

(1989) 07 GUJ CK 0009
In the Gujarat High Court
Case No : Criminal Appeal No. 320 of 1989

Nanjibhai Ratnabhai Chaudhari		APPELLANT
	Vs	
State of Gujarat		RESPONDENT

Date of Decision : 07-07-1989

Acts Referred:

Gujarat Government Rules of Business, 1990 — Rule 51(3)
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1991) CriLJ 2313 : (1990) 1 GLR 181

Hon'ble Judges : M.B. Shah, J;K.J. Vaidya, J

Bench : Division Bench

Advocate : M.R. Barot and V.M. Barot, for the Appellant; K.T. Dave, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and order dated 12th May 1989 passed by the Special Judge, Bharuch, in Special Case No. 1 of 1987, the accused has filed this appeal. The learned Special Judge has convicted the accused for the offences punishable u/s 5(2) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code and has sentenced him to undergo R.I. for a period of one year and to pay a fine of Rs. 1000/-, in default, R I. for a period of three months for each of the aforesaid offences. He has ordered both the substantive sentences to run concurrently.

2. When the matter came up for admission, the record and proceedings were called for.

3. The main question involved in this appeal is whether the order sanctioning prosecution is valid or not. The further question which was raised by the learned counsel for the appellant was whether the defence has probabalized its say that the accused had accepted the amount of Rs. 500/-from the complainant as he had given it by way of loan to the complainant.

4. Mr. Dave, learned Additional Public prosecutor appearing on behalf of the respondent, submitted that the prosecution has proved the sanction to prosecute by examining P.W. 5 Jaysukhlal Maganlal Pandya Ex. 28 and by producing the sanction order Ex. 29. The prosecution has further led the evidence of P.W. 7 Shambhudayal Shankerdayal Khare, Ex. 55 who, at the relevant time, was the Secretary, Labour & Employment Department, Gujarat State, and also by producing the necessary notings which were forwarded to the concerned Minister. He further submitted that the learned Judge has rightly appreciated the evidence and arrived at the conclusion that the defence has not probalilized its case that the accused had accepted the amount of Rs. 500/- from the complainant as he had given it by way of loan.

5. Learned counsel Mr. Barot appearing on behalf of the appellant-accused vehemently submitted that in this case the prosecution itself filed an application Ex. 47 for examining the Minister Shri Amarsinh Vaghela for proving the sanction. That application was opposed by the learned advocate appearing on behalf of the accused. In spite of the opposition the learned Judge granted the said application by observing that it was necessary to examine Shri Amarsinh Vaghela, Minister for Revenue at the relevant time, who had accorded sanction to prosecute the accused. Thereafter the prosecution had taken time from the Court for examining him. Subsequently further application Ex. 51 was filed for examining Shri Shambhudayal who was the concerned Secretary at the relevant time. That application was also objected to by the defence. The Court, however, overruled the said objection and granted the said application. Again time was taken by the prosecution for examining Minister for Revenue Shri Amarsinh Vaghela. Yet the prosecution filed an application Ex. 54 that it was not necessary to examine the concerned Minister as the concerned officer who had prepared the note was to be examined. He submitted that even taking into consideration the evidence of P.W. 7 Shambhudayal Khare it is amply clear that the concerned Minister had not applied his mind to the facts of the case and had not passed any appropriate order under the Business Rules. He has merely signed below the note submitted by the concerned Secretary. He submitted that there is nothing on the record to show that the Minister had applied his mind to the facts of the case before according sanction to prosecute the appellant. He, therefore, submitted that the entire prosecution is vitiated and, therefore, the conviction order is illegal.

6. For appreciating this contention it would be necessary first to refer to the deposition of P.W. 5 Jaysukhlal Maganlal Pandya Ex. 28. At the relevant time he was serving as a Deputy Secretary, in the Labour & Employment Department of the State Govt. It is his say that the accused was Labour Officer serving with the State of Gujarat. Papers were received from the anti-Corruption Bureau, Ahmedabad, with a proposal to give sanction to prosecute the accused N.R. Chaudhary. After preparing the note the papers were placed before the Labour Minister for approval as per the Rules of Business of Gujarat Government. The Labour Minister had approved it. Thereafter he had prepared an order granting

sanction to prosecute the accused as per the Rules of Business of Gujarat Government. That order was produced on record at Ex. 29. He has denied the suggestion that no order was passed by the Labour Minister sanctioning the prosecution against the accused. He stated that on the departmental note Minister Shri Vaghela had signed it. Order Ex. 29 is dated 7th February 1987. The said order inter alia provides that on 28th December 1981. Shri N.R. Chaudhary had inspected two Units named Sonu Enterprise and Joshi & Modi Associates, Engineers and Contractors, situated at G.I.D.C. Ankleshwar and found some irregularities under the Contract Labour (Regulation and Abolition) Act, 1970 and from his Labour Adviser Shri Ganpathai Kahar he had accepted Rs. 200/- on 31st December 1984 and demanded Rs. 500/- on 4th January 1985. It further provided that the papers submitted by the A.C.B., Bharuch against N.R. Chaudhary were considered and, therefore, order sanctioning the prosecution against the accused for the offences u/s 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act was granted. The order was passed in the name and / or behalf of the Governor, Gujarat State, and was verified by P.W. 5 Jaysukhlal who was at the relevant time Deputy Secretary.

7. Thereafter on 12th January 1989 the Public Prosecutor filed an application Ex. 47 before the Special Judge praying that the prosecution may be permitted to examine Minister Shri Amarsinh Vaghela for proving the sanction. That application was granted in spite of the objection raised by the defence counsel. The matter was adjourned twice or thrice for examining the Minister. Thereafter application Ex. 41 was filed for examining Shambhudayal Khare who at the relevant time was Secretary in the Labour Department of the Gujarat State. That application was granted by the Court and P.W. 7 Shambhudayal Shankerdayal Khare was examined at Ex. 55. It is his say that at the relevant time he was a Secretary in the Labour Department and his office has received papers for grant of sanction to prosecute the accused. It is his further say that in such type of cases Section Officer of the Department would prepare a note. Thereafter the said note would be placed before the Secretary after the Deputy Secretary verifies it. The Secretary would place it before the Minister for appropriate orders. If the Minister agrees with the note prepared by the Secretary, then he would sign below the said note. If he disagrees with the said note, then the Minister would place a note on the said file or would contact the Secretary and discuss with him. It is his say that in the present case the note was placed before the Minister and he had signed below it. According to the custom of their Department and procedure of office, this act was considered as an act granting sanction to prosecute the accused. Thereafter the order sanctioning the prosecution was prepared and sent to anti-Corruption Bureau with all other papers. The relevant note is produced at Ex. 56. According to him, this note was prepared by the Section Officer. Thereafter it was placed before the Deputy Secretary and subsequently it was placed before him. He has identified the signatures of all concerned. In cross-examination he states that he had submitted the note along with the case papers pertaining to the accused before

the Minister for obtaining sanction. The Minister had signed below Ex. 56 on 28-2-86. He admits that at that time he had not discussed with the Minister. It is his say that under departmental instructions there is no rule or procedure which provides how Minister has to pass order agreeing or disagreeing with the note submitted by the office. He further stated that according to office procedure if Minister agrees with the note of the Secretary, he has to sign in front of the note. He denies that there is no such procedure prescribed in the Manual of office procedure. He admits that he had not personally gone before the Minister with the file. He denies that he has overlooked the defence of the accused and decided to prosecute without going through all the papers. However, he agrees that he has not decided whether the defence of the accused that he has accepted the amount as it was loan amount was right or not. The said note which is Ex. 56 elaborately recites the allegations against the accused. The said note and the endorsement below it read as under:

"(1) Pages 1-7/C, 35-37/C, 39-40/C, 47-51/C; and the ACB part-file below: may please be seen.

(2) At least three considerations would appear to be pertinent here.

(a) Apart from the complainant, the acceptance of illegal gratification by the GLO was witnessed by a Deputy Mamlatdar serving in the office of the Collector, Bharuch, Shri P. J. Vankar (of p. 53 in the partfile below), that is, by an independent witness.

(b) The GLO's contention that the amount of Rs. 500/ - was accepted by him on its being clarified that the amount was towards the repayment of a loan given by him earlier to the complainant, Shri Kehar(of pp. 39-40/C; and pp. 91, 93 in the part-file below), is specifically denied by the eye-witness, Shri P. J. Vankar (of p. 53 in the part-file below).

(c) The Vigilance Commission has recommended approval of the proposal to file a complaint against the GLO of offences u/s 161, I. P. C. and Section 5(2) of the Prevention of Corruption Act, 1947 (of pp. 47-49/C).

(3) Accordingly., it is recommended:

(R) That the proposal to be approved to initiate criminal proceedings against Shri N. R. Chaudhary, Government Labour Officer, Ankleshwar (now under suspension), for offences u/s 161, I. P. C. and Section 5(2) of the Prevention of Corruption Act, 1947.

(4) This file is submitted for orders with reference to the recommendation made at R in paragraph (3) above.

It has taken more than six months to put up the case for approval after the Vigilance Commission's advice was received. The delay is long but the Deputy Secretary has been looking after two charges since August and has a predilection for depth. Hence it cannot be avoided till the second post of Dy. Secy, on labour

side is filled up.

The plea of the delinquent that he was victim of a conspiracy cannot be accepted. The evidence shows that he had accepted money and the argument that he had advanced money to a Consultant as a loan requires scrutiny by the Court.

We may approve the proposal."

Below this there is signature in green ink by the Minister Mr. Vagela dated 28-2-86. There is also the signature of the Secretary. From the said noting which is submitted to the Minister it is clear that the entire papers were placed before the concerned Minister.

8. Learned counsel Mr. Barot submitted that according to the Manual of the office procedure there is no rule which provides that Minister has to sign below the noting if he approves the proposal. According to his submission, the office procedure rules only provide the procedure which is required to be followed by the Second Officer, Deputy Secretary and the Secretary. It does not lay down any procedure which is required to be followed by the Minister. He emphasized that Rule 51(3) of the Manual of office procedure provides that if an officer agrees with the note, then he has merely to sign. Still however, if he intends to emphasize some point then a separate note can be placed in the margin. But this would not be applicable in the case where Minister approves the note. He has to specifically write that he approves the said note. In our view, this contention is without any substance. It is the say of the Secretary of the concerned Department that as per the office procedure when the Minister agrees with the note he has merely to sign below the said note or in front of the note and in this case it is amply proved that the Minister had signed below the note. The last line of the said note, as stated above, specifically recites that "we may approve the proposal" and below that line there is signature of the Minister Mr. Vaghela on 28-2-86. There is also the signature of the Secretary Mr. Khare that after applying his mind to all the relevant papers the note was prepared by him. The said note in terms states that at least three considerations appear to be pertinent in the present case which are as under:

"(a) Apart from the complainant, the acceptance of illegal gratification by the GLO was witnessed by a Deputy Mamlatdar serving in the office of the Collector, Bharuch, Shri P. J. Vankar (of p. 53 in the part-file below), that is, by an independent witness.

(b) The GLO's contention that the amount of Rs. 500/- was accepted by him on its being clarified that the amount was towards the repayment of a loan given by him earlier to the complainant, Shri Kahar (of pp. 39-40/C; and pp. 91, 93 in the part-file below), is specifically denied by the eye-witness, Shri P. J. Vankar (of p. 53 in the part-file below).

(c) The Vigilance Commission has recommended approval of the proposal to file

a complaint against the GLO of offences u/s 161, I. P. C. and Section 5(2) of the Prevention of Corruption Act, 1947 (of pp. 47-49/C)."

This means that the concerned authority had applied its mind to the evidence of the Deputy Mamlatdar, who is panch No. 1 in the present case, and the statement of the accused is also considered. It had also considered the report of the Vigilance Commissioner and thereafter recommended that." Sanction to prosecute the accused be granted."

9. Therefore, in our view, it was not necessary for the prosecution to examine the concerned Minister Mr. Vaghela as a prosecution witness for proving the sanction.

10. Before the trial Court the learned advocate appearing on behalf of the defence relied upon the overruled decision of this Court in the case of *Habibulla Kalyani v. State of Gujarat* 1985 Cri LR 475. Fortunately it was noticed by the learned Public Prosecutor that this judgment was overruled by the Supreme Court in Criminal Appeal No. 594 of 1986 decided on 4th March 1987 and the Supreme Court in that case held that when the relevant file of the Government was produced before the Court by the prosecution, it was surprising to find that the High Court had observed that the Finance Minister should have been examined as a witness and that they did not think that it was at all necessary. Mr. Barot, however, submitted that in that case after the file went to the Minister, the Minister had discussion with the Commissioner of Sales Tax and it was only thereafter that he had accepted the recommendation of the Additional Chief Secretary and, therefore, the Supreme Court has overruled the decision of this Court. In the present case, in our view, as stated above, the note is eloquent. It shows that the entire material was placed before the Secretary and the Secretary has called out the relevant part and has placed the entire file before the concerned Minister and the Minister had placed his signature approving the proposal to prosecute the accused. It is not necessary that even if the Minister is agreeing with the proposal, he should have any discussion with the concerned officer. The relevant discussion of the Supreme Court in the case of *Habibulla Kalyani* (supra) is as under:

"In this appeal by Special Leave, the only question is whether there was a valid sanction for the prosecution of two respondents who were officers of the Department of Sales Tax, for alleged offences punishable u/s 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code, 1800. Admittedly, there is an order passed by the State Government granting sanction for the prosecution of the respondents. The Additional Chief Secretary, Shri R. V. Chandramouli entered the witness box and testified that he after perusal of the records and on being satisfied that there was prima facie case, recommended the grant of sanction for the prosecution and put up the file to the Finance Minister. The High Court by a curious process of reasoning and by an unnecessarily lengthy and dubious judgment, has quashed the prosecution on the ground that the grant of sanction by the Finance Minister was without due

application of mind. There is no basis whatever for holding that the Finance Minister had not applied his mind before granting the sanction. Despite the fact that the concerned Government file had been produced in Court in evidence on the side of the prosecution, we are surprised to find that the High Court has observed that the Finance Minister should have been examined as a witness. We do not think that it was at all necessary. We are satisfied that it was not a proper or correct approach. The notings in the file prove beyond doubt that the Additional Chief Secretary has applied his mind and had gone through the relevant papers including the statements of the prosecution witnesses as well as the report of the Director, Anti-Corruption Bureau. After he was satisfied that there existed a prima facie case he recommended the grant of sanction for the prosecution. After the file went to the Minister, the Minister had a discussion with the Commissioner of Sales tax and it was only thereafter that he accepted the recommendations of the Additional Chief Secretary."

Apart from the aforesaid discussion, this point is also covered by the decision of the Supreme Court in the case of *The State of Rajasthan Vs. Tarachand Jain*, . In that case it was observed that where the facts constituting the offence appear on the face of the sanction accorded by the Chief Minister, it is not necessary for the prosecution to lead separate evidence to show that the relevant facts were placed before the Chief Minister. The Supreme Court further held that the fact that the Chief Minister signed the sanction for the prosecution on the file and not the formal sanction produced in the Court, which bears the signature of Special Secretary to the Government, makes no material difference. In the present case taking into consideration the sanction order Ex. 29 and the note Ex. 56 which is signed by the concerned Minister, it is apparent that all the material was placed before the Minister and he had accorded sanction to prosecute the accused. Once the facts appear on the face of the sanction order, it is not necessary for the prosecution to lead evidence of the competent authority who has accorded sanction. Hence it cannot be said that the prosecution has failed to prove valid sanction to prosecute the accused.

11. The learned counsel for the appellant submitted that the Secretary Mr. Khare had admitted that he had not decided whether the defence of the accused that he had accepted the amount of Rs. 500/- from the complainant because he had given that amount as a loan is not considered by him and hence the sanction order is not valid. In our view, the note Ex. 56 in terms recites that the said contention was considered by the Secretary and it has been stated that the plea of the delinquent that he had accepted the money as he had advanced money to the Consultant as a loan requires scrutiny by the Court. This shows that the authority was of the view whether this defence is valid or not could not be agitated at the time of granting prosecution. It would be for the Court to decide its genuineness. While granting sanction it was not necessary for him to judge the truth of the allegation made against the accused. If there is prima facie material against the accused, then it cannot be said that the sanctioning authority should weigh the defence of the accused and decide it before granting

sanction. In our view, the trial Court rightly arrived at the conclusion that the prosecution has proved that the sanction produced in the present case is legal and valid.

12. The next question as contended by the learned counsel for the appellant is that the defence has probalilized its say that the accused had accepted Rs. 500/- from the complainant because he had advanced the said amount to the complainant. For this the learned counsel relied upon the evidence of D. W. 1 Shantilal Dhanjibhai who was working at the relevant time as a Peon with the accused. Before discussing this contention, in our view it would be necessary to consider the evidence of the complainant P.W. 1 Ganpatbhai Galgalbhai Kahar Ex. 15, who is Labour Consultant, and P.W. 2 Paragbhai Jairambhai Ex. 17, panch No. 1, who was Deputy Mamlatdar in the office of the Collector, Bharuch. The complainant Ganpathbhai Kahar was a Labour Consultant working with Joshi and Modi Associates, Contractors & Engineers, and Sonu Enterprise. The accused visited the aforesaid two commercial establishments on 28th December 1984 as he was a Government Labour Officer. He had prepared the note under the Minimum Wages Act and under the Contract Labour (Regulation and Abolition) Act. One Ajaypal Chandrapal, who was working as Clerk with Sonu enterprise, had shown the entire record to him but he had not signed on the said record and he demanded Rs. 500/-. Ajaypal replied that he was not having that amount but his Labour Consultant would see him with the record and money. In the premises of Joshi and Modi Associates the appellant contacted one Mukesh Shah. Mukesh Shah had shown the record to the accused. After seeing the record and after preparing his inspection note he had refused to sign the record produced before him and, there also he demanded Rs. 500/-. Mukesh Shah also replied that his Labour Consultant Ganpathbhai would see him with all the record. The accused had given notices to both these firms. The accused had informed Mukesh that along with the record he should send Rs. 500/-. On 21st December 1984 the complainant had gone in the premises of Sonu Enterprise and Joshi and Modi Associates. He was informed by the concerned clerks that Chaudhary (accused) had visited the premises and had issued notices and had demanded Rs. 500/-. The complainant replied that he would prepare the replies on 7-12-84 and he would produce the concerned records and the replies. He contacted the accused in his office at Bharuch on 27-12-84 at about 2.00 p.m. He had produced the record and the replies to the notices to the accused. The accused inquired from him whether he had brought Rs. 500/-from each of them. He replied that he had not brought the amount and requested him to sign the record after going through it. The accused said that he would not sign without taking money. On 31st December 1984 he had again gone at the office of the accused and had produced the replies and record. At that time also the accused had demanded the money. It is the say of the complainant that he was having Rs. 200/- at that time. Therefore he paid that amount to the accused. He requested the accused to sign the record but the accused said that till he gets complete amount, he would not put his signature and further informed him to come on 4th January

1985 between 4 & 5 p.m. Thereafter the complainant contacted the Inspector of Anti-Corruption Bureau on 4th January 1985. The Inspector recorded his complaint which is at Ex. 16. Thereafter the Inspector called for the panchas. Necessary panchnama was prepared. Panch No. 1, who was Deputy Mamlatdar, was directed to accompany the complainant and to see and hear what happens and if the accused accepts amount, he should come out of the office and give the agreed signal. Thereafter the raiding party proceeded towards the office of the accused. Complainant and panch No. 1 went into the office. The accused was present. The complainant produced the replies and the record before the accused. On the said record the accused placed 31st December as the date. The complainant requested the accused to place 4th January as the date and not 31st December. The accused said that as the proceedings were not completed, he had placed the date as 31st December. He further asked whether he had brought Rs. 500/- or not. Because of this demand the complainant paid the said amount to the accused. The accused had accepted it, then placed it in his pocket. Panch No. 1 went out and gave the agreed signal. Raid was carried out.

13. The prosecution version is fully corroborated by the evidence of panch No. 1 P.W. 2 Paragbhai Jairambhai Ex. 17 who was Deputy Mamlatdar in the office of the Collector, Bharuch. There is nothing on the record to suggest that the witness is interested in falsely roping in the accused or is in any way interested in the prosecution. His evidence is consistent, cogent and reliable.

14. Further, the evidence of the complainant is corroborated by the evidence of P.W. 3 Mukesh Ramlal Shah, Ex. 19, who is working as a Clerk in the office of Joshi & Modi Associates, and P.W. 4 Girishbhai Maganbhai Patel Ex. 26, who is working in the office of Sonu Enterprise. Their evidence corroborates the say of the complainant with regard to the previous demand of illegal gratification by the accused. In our view, this evidence is rightly appreciated by the learned Judge. Hence it is not necessary to discuss the evidence of this witnesses because it is the defence of the accused that he had accepted the amount which was paid by the complainant but he had accepted it as he had advanced it to the complainant and, therefore, the question would be whether the said amount is the bribe amount or whether it is an amount advanced by the accused to the complainant. In our view, there is no reason to disbelieve the evidence of panch No. 1 who is totally independent witness. In his presence the accused had demanded the amount and had accepted it. In our view, the trial Court has rightly appreciated the evidence of the complainant as well as panch No. 1 and had arrived at the conclusion that the accused had accepted the amount as illegal gratification.

15. Mr. Barot, learned counsel for the appellant, submitted that the defence has probalilized its contention that the appellant had advanced Rs. 500/- to the complainant by leading the evidence of D.W. 1 Shantilal Dhanjibhai at Ex. 41. It is the say of witness Shantilal that at the relevant time he was working as a Peon in the office of the Labour Officer, Bharuch. In 1984 the accused was appointed as a Labour Officer. He was knowing the complainant Ganpatbhai Galgalbhai

Kahar. Before 2 to 4 months of the incident the accused had inquired from him with regard to the credibility of Ganpatbhai. He had reported that he was good man. The accused had informed him that Ganpatbhai was demanding money as loan from him. He further states that on 4-1-85 when the raid was carried out in the office, he was standing near the table of Clerk Jyotsanaben. After P.I. Vasava and persons of raiding party went in the room of the accused, the accused had uttered that he had committed mistake by giving loan to the complainant. In cross-examination he admits that he was working with the accused and through the favour of the accused he was promoted as a Clerk. He further admits that he was having good relations with the accused and that when the raid was carried out nobody was permitted to enter the room of the accused. In view of the aforesaid admission of the witness that when the raid was carried out, nobody was permitted to enter the Chamber of the accused, the say of the witness that the accused uttered the words that he committed blunder in advancing loan to Ganpatbhai cannot be relied upon. The learned Judge has rightly arrived at the conclusion that if the accused had advanced the loan, he would have at once stated so before P.I. Vasava and the panchas that he had not accepted the bribe but he had received the amount as he had advanced loan to the complainant. In any case, if the accused had uttered these words, at least panch No. 1 who was a Deputy Mamlatdar and independent witness would have stated so before the Court.

16. Further, it is difficult for us to comprehend that the Labour Officer would advance loan to a Labour Consultant and that too without any writing. As such there is nothing on record to show that the complainant and the accused were having good relations with each other and they were good friends. The accused was transferred to Bharuch only in 1984 and there is nothing on record to show that the relations between the accused and the complainant were such that the accused would give loan to the complainant. If indeed any loan was advanced by the accused to the complainant, it is equally difficult to comprehend as to why the complainant should become ungrateful to obliging accused by falsely implicating him in the charge of corruption. In this view of the matter, the learned Judge rightly arrived at the conclusion that the defence has failed to probabalize its defence that the accused had accepted the amount because he had advanced it to the complainant. The learned Judge has rightly arrived at the conclusion that the evidence of the complainant is corroborated by the evidence of P.W. 2 panch No. 1 and also by the evidence of P.W. 3 Mukesh Ramlal Shah Ex. 19 and P.W. 4 Girishbhai Maganbhai Patel Ex. 26.

17. At the fag end of the hearing of this appeal learned counsel for the appellant submitted an application for permitting the appellant to lead additional evidence to show that the accused was transferred from 2nd April 1985 and on 10th November 1985 he was suspended and that only on 21st October 1986 witness Shantilal was appointed as a clerk. This application is filed to point out that the admission of defence witness Shantilal that he was promoted as a Clerk because of the accused is not a correct one. In our view, whether the witness is promoted

because of the accused or not is not of much relevance in this case because the witness admits that he was having good relations with the accused. Hence this application for additional evidence is rejected.

18. No other contention was raised by the learned counsel for the appellant.

19. In the result, this appeal fails and is dismissed.

Learned counsel for the appellant prayed that two months' time be granted to the appellant to surrender to custody. The prayer is granted. The appellant is directed to surrender to custody on or before 9th September 1989.