

(1939) 04 CAL CK 0008
In the Calcutta High Court

River Steam Navigation Co. Ltd.

APPELLANT

Vs

Owners and Parties interested in S.S. "Janardan"

RESPONDENT

Date of Decision : 19-04-1939

Acts Referred:

Inland Vessels Act, 1917 — Section 52

Citation : AIR 1939 Cal 513

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—On 14th December 1935 the paddle steamer Kharoti belonging to the River Steam Navigation Company Limited towing a flat named "The Singara" on her port side was voyaging from Khulna to Calcutta. On the same day the Steamer "Janardan" belonging to the East Bengal River Steam Navigation Co. Ltd., was voyaging from Calcutta to Khulna. The "Janardan" was towing two flats the "Megnath" and the "Jogendranath" on her starboard and port side respectively. At some time between 8 and 9 P. M. these two flotillas came into collision in the Aura Sibsa River. As a result of the collision the flat "Singara" was holed in three places. She sank with her cargo of jute and became a total loss. The bows of the vessels of the "Janardan" flotilla were damaged by the collision. At the time it was ebb tide the speed of the tide being about 2 1/2 to 3 miles per hour. The "Janardan" flotilla was steaming against the tide and the "Kharoti" with her tow was steaming with it. When the collision occurred Mr. Killick, an Officer of the India General Steam Navigation Company, was in a motor launch, "The Glenapp," which was anchored at some little distance below a point or bend in the Aura Sibsa River, which has come to be known as Tiger Point. He was on duty as a conservancy officer his services having been placed at the disposal of Government. These are the admitted facts. It was also admitted at the trial that the "Singara" sank at the place marked in the map of Mr. Oag, Deputy River Surveyor of the Commissioners of the Port of Calcutta. That place is on the western side of the channel about five hundred feet south of the line passing through Tiger Point.

2. The main points in controversy relate to the part of the Aura Sibsa River in which the collision took place, and to the manner in which the respective flotillas were being-navigated just prior to the accident. The case of the River Steam Navigation Company Limited as made out in the pleadings is to be found in the particulars stated in para. 4 of the plaint. Briefly it is as follows: The "Kharoti" was being navigated in a proper and seamanlike manner on the western side of the channel nearer to the west bank, i.e. she was keeping to her starboard side. When approaching Tiger Point and when still a considerable distance above it the "Kharoti" blew a long blast on her steam whistle. The "Janardan" was being navigated at full speed on the wrong side of the channel, i.e. she was proceeding along a course on her port side-nearer the western bank with her searchlight directed thereon. While still above the bend those aboard the "Kharoti" saw the "Janardan" navigating the bend on the wrong side, i.e. on the west side; thereupon the "Kharoti" blew a short blast on her whistle to indicate that she was going to starboard. The "Janardan" did the same but instead of going to starboard she kept her original course. The "Kharoti" then blew three short blasts to signal that she was going full speed astern and reversed her engines. In spite, of these manoeuvres the "Janardan" flotilla which was being improperly and negligently navigated came upon the "Singara" and struck her on the port side and sank her. An alternative case made out is that, as the channel was a narrow one and as the "Janardan" was proceeding against the tide she should have-remained below the bend and allowed the "Kharoti" to pass clear of the Point and that in not doing so the Master of the "Janardan" offended against Article 21 of the Rules promulgated by the Government in. the exercise of the powers conferred by Section 52, Inland Steam Vessels Act 1917 (Act 1 of 1917).

3. The definite case made out in the plaint is that the collision took place on the western portion of the fairway or channel and. before the "Kharoti" had been able to pass-the bend known as Tiger Point. Further according to the pleadings the collision was due to the fact that the "Janardan" was being improperly navigated on the wrong side of the fairway or channel, i.e. on her port side instead of on her starboard side, and to the fact that the "Janardan" did not stop and remain below the bend until the "Kharoti" had passed clear. The case as made out in the evidence given on behalf of the River Steam Navigation is that the "Kharoti" at the time of the impact was hugging the western bank about 4 or 5 fathoms away from it and was above or to the north of the bend. The case of the East Bengal River Steam Navigation Company as stated in the pleadings is as follows: The " Janardan " was proceeding on the starboard side of the fairway well over towards the eastern bank. When she was about half a mile below Tiger Point she blew a long blast but got no reply from the opposite side. She proceeded on her course and when she came close to the bend or Tiger Point she saw the glow of the search, light of an approaching vessel playing on the western bank. She gave a short blast, but got no response. The Sarang of the "Janardan" then stopped her engines. Just then the "Kharoti" with the fiat "Singara" came round the bend towards the "Janardan". The "Janardan" gave three short

whistles and put her engines astern. The "Kharoti" was on the wrong side of the fairway being very near the eastern bank. She did not alter her course on seeing the "Janardan" but kept on at full speed on her wrong course. When the "Kharoti" came very near the "Janardan" she attempted to go to starboard, but it was then too late. The "Singara" came into violent collision with the "Jogendranath" and disconnected it from the "Janardan". She then struck the "Megnath" and finally the "Janardan".

4. Thus, the case of the owners of the "Janardan" is that collision took place below the bend or Tiger Point and near the eastern bank. It is alleged that the collision was due to the fact that the "Kharoti" was on the wrong side of the fairway, to the fact that the "Kharoti" had not given the proper signals and to the fact that she was being improperly and negligently navigated. Upon these respective allegations two actions have been commenced, the one by the River Steam Navigation Co., being Suit No. 1 of 1937 and the other by the East Bengal River Steam Navigation Co., being Suit No. 3 of 1937. The suits have been heard together at the request of the parties and this judgment shall govern both suits. Both parties wish that the question of liability should be decided first and evidence for that purpose only has been led. The question of the amount of damage suffered was not gone into at all by the parties, they having agreed that the consideration of that question would be taken up, if at all, at a later stage after a decision had been given on the question of liability.

5. The eyewitnesses to the collision examined by the River Steam Navigation Co. are Faiz Ahmad, the Sarang of the "Kharoti", Nur Hossain, the sukhani or helmsman of the same vessel, and Wazuddin, sukhani of the flat "Singara". Then there is Mr. Killick who was in the motor launch "Glenapp", a little to the south of Tiger Point. He did not see the collision itself, which he says took place above the bend and beyond his line of vision", but he witnessed the incidents shortly before and shortly after the collision. These are all the witnesses examined by the River Steam Navigation Co. regarding the collision. Next there are two witnesses, Mr. Oag, and Mr. Bird. They surveyed the river a few days after the occurrence and located the wreck. On behalf of the East Bengal River Steam Navigation Co., a larger number of witnesses have been examined. The "Janardan" was at the time carrying as passengers Mr. Ghosh, an Engineer in Siemens (India), his two sons aged 9 and 13 respectively and three Americans, Mr. Spalding, Dr. Balsley and Mrs. Balsley who was then Mrs. Hahn. These Americans were friends of Mr. Ghosh. Mr. Ghosh was a friend of one of the Roys who are the Managing Agents of the East Bengal River Steam Navigation Co. These persons were all going on a pleasure trip on the "Janardan", the Americans being the guests of Mr. Ghosh. Mr. Ghosh and the Americans have been examined on commission. Mr. Spalding professes to have actually seen the collision and Mr. Ghosh says he saw the "Kharoti" and her tow about to collide with the "Janardan" flotilla when he went into the cabin to look after his children. Dr. Balsley and Mrs. Balsley felt the impact and rushed out of their respective cabins to see what had happened. The two sons of Mr. Ghosh have not been examined. Apart from these passengers

some members of the crew of the "Janardan" flotilla have been examined. They are Joynal Abedin, the sukhani of the "Janardan" Godu, Sarang of the Jogendranath, Irshak Ali, sukhani of the "Megnath" Sabu Mirdha, Sarang of the "Megnath", Abdul Bari, the engine driver of the "Janardan", and Dhanu Mia, a khalasi or deck hand of the "Janardan". The Sarang of the "Janardan", Asmat Ali, is dead. Sabu Mirdha of the "Megnath" says he was lying ill in the stern of the flat and saw nothing, Abdul Bari, the engine driver, was in the engine room and could not see what was happening above. The others say that they saw the collision. In addition to these witnesses Mr. Alec Scott, the Superintending Engineer of the East Bengal River Steam Navigation Co., has been examined. He proves the death of Asmat Ali and describes the vessels. His evidence does not deal with the events that led to the collision.

6. This is all the evidence that has been placed before the Court. Before dealing in detail with this evidence I propose to make certain general observations. The two suits have been heard together, but it must be remembered that the position of affairs is not this, that if the East Bengal River Steam Navigation Co. fails to prove its case the River Steam Navigation Co. must succeed or vice versa. The case set up by the East Bengal River Steam Navigation Co. may be false. This will disentitle that company to recover, but it does not follow from this that the River Steam Navigation Co. must be held to have succeeded. A party in order to be entitled to recover must prove his own case. This principle which is of general application has always been applied in admiralty actions. In this connexion I would refer to the case of the "East Lothian" 1 Lushington's Admiralty Rep. 241. Lord Chelmsford at p. 249 asserts this principle in these words:

An erroneous allegation of the mode in which the injury occurred, made by way of answer to a libel does not narrow the issue down to the particular fact alleged so as to entitle the complaining party to recover if proof of it should fail. He must rely upon the establishment of his own case and not upon the failure of his adversary and must succeed upon the truth of his own allegations or not at all.

7. Again a party must recover only "secundum allegata et probata." This was laid down in "The Ann", 1 Lushington Admiralty Rep. 55. It is true that since the Judicature Acts in England the rules as to strictness of pleadings have been relaxed and that in India the Courts will not allow mere technical defects in pleadings to defeat a party's claim which is otherwise good. Nevertheless, the rule that proof must not be at variance materially with pleadings and that a party must state in his pleadings the material facts on which his case rests and in order to succeed must prove those material facts must always remain one of the essentials of legal procedure. Having these principles in mind I set out as precisely as I could at the beginning of this judgment the respective cases of the parties. I shall now take up for consideration the case of the River Steam Navigation Co. Ltd. Their witnesses deposing to the collision say that at the time of the collision the "Kharoti" was above the bend known as Tiger Point and was about four or five fathoms away from the western bank and that the "Janardan"

flotilla was hugging the western bank and instead of going to the east side of the fairway came into collision with the "Kharoti" above the bend. On behalf of the East Bengal River Steam Navigation Co., it is contended that this is a most improbable story and I must say that I agree with this criticism. It must be borne in mind that the river has been described by all the witnesses as a broad river. The width near Tiger Point has been variously given as being half a mile to a quarter of a mile. Mr. Oag's map which is accepted by both parties as being a correct one shows that the width at Tiger Point is a little over one-fourth of a mile and that both below and above the point the river is wider. Now, if the "Kharoti" was being navigated four or five fathoms from the western bank and if the "Janardan" was coming from the south to north also close to the western bank the "Kharoti" would be clearly visible to the "Janardan" for well over a mile before they met. This will be obvious if one glances at Mr. Oag's map or the ordinance map, the correctness of which is admitted by both sides. It is also clear from the maps that the "Janardan" would have had a stretch of water nearly one-fourth of a mile wide on its starboard side in which to turn. There could not be the slightest difficulty in the "Janardan" turning to starboard and avoiding the collision.

8. In these circumstances and under these conditions it is difficult to conceive of any reason why the "Janardan" flotilla should collide with the "Kharoti" flotilla. It is nobody's case that the "Janardan" flotilla deliberately and with set purpose rammed the "Singara". Learned Counsel for the River Steam Navigation Co. argued that it was quite possible that the Sarang of the "Janardan" was not keeping a look out and that there was an untrained man at the helm. This is a mere suggestion and it is negated by certain undisputed facts. Mr. Killiok deposing on behalf of the River Steam Navigation Co. Ltd., said that the "Janardan" blew a long blast on her steam whistle when approaching the bend. This shows that there was a proper look out kept and that the man in charge of the vessel knew the rules regarding signals. The rules say that before approaching a bend a steamer should give a long blast. Then there is the evidence given by Mr. Killick and the persons on the "Kharoti" flotilla that just before the collision the "Janardan" gave a short blast, thereby intimating that she was going to starboard. This again was a correct signal to give and a correct manoeuvre to adopt. This indicates also that there was an experienced person directing the navigation of the "Janardan."

9. Learned Counsel for the River Steam Navigation Co. contends that I should believe the evidence that both the flotillas were near the west bank. He next points out that a collision undoubtedly took place and asks me to conclude from this that there must have been an inexperienced helmsman on the "Janardan" or that her Sarang was not at his post. This sort of argument is obviously illogical. Before I can accept the evidence that both flotillas were near the west bank of the river I must test it in the light of probabilities. If the story is improbable, I should not accept it unless the character of the witnesses is such as to make it impossible or difficult for me to disbelieve them. I find no such difficulty in the

present case. The crew of the "Kharoti" flotilla are obviously interested persons. The manner in which they deposed, the contradictions in their evidence here and before the Magistrate and the untruths which some of them have undoubtedly told, make it unsafe to rely on their evidence implicitly. When therefore their evidence on the face of it tells an improbable story I can have no hesitation in rejecting it.

10. As regards Mr. Killick the position is somewhat different. Clearly he is not so interested as the other witnesses for the River Steam Navigation Co. just mentioned by me. He is an Officer of the India General Steam Navigation Co. and not of the River Steam Navigation Co, He is however not so disinterested as he would have us believe. It has been established that the India General Navigation Co. and the River Steam Navigation Co. have a common staff and common agents at all places outside Calcutta. Even at Calcutta some of the staff is common. The claims department, the traffic department and various other departments are common. In fact the river service is run jointly by these two companies. The conduct of Mr. Killick at the time of the accident and thereafter clearly establishes that he was interested in the River Steam Navigation Co. and it is but natural that he should have been so interested. He did not do himself much good by endeavouring to show that he was quite disinterested in the matter. As a matter of fact, he took the trouble of sending a detailed report of the accident to the River Steam Navigation Co. He did not extend the same consideration to the East Bengal River Steam Navigation Co. He gave orders to the Sarang of the "Kharoti" as to what he should do. His attempt now to tone down these orders into mere recommendations in order to show that he was unconnected with the River Steam Navigation Co. was hardly creditable. On the whole however, Mr. Killick seemed to have given his evidence fairly and honestly; in fact, in my opinion, he was the most straightforward and honest of all the witnesses of either side who deposed to the facts leading to the collision. Nevertheless Mr. Killick's evidence cannot be accepted unhesitatingly on all matters.

11. I turn once again to the question whether it can be believed that the "Janardan" and "Kharoti" were both hugging the western bank. It must be borne in mind that the "Janardan" was going against the current. It is the evidence of all the witnesses that owing to the curve in the river at this place the current is stronger on the western portion of the river than on the eastern side. On the latter side there is slack water. Apart from the fact that steamers would normally keep to the starboard side of the fairway unless they have some good reason not to do so, there is the additional fact that it would be easier and more economical for the "Janardan" to be navigated on the east side of the fairway where there was slack water. Mr. Bird of the River Steam Navigation Co. was questioned by me on this point and he said emphatically that if he were navigating the "Janardan" under the conditions prevailing at the time of the collision he would hug the eastern bank and take the turn at Tiger Point keeping his vessel near the eastern bank. This he says would be the normal course. Mr. Killick says that

when he first saw the "Janardan" approaching the "Glenapp" she was two-thirds across the river on the western side.

12. I find it difficult to believe this. There seems to be no reason why the "Janardan" should proceed in that way against the full force of the tide when she could as easily and with greater propriety be navigated along the starboard side of the fairway. The night was dark and the river was more than one-fourth of a mile wide. At that time Mr. Killick had no particular reason for observing how far east or west of the fairway the "Janardan" was going. From where he was it would be difficult to decide whether the "Janardan" was more towards the east than towards the west. It is therefore possible that he made a mistake. Again it may be that his bias in favour of the River Steam Navigation Co. has led him to make this statement. This is a matter however which is not of very great importance so far as the question under consideration is concerned because Mr. Killick says that after passing him and before coming to the bend the "Janardan" gave a long blast and took the bend in about midstream. If this represents the true state of affairs then the story told by Faiz Ahmad and his crew and the facts set out in the pleadings must be false. If the "Janardan" flotilla took the bend in about midstream and if the "Kharoti" was being navigated four or five fathoms from the west bank the two flotillas could never have collided. According to Mr. Killick he heard the sound of the impact a few seconds after the "Janardan" had taken the bend in about midstream. The "Janardan" and the "Kharoti" must therefore have been somewhere in midstream at the time of the collision if Mr. Killick is to be believed and I am asked to place implicit trust in all that Mr. Killick says. His evidence therefore demolishes the story told by the crew of the "Kharoti" of how both vessels collided when they were navigating close to the western bank.

13. There is yet another circumstance that shows that the collision could not have occurred as stated by the witnesses for the River Steam Navigation Co. Mr. Killick says that he could not see the collision from where he was and that the "Janardan" disappeared from view when it crossed the bend. If the story of Raiz Ahmad and his crew be true then the collision would have been in full view of Mr. Killick. The "Glenapp" according to Mr. Killick, was one-fourth of a mile below Tiger Point and about fifty yards from eastern bank. Mr. Killick has marked the spot on an enlargement of the map of Mr. Oag. The enlarged map is accepted by both parties as being correct. I have drawn a pencil line from where the Glenapp was to the opposite side of the river. This line marks the eastern limit of the field of vision of a person on the Glenapp looking up the river. A person could see a spot on the opposite bank 800 feet above the bend. The portion which would be visible above the bend is enclosed in a triangle of which the pencil line is one side, the western bank another and the line through Tiger Point the third. If the "Janardan" crossed the bend hugging the west bank she would be visible for nearly 800 feet after crossing the line of the bend. If the "Kharoti" was four or five fathoms from the western bank at the time of the collision and if the collision took place just above the bend as indicated by Faiz Ahmed in the Ordnance Map

then the collision would be visible from the "Glenapp." But Mr. Killick says that the "Janardan" went out of sight in passing the bend, that the collision took place very shortly thereafter and that the collision was out of his field of vision. If this be true, then the evidence of Faiz Ahmed and his crew cannot be believed. In my opinion Mr. Killick should be believed. He says that he did not see when the collision took place. Had he seen the collision there could be no reason for his suppressing that fact. Such a suppression would not help the River Steam Navigation Co. in any way.

14. There is yet another circumstance that goes against the case, that the collision took place just by the western bank. The wreck "Singara" has been located and shown on the map by Mr. Oag and everybody accepts the position of the wreck as being accurate. The distance of one end of the "Singara" from the western bank is about three-eighths of an inch. The map is on the scale of one inch to 528 feet. This end is therefore 198 feet from the western bank. The other end is still further away. The evidence of Faiz Ahmed is that after the impact the "Singara" broke adrift and drifted towards the south-west before sinking. He says:

As a result of the backwash from my wheels as well as the result of the current the "Singara" began to drift towards the western side and began to turn turtle gradually.

15. He added that she went towards the south and west. She did not sink immediately. Indeed she could not have sunk immediately if the collision took place above the bend as she is shown as having sunk some distance below the bend. It must also be remembered that the current would take the "Singara" towards the west owing to the curve of the river here. Now, if the "Singara" had been struck four, five or ten fathoms from the west bank as stated on behalf of the River Steam Navigation Co. Ltd. and if she drifted towards the west as stated by Faiz Ahmed she could not possibly sink where she did. She would have sunk much closer to the western bank and would probably have been beached. The "Singara" must have been sunk north-east of where she is now lying. The evidence and the circumstances make this quite obvious. She must therefore have been struck some-where to the east of mid-channel.

16. The evidence of Mr. Killick, the position of the wreck and the inherent probabilities and circumstances of the case leave no room for doubt in my mind that the collision did not take place near the western bank but that it took place somewhere east of mid-channel. All the circumstances show that Faiz Ahmed and his crew are lying when they describe how the collision took place. These witnesses have contradicted their former statements before the Magistrate. For instance, Wajuddin said before the Magistrate that when he first sighted the "Janardan" she was in mid-channel. Now he says that she was a few fathoms from the west bank. There are many instances of such contradictions. The story told by Faiz Ahmed as to how the report in the logbook came "to be written is obviously untrue. The writer has not been produced. The report at the Thana is a

replica of the entry in the logbook both in substance and in language. Yes, Fiaz Ahmed would have me believe that it was written out by a different person independently of the logbook. It would be a waste of time to set forth all the contradictions, inconsistencies and falsehoods in the evidence of Fiaz Ahmed and his crew. It is sufficient to state that if an improbable story is told by witnesses of this description no Court would believe such a story. In the present case their story is not only improbable but in view of the admitted and well established circumstances impossible in many material parts. I find therefore that the River Steam Navigation Co. have not been able to establish its case either as set out in the plaint or as simplified by the evidence.

17. Learned Counsel for the River Steam Navigation Co. next argued that in any case he has succeeded in showing that the Sarang of the "Janardan" was guilty of bad navigation and of infringing Article 21 inasmuch as he did not wait below the bend until the "Kharoti" passed clear of the point. There are two difficulties in the way of this argument prevailing. In the first place, Article 21 upon which the River Steam Navigation Co. relies does not apply in the present case. The Article is as follows:

When two steam vessels, with or without flats in tow, meet in a narrow channel or at a place where the presence of a third vessel makes it difficult to pass, the one going against the current shall slacken her speed until the other has passed clear or when meeting at the bend of a narrow river or channel the vessel going against the current shall stop and remain under the point until the other vessel has passed clear.

18. Aura Sibsa at this part is not a narrow river or channel nor is it a place where the position of a third vessel would make it difficult to pass. The witnesses for the River Steam Navigation Co. themselves say that this is not a narrow river or channel and that there is no necessity at a place like Tiger Point for any vessel to tie up and wait for another vessel to pass. In answer to questions put by me, Mr. Killick says that he would not call the river here a narrow river; he would call it a fairly wide river. When asked whether he would describe this as a narrow channel he said, "Oh, no, certainly it is a very good river for navigation purposes." He says that the bend is rather sharp, but that, "there is plenty of width in the river." Mr. Killick is a master mariner who has spent six years on the river. Next Mr. Oag, a witness for the River Steam Navigation Co. and a River Surveyor, makes the matter still more clear. He says that he has practical navigating experience in Bengal rivers. In answer to questions put by me he says that the river's width near Tiger Point was 1500 ft. and that the two flotillas coming from opposite directions could pass quite easily. The width according to him is about twice the width in which ocean-going vessels manoeuvre in Garden Reach. I then put the following question to him: "Would it be necessary in a channel of this description for one of the flotillas to tie up and wait for the other flotilla to pass by?" He answered, "In my opinion there would be no necessity whatsoever." Mr. Bird of the River Steam Navigation Co. admits that the channel is fairly wide,

but he says that if he were navigating a vessel against the tide at the Point and heard a vessel coming from the opposite direction he would wait below the Point. He adds that if it was day time and he could see the course the other vessel was taking he would not wait. This evidence makes it perfectly clear that the channel here is not a narrow channel within the meaning of Article 21. My attention has been drawn by learned Counsel for the River Steam Navigation Co. to the case in *The Rhondda* (1882) 8 A.C. 549 where it was held that the Strait of Messina was a narrow channel within the meaning of Article 21 of the English Regulations for preventing collisions at sea. In holding this view, their Lordships expressly stated that they did not propose to define what is a narrow channel or to lay down what particular width or length will constitute it. In the present case, we are dealing with a river and not with the sea. If the standard adopted in the abovementioned case were applied to rivers in Bengal then all rivers would be narrow channels and there would be no necessity for having special rules for narrow channels. The rules must be interpreted with reference to local conditions and in a natural manner. Article 21 could, in my opinion, have no application where the river is so wide that the two flotillas coming from opposite directions could safely pass on either side of it without risk of collision. "When the river is one-fourth of a mile wide and deep enough to be navigated within a few fathoms of the banks, as the river near Tiger Point is, Article 21 could in my opinion have no application. I have not lost sight of the fact that Joynal Abedin and Godu Sarang who were examined on behalf of the East Bengal River Steam Navigation Co. say that the proper thing to do would be to stop below the Point and allow the vessel coming with the tide to pass, but in the face of the evidence of Mr. Killiek, Mr. Oag, and Mr. Bird, I have no hesitation in holding that this was not a narrow channel within the meaning of Article 21.

19. The next difficulty in the way of the River Steam Navigation Co. in this matter is this. Even if this is a narrow channel the "Janardan" cannot be blamed for not waiting below the bend. The evidence of Mr. Killiek is that the "Janardan" blew a long blast before taking the bend and that he heard no answering blast from the other side. Of course Faiz Ahmed and his crew say that they blew a long blast half a mile or so before coming to the bend. This blast was heard by nobody. I have no doubt that no long blast was blown by the "Kharoti" when she was approaching the bend. Had she done so, Mr. Killiek would most certainly have heard it. The evidence of Mr. Killiek is that he was very short of drinking water. He was anxiously waiting for an opportunity of taking water from any boat of the River Steam Navigation Co., or India General Navigation Co. which may happen to be passing. It was a still night and he was on the look-out for a steamer. He was one-fourth of a mile below the bend. If a long blast had been blown near the bend, he would most certainly have heard it. He had no difficulty in hearing the sound of the propeller of the "Janardan" even before a blast had been blown when the "Janardan" was one-fourth of a mile away from the "Glenapp". Now Article 11 of the rules framed u/s 52, Inland Steam-Vessels-Act 1917 (1 of 1917) says, "One prolonged blast shall be given to convey a warning

in the following cases: (c) On approaching a bend in the channel." The Sarang of the-"Kharoti" did not observe this rule and those-on the "Janardan" could not have known that any vessel was approaching the bend-before she took the bend. It is true the just as she was about to take the bend the sukhani of the "Janardan" saw the flow of a searchlight on the opposite bank of the river, but this he saw too late when the "Janardan" was nearly on the bend itself. "When the "Kharoti" did not signal the-fact that she was approaching the bend there was no duty on the Janardan to tie up and wait below the bend.

20. I might dispose of another point taken by learned Counsel for the River Steam Navigation Co. The evidence given on behalf of the East Bengal River Steam Navigation Co. is that the Sarang of the "Janardan" was standing not on the bridge but on a platform near the bow of the vessel and on the roof of the vessel. This-platform is known as the "Tiktiki." The helmsman was on the bridge receiving, orders from the Sarang. The helmsman steered the vessel, managed the searchlight, signalled to the engine room and" blew the whistle. It was suggested that this was not a proper arrangement and-that it led to the inefficient navigation of the vessel. The assessors who sat with me-stated that as long as there was the Sarang on the "Tiktiki" there could be no objection to the arrangement and that orders could be given and carried out efficiently in this manner. The various controls within the pilot house or bridge are near one another as we saw on inspection of the vessel and there was no difficulty in one man operating on all of them. The Sarang on the "Tiktiki" would get an excellent and unobstructed view and his orders and signals could easily be heard and seen from the bridge. There is no substance in this point. Thus the River Steam Navigation Co. has entirely failed to establish its case.

21. I now take up for consideration the case of the East Bengal River Steam Navigation Co. As stated before, their case is that the "Kharoti" was being navigated on the east side of the river, that she crossed the bend without giving any signal and crashed into the "Janardan" flotilla below the bend and on the east side of the fairway a short distance away from the east bank. The witnesses who have been examined to establish this case have contradicted one another on so many points and have told such obvious untruths that it is impossible to place any reliance upon their testimony. If the case of the East Bengal River Steam Navigation Co. be true, then Mr. Killick not only saw the collision but was so near it as to be in danger of being involved in it. I would have to hold that Mr. Killick has told a tissue of lies when he denied having seen the collision. I have already given my opinion regarding this witness. He has, it is true, in some parts, not been strictly accurate, but I have not the slightest hesitation in preferring his testimony to that of Mr. Ghose, his American friends, or the crew of the "Janardan" flotilla. I am fully convinced that he did not see the collision. If the collision had taken place below the bend and if he had seen it, he would not look for the wreck the next morning far above the bend knowing full well that the tide would have carried the "Singara" further south of the place where she was struck. In his map he shows the position of what he thought to have been the

wreck and it is well above the bend. It is suggested by learned Counsel for the East Bengal River Steam Navigation Co. that Mr. Killick deliberately made a false report and sketch map in order to support the case that the collision took place above the bend. Why Mr. Killick should adopt these elaborate, devious and dishonest devices is difficult to understand. In order to fasten the liability on the "Janardan" it was not essential to show that the collision took place above the bend and beyond the field of vision of Mr. Killick. If a false case had to be made it could as easily be made on the footing that the collision took place at or below the bend.

22. I find it difficult to believe that Mr. Killick after seeing the collision would make out a case that it took place somewhere else out of his line of vision, proceed to make a false report to the River Steam Navigation Co. and finally mislead this company by locating a wreck at a place where it could not possibly have been found. I have no hesitation in rejecting this argument of learned Counsel for the East Bengal River Steam Navigation Co. and to hold that the collision occurred above the bend. I am strengthened in my view by the opinion of both the assessors to whom I am indebted for the valuable assistance which they gave me on technical matters during the trial. In their view the "Singara" having water-tight bulkheads-and being fully loaded with jute would not sink at once. The jute would prevent the water rushing in rapidly and the different water-tight bulkheads which had not been holed would keep the flat above water for some time until the water got into the bulkheads also. It is the case of both sides that the "Singara" drifted for some minutes. Godu, Sarang of the "Jogendranath" says that the "Singara" and "Jogendranath" drifted together for sometime, that the crew of the "Singara" jumped on to the "Jogendranath" and that the "Singara" sank shortly thereafter. In the Magistrate's Court he said that the "Singara" drifted like this-for ten or twelve minutes. Now the tide was running at about 21/2 to 3 miles per hour and the "Singara" drifted down with the tide. "Singara" sank from to of an inch below the line through Tiger Point according to Mr. Oag's map. This would be about 264 to 400 feet below this line. If she sank within five minutes of being struck and if the tide was running at 21/2 miles per hour she must have travelled eleven hundred feet. If she remained afloat for ten minutes she would have travelled about two thousand feet. In the opinion of the assessors the position of the wreck "Singara" shows that she must have been struck well above the bend and in this view I entirely agree. The story told of a collision taking place below the bend is, in my opinion, false. The evidence of Mr. Ghosh and his American friends is sometimes fantastic and often hopelessly contradictory in important matters. It is so confused and conflicting that no reliance can be placed on it. The confusion is due partly to forgetfulness, partly to a reckless disregard for accuracy and partly to a dishonest endeavour to put the entire blame on the "Kharoti." I shall not set out in detail all the contradictions and inconsistencies in the evidence. Mr. Ghosh and his American friends all say that Mr. Killick came on board the "Janardan" after the accident and delivered himself of a series of statements which were most damaging to the

case of the River Steam Navigation Co. Although, according to the East Bengal River Steam Navigation Co., Mr. Killick is virtually an employee of the River Steam Navigation Co., nevertheless he is alleged to have made statements to Mr. Ghosh and others which absolutely destroyed all chances of the River Steam Navigation Co. recovering against the East Bengal River Steam Navigation Co. and which threw the entire blame for the collision on the crew of the "Kharoti." Why Mr. Killick should be so enthusiastically in favour of the "Janardan" as against the River Steam Navigation Co. on that night it is impossible to understand. It is still more difficult to understand why he should suddenly change his attitude in the course of a few hours and send a report to the River Steam Navigation Co. which is diametrically opposed to what he is alleged to have stated to Mr. Ghosh and his friends. He is alleged to have said to Mr. Ghosh and his friends that when the "Kharoti" passed him it was going very fast downstream with the tide and was on the wrongside of the channel. He also said that he heard the "Janardan" signal that her engines should be reversed. Mr. Killick emphatically denies having made these statements. If Mr. Killick's launch, the "Glenapp," was tied one fourth of a mile below the bend-and I am fully satisfied that it was so tied-he could not possibly have seen the "Kharoti" pass him very fast on the wrong side of the channel as the collision took place far above where the "Glenapp" was. I might mention incidentally that Mr. Ghosh himself says that the "Glenapp" was anchored about one-fourth of a mile below Tiger Point.

23. Again the evidence of Joynal Abedin, sukhani of the "Janardan," clearly shows that Mr. Killick could not possibly have said that he saw the "Kharoti" pass him. Joynal Abedin says that the collision took place when the "Janardan" was abreast of or a little ahead of the "Glenapp." If that be so then the "Kharoti" could not have passed the "Glenapp." Not only have statements been foisted on Mr. Killick which he could not have made, but there has been a dishonest attempt to show that persons other than Mr. Ghosh and his American friends had heard this statement. There is a written report lodged at the Thana containing these alleged admissions by Mr. Killick. This report is signed not only by Mr. Ghosh and his friends but also by some of the crew including Sabu Sarang who says that he knew nothing as he was lying ill in the stern of his flat. The members of the crew say that they could not understand what Mr. Killick said to Mr. Ghosh and his friends, yet they are made to sign the statement to testify that they heard these admissions. When persons are guilty of manufacturing evidence like this it is impossible to place any reliance on their testimony. I am perfectly satisfied that Mr. Killick made no such admissions. This portion of the evidence given by Mr. Ghosh and his friends is clearly false.

24. I shall now touch upon the evidence of these persons as to where they were at the time of the collision. The evidence on this point is most contradictory and some, if not all of these persons, have been lying. Joynal Abedin says that at the time of the collision Mr. Ghosh and his friends were not on the bridge deck but somewhere below. He could not see them. Joynal Abedin, it must be

remembered, was the helmsman who was steering the "Janardan" from the pilot house on the roof of the vessel while the Serang was in the fore part of the vessel on the roof near the bow on a platform called a tiktiki. The pilot house or bridge is enclosed and has a little space in front. Mr. Spalding says that he and Mr. Ghosh were in front of the pilot house on the roof of the steamer at the time of the accident looking towards the bow of the vessel. He says that before that he was seated below on the lower deck. This is in direct conflict with Joynal Abedin's evidence. He says that none of these persons were in or near the pilot house when the collision occurred. Mr. Ghosh says that he was on the lower deck in front of his cabin at the time of the accident and that he and Mr. Spalding were sitting there just prior to the accident. He says that he cannot say where Mr. Spalding was at the exact moment that the collision took place. Dr. Balsley at first told an elaborate story of how he, Mr. Ghosh and Mr. Ghosh's son were in the pilot house.

25. Mr. Ghosh's son was singing improvised songs. Mr. Ghosh and his son then went down and Dr. Balsley remained with the Captain. Later, he came down and went to the bow of the ship. At that time he saw Mr. Ghosh and Mr. Spalding sleeping under their mosquito nets in the cabin. They did not get out of their beds till the collision had taken place. After some time, he corrected himself and said that he was not certain whether Ghosh and Spalding were in their beds. This is the sort of discrepant evidence that one encounters throughout when examining the statements of the witnesses of the East Bengal River Steam Navigation Co. I might mention another contradiction in the evidence. Spalding says that he saw the light of the "Glenapp" on the other side of the bend. His evidence is that the "Glenapp" was above the bend and not below and that he could see her lights on the mast head from below the bend and across it as the land was bare and open. He is quite emphatic and says, "we could see across the bend and we remarked that she must be just round the bend." Dr. Balsley says that the place was heavily wooded and one could not see across the bend. Mr. Ghosh says that the "Glenapp" was about a quarter of a mile below the bend and he puts her below the bend on his map. Further, it is well established that the "Glenapp" had no mast at all and that her light was not on any masthead but was hanging from the anchor davit. I do not propose to point out further contradictions in the evidence. The witnesses who deposed in Court on behalf of the East Bengal River Steam Navigation Co. were clearly interested in trying to put the entire blame on the "Kharoti ". I was not impressed by their demeanour and they have told an obvious falsehood when they say that the collision took place below the bend. I am unable to place any reliance on their evidence.

26. There has been so much untrustworthy evidence given on both sides that it is not possible for me to come to any definite conclusion as to how the collision took place. All that I can definitely and safely conclude is that neither side has given the Court a true account of where and how the collision took place. This is not a case where the Court making allowances for exaggeration can arrive at a clear decision on the material parts of the case. The parties have kept back from

the Court the true state of affairs in such a way as to make it impossible for the Court to ascertain with certainty how the collision took place. In these circumstances the only thing that I can do is to dismiss both actions. The parties shall bear their own costs.