within sufficient time to avoid the accident but he was in a hurry to reach his destination within time and so the accused continued to run his bus at the same speed full well knowing that if the pedestrain continued to cross the road he would do so at his peril and therefore expecting him to stop. It is that attitude of mind which has led to this accident and amounts to rashness or negligence on the part of the accused. Even taking into account the explanation which the accused has given, I am unable to see how the accused cannot be held to have driven rashly or negligently."

The High Court was on the whole satisfied upon the evidence that the conviction was justified.

In this Court Shri Pardiwala has, in an elaborate argument, taken us through the entire record of the case and has submitted that in a case of rash and negligent driving the prosecution has to prove by evidence beyond reasonable doubt that the accused was rash and negligent and the mere fact that the accident has taken place in a manner which does not seem to be normal, is not by itself sufficient to cast on the accused person the onus of establishing his innocence.

In cases of road accidents by fast moving vehicles it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital vents during the few moments immediately preceding the actual accident, from which its true cause can be ascertained. When accidents take place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own pre-occupations and in the normal course their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then that they would look towards the direction of the noise and see what had happened. It is seldom-and it is only a matter of coincidence-that a person may already be looking in the direction of the accident and may for that reason be in a position to see and later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interest in the matter, whatever be the reason for this disinclination. If however, they do feel interested in going, to the spot in their curiosity to know something more then what they may happen to see there, would lead them to form some opinion or impression as to what in all likelihood must have led to the accident. Evidence of such persons, therefore, requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. Apart from the eye-witnesses, the only person who can be considered to be truly capable of satisfactorily explaining as to the circumstances leading to accidents like the present is the driver himself or in certain circumstances to some extent the person who is injured. In the present case the person who died in the accident is obviously not available for giving evidence. The bhaiya (Harbansing) has also not been produced as a witness. Indeed, failure to produce him in this case has been the principal ground of attack by Shri Pardiwala and he has questioned the bona fides and the fairness of the prosecution as also the trustworthiness of the version given by the other witnesses. Six witnesses have been produced by the prosecution in sup- port of its case. We are going into that evidence which is normally not done in appeals under Art. 136 of the Constitution because in this case it was urged by Shri Pardiwala that there is absolutely no evidence showing rashness or negligence onthe part of the appellant and that the evidence with regard tothe exact

position in which the bus was actually found vis-a-visthe dead body, soon after the accident, is also not trustworthy.In deed, according to the learned counsel, both the trial court and the High Court have been influenced more by the tragic consequences resulting from the accident than the evidence on the record.

P.W. 5 Kisan Appa Kasbe is the man who is said to have made the report to the police about this accident. He appeared in court on March 20, 1968 and stated that on July 2, 1967 at 3.45 p.m. while walking along the northern footpath from east to West towards Kodabad Circle he heard noise of impact of a vehicle and turning that side he saw a B.E.S.T. bus stationary on the southern footpath and a bent electric pole. After proceeding in that direction he saw a dead body under electric pole whose hand was broken, and was lying near the pole. His skull was also broken and brain matter was visible. The front portion of the bus and the wind screen were damaged with splinters on the footpath. He saw four injured persons. Those injured persons were taken to the hospital in a single decker bus. He was contacted by the police at 8.30 p.m. on the same day at his residence where his statement was recorded. This statement has been described by M. S. Patil, S.I. (P.W. 6) as first information report. Quite plainly that statement could not be the F.I.R. for the simple reason that investigation had admittedly started on receipt of information at 4.40'p.m. as sworn by P.W. 6. The statement made by P.W. 5 at 8.30 p.m. at his residence would accordingly fall under s. 161, Cr. P.C. and could only be utilised as provided by s. 162, Cr. P.C. for contradicting him. Of the four injured persons mentioned by P.W. 5 three have appeared in court, namely, Shriman Yadav (P.W. 2), Mohan Rama (P.W. 3) and Bhondibai Babu (P.W. 4). P.W. 2 merely says that while he and Mohan Rama (P.W. 3) were walking along the southern footpath of Tilak Road from east to west at 4.30 p.m. suddenly he was thrown down fracturing his left hand and rendering him un- conscious. He has not said anything more. Mohan Rama (P.W.

3) has deposed that he and Shriman Yadav were walking along the southern footpath when a B.E.S.T. bus came from behind and struck Shriman Yadav, thereby throwing him down. Mohan Rama also fell down as a result of Shriman's impact. Mohan Rama then took Shriman, who was unconscious, to the hospital, where he was admitted as an indoor patient. Mohan Rama was, however, treated and allowed to go home. Mohan Rama had not seen the bus mounting the footpath. He only saw the electric pole falling on the deceased. According to him, the front left wheel of the bus was on the footpath and the front right wheel was touching its kerb. 'The electric pole was not uprooted but was cut at the base. Quite obviously, the evidence of these two witnesses does not throw any helpful light on the precise circumstances in which the bus happened to mount the footpath. Dhondibai Babu (P.W. 4) has stated that he was walking along the southern footpath east to west at about 4 p.m. when suddenly a B.E.S.T. bus knocked him down unconscious. According to him, the left front portion of the bus struck him. He has said nothing more. If he became unconscious, it is doubtful if he could reliably state that the left front portion of the bus had struck Mm. The statement of Kisan Appa Kasbe (P.W. 5) has already been adverted to. But he too, as one would normally expect a witness to such accidents, only looked in the direction of the accident, when his attention was attracted as a result of noise of the impact of the bus in question. There is thus no evidence as to what compelled the driver to turn left which caused the bus to mount the footpath and strike against the electric pole, thereby causing injuries to the several persons, one of whom died at the spot. Manohar Sadashiv, S.I., appearing as P.W. 6 has deposed that at about 4.40

p.m. on July 2, 1967 information was received from the control room about the accident and that he then went to the scene of the occurrence. He saw a double decker bus no. 03 stationary on the southern footpath with the front portion of the bus damaged and the wind screen broken. He saw one dead body lying below the electric pole with one hand severed lying nearby and also broken skull with brain substance visible and lying on the road. He drew up a panchanama and also a rough sketch (Ex. PB) He sent the dead body. to the City Morgue and arrested the accused and sent him to the police station. He then contacted the four injured persons in the hospital and the complainant, (meaning thereby P.W. 5) at his residence as late as 8.30 p.m. on the same day and recorded what he describes to be, the first information report. Harbansing, one of the four injured persons had, according to this witness, left Bombay the same night with the result that his statement could not be recorded. In cross-examination he has explained that Harbansing was reluctant to make any statement because he wanted to go to his native place where he was stated to be on the date of the examination of P.W. 6 in court, which was March 20, 1968. P.W. 1 is the doctor who held the postmortem examination on the dead body. His evidence is not material for our purpose. This is all the prosecution evidence led in the case. We cannot help expressing our surprise and regret at the manner in which the investigation has been conducted. The investigating officer unfortunately did not care to have the photographs taken of the position of the vehicle, the electric pole and the persons injured and dead as a result of the accident. He did not care even to take the measurement of the height of the kerb, which in our view, was a very relevant factor. Nor did he care to get the vehicle examined by a mechanic for the purpose of ascertaining if its mechanism was in order and particularly if its brakes were working properly. The rough sketch prepared by him is a highly unsatisfactory document as it only gives us an extremely rough idea of the position this is of little assistance in determining the question of the appellant's guilt in the criminal trial. Kanu Girdharlal Joshi, an LL.B. student, appeared as D.W. 1. He claims to have seen the bus and the bhaiya immediately prior to the actual accident. The bhaiya was crossing the road running. The witness on seeing the bhaiya shouted to him to stop but the bhaiya continued running. The bus then took a turn to its left, mounting the footpath and causing the accident in question.

The learned Presidency Magistrate, who tried and convicted the appellant, and the High Court, which heard and dismissed his appeal, have both held the appellant guilty almost exclusively on the nature of the accident and on the appellant's inability to stop the bus on seeing the bhaiya who was attempting to cross the road. Both these courts disbelieved D.W. 1. They passed strictures against him in very strong language and cast aspersions even on his knowledge of law. Shri Pardiwala complained that the trial court had misread the prosecution evidence and the High Court was influenced by a number of assumptions which cannot be sustained on the material on the record, some of those assumptions being even contradictory, and this has resulted in grave miscarriage of justice. The condemnation of D.W. 1, K.G. Joshi, by the courts below in strong language is also unjustified and unfair to the witness, contended the counsel. Stress was also laid by the appellant's learned counsel on the opinion of the High Court emphasising the utterly perfunctory character of the investigation and the false statements made by S. 1. Patil, (P.W. 6), the investigating officer. Our attention was drawn to the following observations in the judgment of the High Court :-

> "Tilak Road at that hour of the day is more than normally crowded. In that crowded locality there are shops on both sides and hundreds of people move about on the

footpaths. There were also several passengers in the bus and the bus conductor. Yet this sub-Inspector has not cared to make any enquiry to find out from anyone of the persons round about, from anyone of the passengers or any one of the shopkeepers round about how the accident occurred, with the result that the prosecution has been able to give evidence only of three persons who were injured and who in their very statement say nothing about how the accident took place and of Kisan Appa Kasbe-. Even Kisan Appa Kasbe's attention it appears was attracted towards the incident by the sound of the impact of the bus with the pole. Notwithstanding this statement of each one of these witnesses it is surprising that the Sub-Inspector should not have pursued further investigation but should have put up the case upon such evidence. What is still worse is that one important person whose evidence was available and could have been examined was not examined. He is the injured person Harbansing. He was removed to the K.E.M. Hospital and was under

treatment there for a long time. This is established upon the evidence of Dr. Kole P.W.

1. He had a fracture of the jaw bone and six other injuries, and being admitted to the hospital on 2nd July 1967 was discharged from the. hospital on the 23rd August 1967 according to the evidence of Dr. Kole, Sub-

Inspector Patil was asked why Harbansing's statement was not recorded and this is what he has stated Harbansing Ramnarayan one of the 4 injured left Bombay on the same night. His statement therefore would not be recorded'. In the face of the evidence of Dr. Kole it is clear that this evidence of Sub-Inspector Patil is utterly false because Harbansing was in no condition to move. He was in hospital and remained in the hospital till 23rd August 1967 for almost a month and 26 days after the accident and yet it is surprising to see this responsible police officer saying that he could not record his statement because he left Bombay on the same night. One begins to wonder whether this Sub-Inspector made any enquiries at all about the whereabouts of Harbansing. In his cross-examination he has further given a different reason. He has stated 'Harbansing was reluctant to make any statement as he wanted to go to his native place. He is at his native place. Even this reason does not appear to me a satisfactory reason at all. Even if he had gone away to his native place, Harbansing could well have been contacted and his statement recorded." Shri Pardiwala submitted that on this observation alone the prosecution case should have failed. We find there is. considerable, force in this submission. The High Court has also observed that no attempt had at all been made "to ascertain the probable speed of the bus by measuring the tyre marks on the road though, according to the witnesses, the brakes were jammed and there was a screaming sound as the bus came to a halt", adding, that even the elementary precaution of having the bus tested for the efficiency of its brakes was not taken. Though according to Shri Pardiwala the observation of the High Court, that, the brakes were jammed and there was a screaming sound, was not supported by evidence, in our opinion, assuming this observation to be supported by evidence, it only serves to fortify the view of the High Court that the investigation has been conducted in a very casual and superficial manner. The investigating officer seems to have acted without the requisite, sense of responsibility essential for fair and just police investigation into serious accidents like the present,

with the result that important evidence which was available and should easily have been forthcoming has not been brought before the court for wholly inadequate-if not flimsy-- reasons. Examination of the marks of wheels on the road would have been very useful in appreciating other evidence. What is more surprising is that even evidence on the state of the traffic on the road at the relevant time and on the height of the kerb has not been produced by the prosecution. This evidence would have clearly helped the court in having a clearer picture of the position and in more satisfactorily appreciating the circumstances in which the accident occurred. If there was meagre traffic, then, there was a greater likelihood of the appellant being able to see the running bhaiya more clearly, whereas if traffic was heavy then there was a chance of the bhaiya emerging from behind some vehicle unnoticed by the appellant. Similarly the height of the kerb was a relevant factor to be considered in forming an opinion about the likely speed of the bus. The prosecution failed to appreciate the importance of these aspects and did not care to adduce any evidence on them. This reflects a high degree of inefficiency on the part of the investigating agency. The High Court has, however, observed (perhaps on the basis of personal knowledge of the learned Chief Justice who decided the appeal in the High Court) that the road at that time was more than normally crowded. If that was so then it was a question for con- sideration as to from how much distance was the appellant able to see the bhaiya running, in his anxiety, to cross the road. The High Court did not advert to this aspect at all. Indeed, at one place the High Court has observed that the appellant would have noticed the bhaiya when he was running to cross the road. This could be possible only on the assumption that the traffic on the road was not very heavy and- it did not block the appellant's vision. The High Court has also observed that this was not the first time when an investigation in a case where the public motor vehicle belonging to a public body was involved in an accident had been utterly perfunctory. The fact that this was not the first occasion of inefficient and perfunctory investigation in such cases, ,could not, in our view, serve as an argument for placing premium on the inefficiency of the investigating agency and for convicting the accused which could only be done if the evidence had established his guilt beyond reasonable doubt.

No doubt when an accident like the present takes place one naturally expects the driver concerned to explain the circum-

stances in which he was obliged to take the bus on to the footpath and to strike against the electric pole with such force, thereby killing one human being and injuring several others. The satisfactory nature of the explanation to absolve him of his criminal liability for the accident has, in such circumstances, to be appraised in the light of the entire evidence on the record. The onus of course remains on the prosecution and does not shift to the accused. The evidence of the bus, however, having mounted on to the footpath, which, in the normal course, does not happen, is admissible and has to be duly taken into account in understanding and evaluating the entire evidence led in the case and in appraising the value of the explanation given by the accused for his compulsion which resulted in the accident. The appellant's explanation, even though not conclusive, does, in the absence of the testimony of the bhaiya and of at least some out of the passengers said to have been travelling in the bus, who might have been able to throw some helpful light on the relevant circumstances, seem to leave fair scope for reasonable doubt about his guilt. Whether the failure on the part of the investigating agency to contact persons who would have given useful material evidence relevant for finding the truth was due to inefficiency or was deliberate having been inspired

by some other motive is not for us to speculate on the existing record. Suffice it to say that if it appears as it does in this case, that material evidence has not been collected by the investigating agency for reasons which are wholly unconvincing and the evidence actually produced, leaves a serious lacuna in bringing his guilt home to the appellant, then, merely because the nature of the accident prima facie requires ail explanation from the driver would not be sufficient to sustain his conviction, if the truth of his explanation, which is not liable to rejection outright, could have been appropriately judged if the evidence left out by the prosecution had been produced. The learned Chief Justice on appeal did advert to the possibility of recording bhaiya's evidence at that stage. The idea was, however, dropped because the appellant's counsel did not agree to examine him. In our view, this was hardly a proper approach in this case. Though we feel that in August, 1969, two years after the occurrence of July 2, 1967, the statement of Harbansing, bhaiya, who had never been interrogated by the investigating agency was unlikely to be very helpful, nevertheless if the High Court felt that his evidence was necessary in the interest of justice, then, the witness could and should have been examined as a court witness, the defence objection notwithstanding Parties could not control the court's discretion to have before it further evidence if it was considered necessary for finding the truth for promoting the cause of justice. Justice would fail not only by unjust conviction of the innocent but also by acquittal of the guilty for unjustified failure to produce available evidence. On the existing record we find the evidence to be inadequate and unsafe for convicting the appellant. This, however, is entirely due to the faulty and inefficient investigation, for which no justification is forthcoming. On the view that we have taken it is unnecessary to refer to the decisions cited at the bar on the question of onus of proof in criminal cases generally.

This appeal is of course before us under Art., 136 of the Constitution but the judgments of the trial court and of the High Court proceed principally on assumptions not fully supportable on the material on the record. That is why we have considered it just, fair and proper to examine the evidence ourselves. We find there is a serious lacuna in the case wholly due to the inefficient and perfunctory investigation by the investigating agency.

Before concluding we cannot help observing that the adverse remarks made against K. G. Joshi, P.W. 1, are hardly fair or just. Assuming his testimony did not impose the courts below, they should have expressed their opinion in temperate language usually associated with and reflecting the impersonal diginity of judicial restraint. The strong language used in condemning him and otherwise casting aspersions on him which were unnecessary is, in our opinion, uncalled for and we cannot approve of those observations. The result is that this appeal succeeds and allowing the same we acquit the appellant.

V.P.S. Appeal allowed.