

(1956) 11 BOM CK 0004

In the Bombay High Court

Case No : Criminal Appeal No's. 861 and 862 to 864 of 1956

State of Bombay

APPELLANT

Vs

Sardar Sardul Singh Kirpalsingh Caveeshar

RESPONDENT

Date of Decision : 26-11-1956

Acts Referred:

Evidence Act, 1872 — Section 10, 8

Penal Code, 1860 (IPC) — Section 109, 120B, 409

Citation : (1957) 59 BOMLR 449

Hon'ble Judges : Vyas, J;Palnitkar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vyas, J.—[His Lordship after setting out the prosecution case and the various defences taken by the accused, proceeded :] As the convictions of accused Nos. 2 and 5 were based upon the acceptance of the unanimous verdict of the jury and as the convictions of accused No. 1 and accused No. 4 were based upon the acceptance of the majority verdict of 8 against 1 and 6 against 3 respectively, it would not be open to this Court to go behind the verdict unless the appellants' learned advocate Mr. Chari was able to satisfy us that the learned Judge's charge to the jury suffered from misdirections or non-directions amounting to misdirection In this connection, the first submission which Mr. Chari strenuously pressed before us was that a considerable bulk of evidence relating to the conduct of Lala Shankarlal after the conspiracy was carried out was wholly inadmissible and yet it was allowed to be led. Mr. Chari did not dispute the legal position that the evidence of Lala Shankarlal's conduct during the course of the conspiracy was admissible against the accused, but he contended that the evidence regarding the words spoken, acts done, letters written, cheques drawn, transfers of shares made and several other things done by Lala Shankarlal after the object of the conspiracy was achieved was not admissible against the accused. According to Mr. Chari, whatever negotiations Lala Shankarlal might have carried on in the year 1950 for purchasing the controlling block of shares of

the Empire of India Life Assurance Company or whatever his conduct might have been in the matter of the repayments of what are known in this case as the Raghavji loan, the Misridevi loan and the so-called " fresh loan " to accused No. 5 and in the matter of the purchase and sale of the Tropical Insurance Company's shares by the Jupiter General Insurance Company, all that could be no legal evidence against the accused. Mr. Chari took us through the various paragraphs of the learned Judge's charge to the jury, wherein the learned Judge extensively dealt with the evidence about what Lala Shankarlal had done or said after January 31, 1949 (the period specified in the charges against the accused did not extend beyond January 31, 1949), and contended that all that evidence being inadmissible against the accused, the charge to the jury was vitiated as the mind of the jury was prejudiced by the consideration of what the jury was not entitled under the law to know and consider.

2. Having thus formulated his first objection to the learned Judge's charge to the jury, Mr. Chari proceeded to invite our attention to the several paragraphs in the learned Judge's charge where the learned Judge referred to the evidence regarding the conduct of Lala Shankarlal after the object of the conspiracy was achieved, i.e. after the amount of Rs. 28,15,650 alleged to have come out of the funds of the Jupiter Company was paid on January 20, 1949, to Tulsiprasad Khaitan for purchasing the controlling block of shares of the Jupiter General Insurance Company. Mr. Chari invited our attention to several observations made by the learned Judge in his charge to the jury.

3. [His Lordship after setting out these observations, proceeded:]

4. Now, Mr. Chari's objection to all these observations and similar observations, which the learned Judge made in his charge to the jury, in regard to what Lala Shankarlal did or said after January 31, 1949, by or before which date the offence which was to be committed in pursuance of the conspiracy had already been committed, is twofold :

(1) The learned Judge did not tell the jury that the conduct of Lala Shankarlal after the conspiracy was carried out was not admissible against the accused. This prejudiced the case of the accused. It made the jury decide the case against the accused upon material which they were not entitled to take into consideration as against them. In other words, says Mr. Chari, the failure on the part of the learned Judge to caution the jury in respect of the evidence which was not admissible against the accused made it impossible for the jury to give a rational consideration to the defence of the accused.

(2) If Lala Shankarlal had been alive during the trial of the case and if he had been tried upon a charge of conspiracy to commit this offence, the evidence of his subsequent conduct, that is conduct after the offence had been committed in pursuance of the conspiracy, would have been admissible as against himself. But as Lala Shankarlal was dead before the trial of the case commenced, the vast bulk of evidence about his acts, words, writings subsequent to the commission of

the offence was not admissible against anybody in this case and it should not have been led by the prosecution. Lala Shankarlal himself, the alleged speaker of the words or the alleged doer of the acts, was not on trial and, therefore, what he did or said after the conspiracy was carried out was no evidence against anybody. That being so, says Mr. Chari, the whole bulk of evidence as to what Lala Shankarlal did or said after January 31, 1949, i.e. after the expiration of the period specified in the charge against the accused, was inadmissible. This inadmissible evidence confused the issue and prejudiced the defence.

5. Now, so far as the first of these two objections of Mr. Chari is concerned, it has no force. In fact, it is groundless. At great many places in his charge to the jury, the learned Judge was at pains to point out to the jury that after the object of the conspiracy was achieved by the commission of the offence, which was contemplated by the conspirators, the evidence of subsequent conduct of a conspirator would not be admissible against anybody else but himself. In this connection, we have only to turn to the observations made by the learned Judge in various paragraphs of his charge to the jury. For instance, if we turn to para. 453 of the learned Judge's charge, this is what the learned Judge told the jury :

As I have mentioned before, so long as the conspiracy is afoot and is going on, each conspirator is an agent of the other and is responsible for anything said, done or written by the other, but after the conspiracy has terminated, the agency ceases. After the conspiracy is terminated by the consummation of the offence for which the said conspiracy was hatched or in any other manner, one conspirator is not the agent of the other. The conduct of one conspirator after the termination of the conspiracy is important to consider and is relevant against him only. The individual acts of a conspirator, after the termination of the conspiracy, are evidence only against him and not against other conspirators. But after that period, if certain acts are alleged to have been committed by one or the other of the alleged conspirators, they would not be taken against him except those acts which he has himself committed. If you disbelieve the evidence connecting any one particular accused person with the alleged conspiracy, then you must disregard the evidence of anything said, done or written by him with regard to the others.

Then again, in para. 557 of the charge, the learned Judge observed thus :

Consider whether the particular accused bona Me believed that a loan was to be advanced to accused No. 5 for Rs. 25 lakhs.

In para. 588, the learned Judge warned the jury against using the evidence, led by the prosecution against a particular accused, against another accused. This was what he said:

At this stage, I must point out that if you come to the conclusion in pursuance of the statement of the accused that these exhibits (Z-266 and Z-267) were written after January 1949, then they could only be evidence against accused No. 4 and could not be used against any one of the other accused.

Then in para. 602 of the charge, the learned Judge stated to the jury :

After the period of conspiracy, evidence has been led to show the after conduct of the accused persons...For this purpose many acts are alleged against individual accused persons and you will, therefore, take into consideration this conduct of the individual accused persons to consider whether it confirms your opinion that he was a member of the conspiracy or committed the breach of trust as alleged in the charge. In considering this evidence, which I am shortly going to narrate, you would take into consideration what was said, done or written by a particular accused person only against himself and against none else as it was after the period of conspiracy.

Once again, in para. 641, the learned Judge cautioned the jury in these words :

In this respect, I must point out to you that if you come to the conclusion that these vouchers were made some time after the period of conspiracy and as suggested by the prosecution in the middle of April 1949, then the preparation of the vouchers is only evidence against accused No. 4 and not against any other accused.

In para. 675 of the charge, the learned Judge once again reminded the jury of their duty to ignore from consideration against a particular accused the evidence which was not admissible against him. This is what he said :

This letter (Exh. Z-84-L) could only be used against Kaul and not against any one as it is signed by Kaul (accused No. 1) only.

In para. 676, the learned Judge said to the jury :

It is therefore submitted that the Directors who passed this resolution on the 5th of November 1949 deliberately shut their eyes to the ordinary requirements before the company could bona fide advance a loan to any one.

In this paragraph also, the learned Judge was referring to a point that only those Directors could be considered liable upon the evidence against them and not other Directors. In para. 678, the learned Judge made the following observations before the jury:

It is submitted by accused No. 2 that the grant of the loan to Raghavji Purshottam and the grant of the loan of Rs. 3,30,000 to Caveeshar and Misri Devi loan and the purchase of 54,000 shares for Rs. 14 lakhs cannot be taken as evidence against him as he was not present at the meeting of the Directors held on the 5th of November 1949 and 20th of December 1949. He did not participate in the resolutions granting these loans or sanctioning the transaction. Consider the position that when he was not present at the Directors' meetings he could be at all fixed with the knowledge of these loans at the time of sanctioning the same.

In para. 685, the learned Judge once again told the jury :

The question, therefore, for you to consider in each one of these transactions is

as to who was the person concerned and as to what and how far he knew about the bogus nature of these transactions.

In para. 689, once again the learned Judge told the jury that the evidence of a particular letter could only be used against accused No. 4 and against none else. This is how the learned Judge stated the position before the jury :

In this connection, the prosecution has pointed out a letter written by Guha to Lala Shankarlal (Exh. Z-84-C) showing that Guha himself knew about these various transactions and from this letter it wants to bring home the knowledge about these bogus transactions to accused No 4. As I have mentioned before, this letter could only be used against Guha and against no one else.

At several other places also, during the course of his charge, the learned Judge gave the same caution to the jury and warned them against committing an error of letting their minds be influenced by the subsequent conduct of a conspirator so far as the case against other persons was concerned. It would thus appear that the charge made by Mr. Chari against the learned Judge's summing up from this point of view is wholly incorrect.

6. The second objection of Mr. Chari against the learned Judge's references to the subsequent conduct of Lala Shankarlal-when I say subsequent, I mean subsequent to the carrying out of the conspiracy-is that as Lala Shankarlal was not on trial in this case as he died before the trial began, the evidence as to his subsequent conduct was wholly inadmissible and the learned Judge should not have referred to it at all in his address to the jury. Mr. Chari says that in a conspiracy case, the evidence of the conduct of a conspirator, after the conspiracy is carried out, even if the said conduct is resorted to by him for the purpose of concealing the conspiracy, would be admissible against himself only if he is on trial, but it would not be admissible against others. For making this submission, Mr. Chari relies on a decision of the Privy Council in *Mirza Akbar v. Emperor* (1940) 43 Bom. L.R. 20, P.C. It was held by their Lordships that the evidence of a conspirator was admissible against his co-conspirator on the principle that the thing done, written or spoken was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. Their Lordships pointed out that the words written or spoken might be a declaration accompanying an act and indicating the quality of the act as being an act in the course of the conspiracy : or the words written or spoken might in themselves be acts done in the course of the conspiracy. Their Lordships held in this case that the words of Section 10 of the Indian Evidence Act, 1872, must be construed in accordance with the above principle and were not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it had been completed. The common intention was, as their Lordships pointed out, " in the past." Their Lordships pointed out that the words " common intention " in Section 10 of the Indian Evidence Act signified a common intention existing at the time when the thing was said, done

or written by the one of them. Things said, done or written while the conspiracy was on foot were relevant as evidence of the common intention, once reasonable ground had been shown to believe in its existence. Therefore, said their Lordships, any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist was not admissible against the other party. There was then no common intention of the conspirators to which the statement could have reference. It is, therefore, clear that the evidence of anything which Lala Shankarlal did by the words which he spoke, by the dealings which he did, by the letters which he wrote, by the cheques which he gave, by the representations which he made, after the conspiracy was carried out and after the common intention of the conspirators which was a matter "in the past" was executed, would not be admissible against anybody else, but himself: that is, it would not be admissible for the purpose of showing that the accused were conspirators, but it would be admissible for showing that Lala Shankarlal himself was a conspirator, which would mean that there was a conspiracy and he was a party to it. It may be noted, and this is important, that there is nothing in the pronouncements of their Lordships in their judgment in *Mirza Akbar v. Emperor* to indicate that the evidence of a conspirator's subsequent conduct, that is, conduct subsequent to the commission of the offence of conspiracy, is not admissible to show that he himself was a conspirator. For the purpose of proving the identity of others, who might have been concerned along with himself in the conspiracy, his subsequent conduct would not be relevant. That identity (identity of his co-conspirators) must be proved by independent evidence. But, for showing the existence of a conspiracy and showing that he himself was a conspirator in that conspiracy, his subsequent conduct is relevant and the evidence about it is admissible. In our view, the subsequent acts of Lala Shankarlal were relevant to show that there was a conspiracy and that he himself was one of the conspirators in it and the evidence about those acts or that conduct would be admissible. Section 10 of the Indian Evidence Act lays down:

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose showing that any such person was a party to it.

In *Mirza Akbar v. Emperor*, the Privy Council held that the evidence of a conspirator's subsequent conduct would not be admissible against others, as the common intention which brought the conspirators together, tied them together during the course of the conspiracy and kept them together till the object of the conspiracy was carried out, was "in the past." It did not continue in the future, that is, it did not continue after the conspirators had achieved the object for which the conspiracy was formed. The existence of the common intention "in the

past " and the discontinuance thereof after the conspirators" object was achieved was the basis of their Lordships" decision in *Mirza Akbar v. Emperor*. However, so far as the conspirator, whose subsequent conduct becomes the subject-matter of controversy as to its relevance or admissibility in evidence, is concerned, the said subsequent conduct of his, in so far as it was resorted to by him for concealing the conspiracy which had been carried out, was referable to the intention which in their Lordships" words was " in the past." Therefore, so far as he is concerned, the evidence about that conduct would be admissible in the words of Section 10 of the Indian Evidence Act for proving the existence of the conspiracy and also for showing that the conspirator concerned was a party to it. In the present case, the contention of the prosecution is that amongst the subsequent acts with which Lala Shankarlal was concerned were the transfer of 48,399 shares of the Jupiter General Insurance Co. to the Delhi Swadeshi Co-operative Stores, acquisition of 13,500 shares by the Tropical Insurance Company from the Punjab Central Bank, negotiations for purchasing the majority block of shares of the Empire of India Life Assurance Co. for the concealment of the bogus loans to Raghavji and Misridevi and for the concealment of the bogus transactions relating to the purchase and sale of the Tropical Company"s shares by the Jupiter Company etc. etc. and that the evidence of those acts was admissible to show that he wanted to hide the real nature of the original transaction which was carried out in pursuance of the conspiracy, viz. the utilisation of the Jupiter Company"s funds for purchasing the majority block of shares of that very company. Therefore, the evidence about those acts would be admissible u/s 10 of the Indian Evidence Act to show two things : (1) that there was a conspiracy and (2) that Lala Shankarlal himself was a party to it.

7. Lala Shankarlal"s role in this conspiracy was a dominant role. Indeed, according to the prosecution, he was the author of the conspiracy. His was the mind which had conceived the conspiracy. The other conspirators fell in with him. The prosecution case is that they were selected by him for this conspiracy and they discharged their role as active conspirators, once they had agreed to fall in with the scheme of Lala Shankarlal. Although the object of the conspiracy was carried out in the month of January 1949 by the transfer of the Jupiter funds to the credit of the Tropical Insurance Company in Delhi and by the passage of those monies into the hands of Tulsiprasad Khaitan in Bombay and by the purchase of the controlling block of shares of the Jupiter Company with the help of those monies, the conduct of Lala Shankarlal subsequent to January 1949 had a bearing on the conspiracy and was distinctly referable to the conspiracy. That conduct of his, viz. the conduct in the matter of the Raghavji loan, the Misridevi loan, the creation of the so-called fresh loan to accused No. 5 and the purchase and sale of the Tropical Insurance Company"s shares threw light on the question whether the Jupiter shares were purchased by the Tropical Insurance Company with the monies of the Tropical Insurance Company or with the funds of the Jupiter General Insurance Company itself. If the said purchase Was done with the Tropical Insurance Company"s funds, there was no understandable reason for

making a show that the Jupiter General Insurance Co. had advanced a loan to accused No. 5, a further show that out of the repayment of the said loan, loans were advanced to Raghavji and Misridevi and shares were purchased by the Jupiter General Insurance Company from the Tropical Insurance Company and for creating a still further bogus phenomenon that Raghavji and Misridevi had paid back those loans. There was no need for making a show that Jupiter monies had gone out to accused No. 5, Raghavji and Misridevi and had come back to the Jupiter Company from those persons, whereas, as a matter of fact, the " Jupiter monies had gone to Khaitan and the monies which came to the Jupiter Company in October 1950 were the monies of the Empire of India Life Assurance Co. and the Tropical Insurance Company. The point is that the conduct of Lala Shankarlal subsequent to January 1.949 was referable to the conspiracy which had been carried out in January 1949 and was, therefore, admissible on the issue of the existence of the conspiracy itself and also for showing that Lala Shankarlal was a party to that conspiracy, though of course it was not admissible to show who the other persons in that conspiracy were. The identity of the other partners in the conspiracy must be established by independent evidence. While we are dealing with the evidential value of the subsequent conduct of Lala Shankarlal, it must be pointed out that it could not be, and was not, disputed that the conduct of Lala Shankarlal, during the course of the conspiracy ,would be relevant as against all the participators in the conspiracy and the evidence about it would be admissible against them all.

8. Mr. Chari has argued that since Lala Shankarlal was dead and not on trial and could not be punished for whatever he might have said or done, the evidence about what he might have said or done after the conspiracy had been carried out, which could not be admissible against these accused, but would have been admissible against himself if he had been alive and tried, was useless in this case and could only result in prejudicing the mind of the jury. This sounds well, but it is not a correct statement of law in a conspiracy case. Since the minimum number of persons required to constitute an offence of conspiracy is two, if a conspiracy consists of only two persons and if one of the conspirators dies, his conduct ,even if it be the conduct after the conspiracy was carried out, would be admissible to show that there was a conspiracy and that he was a member of that conspiracy. Very often, the only evidence of a deceased person being a member of a conspiracy is the evidence of his own conduct after the object of the conspiracy was carried out, for instance the conduct of concealing the conspiracy ; and if such evidence, in a case of conspiracy consisting of two persons only, is to be rejected on the ground of inadmissibility, the charge of conspiracy could never be proved against the surviving conspirator, since there could be no conspiracy unless at least two persons were concerned in it. One person cannot constitute a conspiracy. Therefore, unless the deceased person be shown to have been a party to the conspiracy, the charge of conspiracy could never be brought and could never be proved against the surviving conspirator. If there was a conspiracy consisting of only two conspirators, one of whom died

before the trial, and if the only evidence to prove that the deceased was a member of that conspiracy was his conduct after the conspiracy was carried out, the charge of conspiracy against the surviving conspirator could only be proved if the above evidence of the deceased's conduct was admissible to show firstly that there was a conspiracy and secondly that the deceased was one of the conspirators. Such evidence, in our view, is clearly admissible u/s 10 of the Indian Evidence Act. As I have already pointed out, there is nothing in the judgment of their Lordships of the Privy Council in *Mirza Akbar v. Emperor* to show that it is not admissible for the above purposes. Whether Lala Shankarlal was alive or dead during the trial-it is undisputed that he died before the trial began-would make no difference to the admissibility of the evidence of his subsequent conduct in this case to prove that there was a conspiracy and that he was a conspirator in it.

9. Mr. Chari has posed a question : " Lala Shankarlal having died, what is the use, in the trial against the present accused, of showing what he did or did not do ? " The answer is that it is essential in the present case to know what Lala Shankarlal did or said after the conspiracy was carried out in order to find whether there was a conspiracy and whether he was a conspirator. In *Bex v. George Scott and Edward Hams Michaelmas Term Geo. III B.R. 1263* a charge-sheet was sent up against six persons and the charge was that they had committed an offence of rioting. Two out of the six persons died before the trial began ; two others were acquitted at the end of the trial; and the remaining two persons were found guilty of having committed the offence of rioting. Under the English law, three persons at least are necessary to constitute an offence of rioting. Lord Mansfield held that the two persons who were tried must have, along with the two who had died untried, committed a riot. By themselves, the two persons who were tried could not commit an offence of rioting. This decision proceeded upon the conclusion that there was a riot in the first place and that the two deceased persons, who had died untried, were parties to it. Very often the only evidence that a person was a rioter is the evidence of his own conduct subsequent to the commission of the riot, as for example, concealment and production of a weapon, confession, absconding etc. etc. Thus, *Bex v. George Scott and Edward Hams* is an authority for holding that the subsequent conduct of a deceased offender, that is, his conduct after the offence was committed by him, is relevant and admissible in evidence to show that the offence was committed and that he was a party to it. Just as in the case of *Rex v. George Scott and Edward Hams* the conduct, which might have been conduct before and after the commission of the riot, of the two deceased persons who had died untried must have been taken into consideration for coming to the conclusion that there was an offence of riot committed in the first place and that the two deceased persons were parties to it, so in the present case, the conduct of Lala Shankarlal, even though it be the conduct after the object of the conspiracy was achieved, would be admissible to show that there was a conspiracy and that he was a party to it.

10. In *Beechey v. Regem* (1915) 25 Cr. Cas 217 a petition was filed for special leave to appeal in forma pauperis from a judgment of His Majesty's Court for China and Korea. The petitioner Beechey was a British subject. He was charged at Shanghai with conspiracy to defraud, together with a man named De Macar, a Belgian subject. At the end of the trial, it was not disputed that De Macar was only amenable to Belgian law and that by the law of that country, conspiracy to defraud was not a criminal offence. The point was taken on behalf of Beechey that in these circumstances he could not be found guilty of conspiracy with De Macar. The Judge at the trial directed the jury that they could not convict the prisoner unless they were satisfied that De Macar was also guilty and would have been convicted if the Court had had jurisdiction to deal with his case. The jury returned a verdict of guilty and on appeal the Supreme Court refused to set the verdict aside. The prisoner (Beechey) appealed. It was in those circumstances that the petition for special leave in forma pauperis was filed by Beechey. That petition was dismissed by Viscount Haldane who delivered the judgment of the Judicial Committee of the Privy Council. The Judicial Committee consisted of four learned Judges, The Right Hons. Viscount Haldane, Lord Atkinson, Lord Sumner and Lord Parmoor, and as I have just said, the judgment of the Judicial Committee was delivered by Viscount Haldane. Now, just as De Macar was, in law, a non-existent person, so far as the offence of conspiracy to defraud was concerned, by reason of the position under the Belgian law, so also Lala Shankarlal was, in fact, a non-existent person when the trial of this case began. The jury concluded upon the evidence in that case (*Beechey v. Begem*) that De Macar, who as I have just said was a non-existent person so far as the law about conspiracy to defraud was concerned, was a conspirator. Unless it was so held, Beechey could not have been convicted of conspiracy. It is clear that the view which was taken in that case by the Judicial Committee of the Privy Council, which declined to grant leave to appeal against the conviction of Beechey for an offence of conspiracy to defraud, was not that the conduct of De Macar must be restricted to a consideration of his own guilt only and could not be used for holding that he and another were concerned in an offence of conspiracy. The conduct of De Macar was taken into consideration for holding that there was a conspiracy and that he was a party to it. In our view, it was implicit in the decision of their Lordships of the Privy Council, while they refused leave to Beechey to appeal, that in a case in which the charge was that there was a conspiracy between two persons only, namely, a deceased person and a living person, such conspiracy could be proved in a trial against the living person. Since such a conspiracy was held capable of being proved, the evidence must be admissible to show that there was a conspiracy and that the deceased was a party to it, since unless he was a party to it, conspiracy itself could not be constituted. Such evidence may be the evidence of the conduct of a deceased conspirator before or after the offence which was the object of conspiracy was committed. Thus, upon the authority of this decision also, viz. *Beechey v. Begem*, it must be held that the evidence of the conduct of Lala Shankarlal after the conspiracy was carried out would be admissible for showing that there was a

conspiracy and that he was a conspirator himself. For instance, let us turn to para. 65 of the learned Judge's charge to the jury, in which the learned Judge referred to a certain piece of conduct on the part of Lala Shankarlal in the month of May 1949, that is to say, after the object of conspiracy had already been achieved. In para. 65 of his charge to the jury, the learned Judge referred to Lala Shankarlal having thought of a plan to bring pressure upon Mr. Rege to abandon petition No. 187 of 1949 which he had filed in the High Court against the Jupiter General Insurance Company and its Directors including Lala Shankarlal, alleging that the Directorate of the company was guilty of misfeasance. I have already pointed out above that Mr. Chari has objected to this evidence of Lala Shankarlal's conduct going before the jury on the ground of its being inadmissible against these accused persons. In, our view, the above-mentioned conduct of Lala Shankarlal would be relevant to show that at the inception, that is to say, in the month of January 1949, there was a conspiracy and that in pursuance of the object of that conspiracy, the funds of the Jupiter General Insurance Company had been, used for purchasing the shares of the Jupiter Insurance Company itself. There is no doubt that the misfeasance which Mr. Rege referred to in his petition before the High Court (No. 187 of 1949) was in respect of the above-mentioned purchase of the shares of the Jupiter General Insurance Company with the funds of that Company itself. The Jupiter General Insurance Company's funds having gone out had to be shown as having come back to that Company. Lala Shankarlal's conduct in that connection would be relevant and admissible in evidence to show that he was a party to the conspiracy.

11. Then again, in para. 75 of his charge, the learned Judge was referring to the matter of the Raghavji loan. In our view, the observations which the learned Judge made before the jury about the conduct of Lala Shankarlal in his conversation with Chandrakant, the son of Raghavji, and about what followed thereafter would be relevant to show the existence of a conspiracy, since unless the conspirators had diverted the Jupiter funds for purchasing the Jupiter shares, there would not have arisen any necessity to create the bogus Raghavji loan. Since Lala Shankarlal himself made Chandrakant get the title deeds of Raghavji's properties together with certain blank papers bearing Raghavji's signatures, the observations which the learned Judge made to the jury in regard to Lala Shankarlal-Chandrakant meeting in para. 75 of his charge to the jury, to which Mr. Chari has objected on the ground of inadmissibility, would be admissible to show that Lala Shankarlal was a party to this conspiracy. Then again, if we turn to para. 146 of the learned Judge's charge, it would appear that the learned Judge was dealing with what Lala Shankarlal and Om Narayan as between themselves had managed to do. Mr. Chari has objected to the observations made by the learned Judge before the jury in this paragraph of the charge on the ground of inadmissibility. In our view, however, what the learned Judge told the jury in para. 146 of his charge, with which I have already dealt in the previous part of this judgment, would be relevant to show that there was in existence a conspiracy in this case, for unless there had been a conspiracy to

divert the Jupiter monies for purchasing the Jupiter shares, the bogus Misridevi loan would not have been created. The observations made in para. 146 of the learned Judge's charge would be relevant to show that Lala Shankarlal was a party to the conspiracy, for unless he had been one of the conspirators, he would not have asked Om Narayan to get a demand draft for Rs. 5,50,000 from the Grindlays Bank for using it to show the repayment of the bogus Misridevi loan.

12. In this manner, all the observations which the learned Judge made in paras. 11, 73, 74, 75, 94, 101 and 588, to which Mr. Chari has objected on the ground of inadmissibility, would be relevant to show that there was a conspiracy in this case and that Lala Shankarlal was a party to it.

13. Thus, we are unable to accept the contention of Mr. Chari that the learned Judge's charge to the jury was vitiated, because the learned Judge referred at several places therein to the conduct of Lala Shankarlal during the years 1949 and 1950.

14. The next point which Mr. Chari sought to make before us was that it was not open to the prosecution to ask for the conviction of the accused upon alternative sets of facts. Mr. Chari said that while it was open to the prosecution to ask for conviction upon alternative charges based upon the same facts, it was not permissible to it to invite the Court to convict the accused upon alternative sets of facts. What Mr. Chari meant when he made this contention was that when the learned Judge referred the jury to the evidence of Subramaniam and said that if Subramaniam was believed, it would mean that at the meeting of the Board of Directors of the Jupiter General Insurance Company held on January 11, 1949, no loan was applied for by accused No. 5 and no loan was sanctioned to him and the resolutions Nos. 5, 6, 7 and 8 in the minute book, relating to the Board's meeting of January 11, 1949, were false resolutions in the sense that they were not in fact passed by the Board on January 11, 1949, the learned Judge was asking the jury to consider the possibility of convicting the accused on that particular set of facts. Then the learned Judge put before the jury another aspect of the case in the same connection. He asked the jury to consider whether, even if the resolutions Nos. 5, 6, 7 and 8 were passed at the Board's meeting on January 11, 1949, the Directors might have honestly believed that what these resolutions purported to say was intended by them to be done. The learned Judge told the jury that if what resolution No. 5 purported to say was really not intended by the Directors to be done, the loan to accused No. 5 would still be a bogus loan. Mr. Chari contended before us that when the learned Judge made these observations to the jury, he asked them to consider the possibility of convicting the accused on alternative sets of facts. We do not see any force in this submission of Mr. Chari. The learned Judge did not ask the jury to convict the accused on alternative sets of facts. He was dealing with the point whether Subramaniam was to be believed by the jury or not, and what results would follow in either case. A fact may be deduced or not deduced upon the acceptance or non-acceptance of particular evidence. Belief in particular evidence or non-

belief in it is not a set of facts. It is a state of mind of the jury. The results which follow from the belief or non-belief in particular evidence are a set of facts. The set of facts in this case with which the learned Judge was dealing was whether the transactions of a loan to accused No. 5 and the purchase of the properties of the Delhi Swadeshi Co-operative Stores by the Jupiter General Insurance Company were true transactions or bogus transactions. If the jury thought that they were bogus dealings, they were asked to consider what bearing such a conclusion would have upon the charge against the accused. In our view, the learned Judge did not misdirect the jury when he said this to them.

15. It was next contended by Mr. Chari that in this case there was a mass of evidence which was admissible as against each accused individually, but not admissible as against the rest of the accused, and that this was likely to confuse the mind of the jury and prejudice the defence. As an instance, it was pointed out by Mr. Chari that the Raghavji loan of Rs. 5,00,000 and the "fresh loan" to accused No. 5 of Rs. 5,30,000 were sanctioned by the Board at its meeting held on November 5, 1949, at which only accused No. 1 and accused No. 3 out of the present accused were present, but accused No. 2 was absent. Similarly, at the Board's meeting of December 20, 1949, also, when the matters about the Misridevi loan of Rs. 5,00,000, and the sale of 40,000 shares of the Tropical Insurance Company came up before the Board, accused No. 1 and accused No. 3 only were present, but not accused No. 2. Mr. Chari contended that the above-mentioned conduct of accused No. 1 and accused No. 3 after the conspiracy was carried out in the month of January 1949 was admissible as against them only and not against accused No. 2. Similarly, certain acts were done only by accused No. 4 or by accused No. 1 in the years 1949 and 1950, and they were done after the object of the conspiracy was achieved. Mr. Chari said that the evidence of the above-mentioned conduct of accused No. 1 and accused No. 4 would be admissible as against them only, but not against accused No. 2 and accused No. 5. Mr. Chari contended that this state of the evidence on the record was too confusing for the jury and rendered it difficult for them to discriminate between what was admissible against which accused and what was not so against him. In this connection, he referred us to a decision of the Privy Council in *Walli Mohammad v. The King* 53 C.W.N. 318. It was held by the Privy Council in that case that the difficulty in all cases where more than one were accused of a crime and when the evidence against one was inadmissible against another was that, however carefully the assessors or a jury were directed and however firmly a Judge might steel his mind against being influenced against one by the evidence admissible only against another, nevertheless the mind might inadvertently be affected by the disclosures made by one of the accused to the detriment of another. Their Lordships said that the statements of each prisoner were evidence against himself only and were inadmissible against his fellow accused and consequently the only safe method of testing the strength of a case for the prosecution was to take each man's case separately, neglect the evidence of others and ask whether the conflicting and inconsistent nature of the matters

alleged and persons implicated combined with the admission was enough to justify a verdict against him. In the first place, it is to be noted, as I have already pointed out by reference to several observations made by the learned Judge at several places in his charge to the jury, that the learned Judge was repeatedly at pains to tell the jury that they must be vigilant and must not let their minds be influenced, while they were dealing with the case of a particular accused, by a consideration of evidence which was admissible as against only some of the accused and not admissible as against the rest of the accused including himself. But, apart from this, it is to be remembered that a decision in a particular case is given in the context of the particular facts of that case. If the said decision is taken out of that context and grafted upon a set of different facts, difficulties might arise. If, for instance, there were 10 conspirators in a case and if each one of them had done certain acts or resorted to a certain piece of conduct after the conspiracy was carried out, the evidence of those acts or that conduct would be admissible as against the particular accused connected with those acts or that conduct, but not as against the other accused. That would be necessarily so as the law of evidence stands. Now, if we were to accept the submission of Mr. Chari, such a case could never be established and must always fail. Such a use of the decision of their Lordships of the Privy Council in *Walli Mohammad v. The King* is, in our opinion, not correct. Besides, in the present case, as I have just stated, the minds of the jury were not likely to be confused by some evidence being admissible against some accused and not so against the others, for the reason that the learned Judge repeatedly told the jury to take into consideration, while dealing with the case against a particular accused, only such evidence as was admissible against him and ignore the rest of the evidence which was admissible as against the rest of the accused.

16. The next contention of Mr. Chari was that although certain disputed writings were forwarded by the prosecution to an hand-writing expert, Mr. Phansalkar, for obtaining his opinion and although Mr. Phansalkar had given his opinion after examining the disputed writings, the prosecution had told the Court that they did not propose to examine Mr. Phansalkar as a prosecution witness. Thereupon, the defence had applied to the Court and the prayer of the defence was that the prosecution must examine Phansalkar since they had obtained his expert opinion as to the authorship of the disputed writings. The learned Judge had rejected that application. In the view of the learned Judge, the Court could not compel the prosecution to examine a witness whom they did not wish to examine. Mr. Chari contended that in the above circumstances the Court ought to have asked the jury to draw an adverse presumption against the prosecution, namely, the presumption that if Phansalkar had been examined by the prosecution as their witness, he would not have supported the prosecution case. In paras. 849 and 850 of the learned Judge's charge, the learned Judge dealt with a certain writing exh. Q. The prosecution contention was that this writing was passed and signed by accused No. 1 and accused No. 2 on January 30, 1951, when they went to the house of Chopra after Chopra had filed his complaint. According to the

prosecution, it was at this meeting of accused Nos. 1 and 2 with Chopra that accused Nos. 1 and 2 had appealed to Chopra not to proceed with his complaint as they were persons with wives and children. It was on that occasion that accused Nos. 1 and 2 had admitted before Chopra, according to the case of the prosecution, that they had defrauded the Jupiter General Insurance Company and the Empire of India Life Assurance Co. The prosecution story is that Chopra, desirous of having a record of the admission of accused Nos. 1 and 2 of their guilt, wanted them to say so on paper and then they passed the writing exh. Q. The contention of accused Nos. 1 and 2 was that they had never signed any such writing as exh. Q. While dealing with this exhibit, the learned Judge said :

It is rather difficult to come to any definite conclusion with regard to the identity of accused No. 1 in respect of the signature on Exh. Q by comparing with other admitted signatures. His signature is so peculiarly written. You will also find that "a" in the word "Kaul" is sometimes written like "O" and there are attempts made to join with the following letters. Moreover there is some hesitancy in writing "Haul" in Exh. Q as seen by a wave in the second stroke of "K" " and then the learned Judge observed :

But I am not an handwriting expert. These are few suggestions for you to consider. My opinion is not binding on you. It is for you to come to your conclusion whether Exh. Q is signed by accused Nos. 1 and 2 or not. Now, having compared these signatures, you have to judge for yourselves whether you believe that Exh. Q is signed by accused Nos. 1 and 2 or not.

After having said this, the learned Judge said again:

You have not been fortunate enough to get the assistance of an handwriting expert. At one time the prosecution wanted to call an handwriting expert to prove that the signatures on Exh. Q are those of accused Nos. 1 and 2. Then the prosecution made up its mind not to call that expert whose opinion was taken and wanted to call some one else, viz. Mr. Gimi. The application to call Gimi was not allowed by me unless the prosecution called the previous handwriting expert also. Under these circumstances, there is no corroborative evidence of an handwriting expert to the evidence of Chopra and Mayadas who depose that accused No. 1 and 2 have signed Exh. Q. But even when there is an opinion of an handwriting expert, it is ultimately you who have to come to your conclusion after considering all the surrounding circumstances and comparing the signatures as to whether Exh. Q is written by accused Nos. 1 and 2 or not.

In para. 610 of his charge, the learned Judge was dealing with a disputed writing exh. F. The prosecution contended that this was a genuine writing of accused No. 5. The defence was disputing it. The "writing exh. S was the admitted writing of accused No. 5. The learned Judge asked the jury to compare the signatures on the writings exh. S. and exh. F and form their own conclusion whether exh. F bore the genuine signature of accused No. 5. This was what the learned Judge said:

Now that you have compared the signatures, it is for you to come to the conclusion as to whether the signature on Exh. F is genuine or forged. There is no opinion of an handwriting expert to assist you.

Again, while dealing with the same point, the learned Judge observed before the jury (para. 609) :

I am not an handwriting expert, It is always very hazardous to form an opinion by comparison of signatures unassisted by an expert opinion. But to my mind, the most characteristic feature in the signature is the word "dul" written in the whole of the signature etc., etc.

Mr. Chari contended before us that since the prosecution had sent these writings exh. Q. and exh. F to the handwriting expert Mr. Phansalkar and had obtained his opinion about them and had yet not examined him, the learned Judge ought to have told the jury that they must draw an inference adverse to the prosecution in this respect. By not telling the jury so, he committed a fault of non-direction which must amount to a misdirection.

17. Now, the law on the point as to which witnesses the prosecution is bound to examine is well-settled. The prosecution is bound to examine such witnesses whose evidence is essential for the unfolding of its case. By no stretch of imagination could it be said that the evidence of an handwriting expert Phansalkar was necessary for the unfolding of the prosecution case against the accused. It might have had. a bearing on the question whether the writing exh. Q was passed by accused No. 1 and accused No. 2. If Phansalkar's evidence on this point had been to the effect that in his opinion the writing exh. Q bore the signatures of accused Nos. 1 and 2, it would have been just one of the circumstances in favour of the prosecution. If the opinion of Mr. Phansalkar had been indefinite, it would have been an innocuous circumstance neither in favour of, nor against, the prosecution. If, on the other hand, the opinion had been to the effect that the signatures on exh. Q did not appear to be those of accused Nos. 1 and 2, it would have been a circumstance against the prosecution. In neither of these three possibilities which might have arisen out of the opinion of the handwriting expert could it be said that the opinion was necessary for the unfolding of the prosecution case. Evidence necessary for the unfolding of the prosecution story is the evidence without which the essential elements of the prosecution case would not be unfolded at all and there would be left a lacuna or incompleteness in the story itself. Such evidence the prosecution is bound to lead, and if it is not led, it would be a serious infirmity in the prosecution case. For instance, the prosecution story in the present case is that as a result of certain negotiations between, the conspirators and Tulsiprasad Khaitan, a fraud was committed on the Jupiter General Insurance Company. Evidence in regard to those negotiations would be evidence necessary for the unfolding of the prosecution case. Then the prosecution case is that four bogus transactions, namely, the Raghavji loan, the Misridevi loan, the so-called fresh loan to accused No. 5 and the purchase of the Tropical Insurance Company's shares by the

Jupiter General Insurance Company, were created for concealing the conspiracy and for hiding the fact that the Jupiter shaves were purchased with the funds of the Jupiter General Insurance Company itself. Therefore, the evidence with regard to those transactions would be evidence essential for the unfolding of an important ingredient or constituent of the prosecution story. Then again, according to the prosecution, the repayments to the Jupiter General Insurance Company in October 1950 were a mere holocaust resorted to for showing that the above-mentioned four bogus dealings were true dealings. Therefore, the evidence in regard to those repayments, the manner in which the monies came to the Jupiter General Insurance Company, would be essential to the unfolding of that vital element of the prosecution case. Unless the prosecution led evidence before the Court in respect of the above-mentioned component parts of its case, the case would not be unfolded. Therefore, the prosecution was bound to lead that evidence and if it did not do so, its case would suffer a setback. Where an accused person made a certain admission of his guilt in writing, it might be a circumstance supporting the prosecution case, which might have been unfolded by the evidence relevant to the unfolding, but it would not amount to the unfolding of the case. In our view, the evidence of the handwriting expert Phansalkar was not necessary for the unfolding of the prosecution case and the prosecution was not bound to examine him as their witness. If the defence thought that Phansalkar's evidence would destroy or throw doubt upon the prosecution story or would support its contention that the signatures on exh. Q were not of accused Nos. 1 and 2, it was perfectly open to them to examine him. The defence could legitimately expect that the prosecution must discharge its duty and not evade it upon the apprehension that the performance of the duty might weaken or negative its case. But the defence could not rightfully expect that the prosecution should discharge the duty of the defence. In this case, if the prosecution thought that Phansalkar's evidence was not helpful to it for the unfolding of its case, it was not bound to examine him as its witness; but if the defence thought that his evidence was helpful to them in showing that the signatures on exh. Q were not of accused Nos. 1 and 2, it was open to them to examine him.

18. Then again, and this is important, it is to be noted that the learned Judge did tell the jury in para. 850 of his summing up :

But even when there is an opinion of an handwriting expert, it is ultimately you who have to come to your conclusion after considering all the surrounding circumstances and comparing the signatures as to whether Exh. Q is written by accused Nos. 1 and 2 or not.

Now, it could not be denied that the fact that the prosecution did not examine Phansalkar as its witness although the disputed writings were sent to him by the prosecution for his examination and opinion was one of the circumstances of this case, and it is clear from the above quoted observations of the learned Judge in para. 850 of his charge that the learned Judge did ask the jury to take that

circumstance into consideration. The jurors with their experience of the world were bound to understand that if Phansalkar's opinion, had been in favour of the prosecution, the prosecution would have examined him as its witness. They were bound to draw a reasonable inference that the prosecution did not examine Phansalkar, because if he had been examined by it, his evidence would not have supported the prosecution story that the writing exh. Q bore the signatures of accused Nos. 1 and 2 and the writing exh. F bore the signature of accused No 5.

19. In this context, it is significant to remember that the learned Special Prosecutor appointed by the State of Bombay in this case did tell the jury :

The prosecution refused to call certain witnesses, I refused to call Madhukar, C.R. Shah, Himmatlal F. Parikh, Himmatlal Shah. The Court did not compel me to call them. It is open to the jury to draw an inference against the prosecution. Whether such an inference should be drawn by you it is for you to consider under the circumstances.

20. It is no doubt true that Phansalkar's name was not amongst the names mentioned by the learned Special Prosecutor in these submissions of his before the jury. But there is no doubt that the observations of the Special Prosecutor cited above would apply with equal force to the non-examination of Phansalkar by the prosecution. Therefore, the jury did have before them a clear and a categorist statement made by the prosecution itself that in view of the fact that certain witnesses were not examined by the prosecution, it was open to them to draw an inference adverse to the prosecution. This would precisely meet the objection taken by Mr. Chari in this particular context. The point is that in the above circumstances we are unable to see substance in Mr. Chari's contention that the learned Judge was guilty of a non-direction amounting to a misdirection in not asking the jury in terms to draw an inference adverse to the prosecution, because Phansalkar was not examined by the prosecution as their witness.

21. The next attack which was made by Mr. Chari against the learned Judge's charge was this: In para. 977 of the learned Judge's charge to the jury, the learned Judge observed :

On the 20th of January 1949 a sum of Rs. 14,000 is shown to have been paid out of the Tropical. In the Tropical books of account, no details are mentioned as to why this amount was paid. But accused No. 5 explains by stating that this amount was paid to him for a secondhand Packard car which he had sold to Lala Shaukarlal for his concern. He submits that this has nothing to do with the present charge. It may be noted that the number of the car is also not given by accused No. 5 and no prior registration of this car in his name is produced.

Mr. Chari's attack was against the observations :

It may be noted that the number of the car is also not given by accused No. 5 and no prior registration of this car in his name is produced.

Mr. Chari's comment was that the learned Judge asked the jury to speculate

whether the explanation of accused No. 5 that the Tropical Insurance Company had paid him Rs. 14,000 on. January 20, 1949, because he had sold his "second-hand" Packard car to Lala Shankarlal, the Managing Director of the Tropical Insurance Company, could be a true explanation. This, said Mr. Chari, was a wrong thing for the learned Judge to do, as no question was put to accused No. 5, when his statement u/s 342 of the Code of Criminal Procedure was recorded by the Court, in the matter of the number of the Packard car or its registration. Mr. Chari said that where the prosecution was unable to have an explanation for a particular circumstance and where the accused's explanation was the only explanation on the record, the accused's explanation, must be accepted. In our view, this was too sweeping a statement to make. The correct position would be that where the prosecution has no explanation to offer, the accused's explanation should be accepted, even though not proved to be true, if it appears to be a reasonable explanation or if the jury, in the circumstances of the case, considers it possible of acceptance. But, if the jury, in the face of the evidence before it and in view of the circumstances arising out of that evidence, considers that it is not a reasonable explanation nor is it possible to accept it, it is not bound to accept it. When the learned Judge told the jury

It may be noted that the number of the car is also not given by accused No. 5 and no prior registration of this car in his name is produced.

he clearly asked them to consider the natural probabilities. It is not necessary, indeed it is scarcely possible, that all natural probabilities and all reasonable inferences, such as might arise from the evidence, must be exhausted and put to an accused person while recording his statement u/s 342 of the Code of Criminal Procedure. Often the list of such probabilities or inferences may be of considerable bulk and no authority is cited before us to show that the learned Judge cannot ask the jury to take into account those probabilities, unless in the first instance they are put to the accused in his statement u/s 342 of the Code of Criminal Procedure. We have no doubt that when the learned Judge said

It may be noted that the number of the car is also not given by accused No. 5 and no prior registration of this car in his name is produced.

he asked the jury to consider whether the explanation of accused No. 5 was a reasonable explanation or whether it was such as was possible of acceptance in the present case. We are not aware of any law which says that whatever explanation the accused might advance, it must be accepted mechanically and without any probe into the probability of its being a possible explanation at all in the circumstances of a particular case, if the accused was not asked about it u/s 342 of the Code of Criminal Procedure. We have not been referred to any authority which has laid down that a Judge cannot ask the jury to test the explanation of an accused person in the light of the guidance derivable from natural probabilities, unless the accused is asked about it in his statement u/s 342 of the Code of Criminal Procedure and that he must direct the jury to accept it without giving any thought whatever to it. We have dealt with this contention

of Mr. Chari in some details, because a contention like this is a stock contention of the defence in criminal cases and we thought it necessary to point out what value might be attached to that contention. Every such contention must be judged on its own merits and in the context of the circumstances of the case.

22. The next contention of Mr. Chari was that the evidence which the prosecution had led about repayments of the Raghavji loan, the Misridevi loan, the so-called "fresh loan" to accused No. 5 and about the sale proceeds of the Tropical Insurance Company's shares was inadmissible on the ground of remoteness, Mr. Chari said that the alleged fraud on the Jupiter General Insurance Company was committed in January 1949 and the repayments mentioned above, which were made to the Jupiter General Insurance Company, were made in October 1950. In between, in May, November and December 1949, there had taken place the four transactions of the purchase of the Tropical shares by the Jupiter Company, loans to Raghavji and Misridevi and the fresh loan to accused No. 5, which, the prosecution contended, were bogus transactions and which the defence said were true transactions. Mr. Chari's contention was that the occurrence of the above-mentioned four dealings nearly four to eleven months after the alleged fraud on the Jupiter General Insurance Company and the repayments to the Jupiter Company, which were made about a year later still, would show that the fraud, if any, and the repayments were only remotely connected. Mr. Chari said that human conduct was an infinite and complex network of actions, reactions and counter-actions and, therefore, if two actions of a person, which were separated by a long distance of time during which other actions of his and reactions of others might have intervened, were to be pieced together to spell out a dishonest intention, there would be a grave danger of the rightful defence of that person being prejudiced. This proposition, in the way in which Mr. Chari has enunciated it, sounds attractive, but all that is attractive to hear does not necessarily have much substance in it. Remoteness is a matter of degree. We have no doubt that if the four transactions of the loans to Raghavji and Misridevi, the fresh loan to accused No. 5 and the purchase of the Tropical shares by the Jupiter Company were created to conceal the original fraud and if the repayments shown to have been made to the Jupiter Company were merely a show made to satisfy the auditors that those four transactions were genuine dealings and that the monies recovered therefrom were repaid to the Jupiter Company, the connection between the fraud and the bogus repayments cannot be said to be a remote connection. In this connection, it would be apposite to refer to illustration (e) to Section 8 of the Indian Evidence Act. Illustration (e) to Section 8 says that if A is accused of a crime, the facts that either before or at the time of or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself... are relevant, in the present case, the contention of the prosecution is that as the audit for the year 1949 was at hand and as the auditors, who had taken a serious objection to the loans to Raghavji and Misridevi and to the fresh loan to accused No. 5 and had a grave suspicion about the purchase of the Tropical shares, had to be

satisfied, so that they might drop further investigation into those matters, the conspirators provided evidence, by creating evidence of repayments, which would tend to give to the above four transactions an appearance favourable to themselves, namely, an appearance that the said transactions were genuine transactions. Therefore, the alleged repayments would be relevant facts under g. 8 of the Indian Evidence Act and the evidence thereof would be admissible. Before the Court could be persuaded to accept Mr. Chari's submission that the alleged fraud on the Jupiter Company in January 1949 and the repayments to the Jupiter Company in October 1950 were remotely connected and. therefore, the repayments would not be relevant facts, the law of evidence as at present administered would have to be amended and the proposition laid down in ill. (e) to Section 8 would have to be abrogated. The bogus loans to Raghavji and Misridevi, the bogus fresh loan to accused No. 5 and the bogus purchase of the Tropical shares by the Jupiter Company had to be created in May, November and December 1949 to screen the fraud, which had been committed in January 1949, from the auditors. The bogus loan of Rs. 25,10,650 to accused No. 5 had to be wiped out by or before December 31, 1949. The auditors would not be satisfied about it unless they examined the title deeds, the mortgagage deed, the valuation report etc. These were non-existent. It was, therefore, that the above bogus transactions were created. This was the contention of the prosecution which was to be judged by the jury upon the evidence before them. The above-mentioned four transactions would accordingly be relevant facts. The conspirators' conduct of showing repayments in October 1950, namely, showing that the amounts advanced to Raghavji and Misridevi and also to accused No. 5 under a fresh loan to him had been repaid by them and that the sale proceeds of the Tropical Insurance Company's shares had been recovered by the Jupiter General Insurance Company, was influenced by the relevant facts, the relevant facts being the above-mentioned three bogus loans and the bogus purchase of the Tropical shares. Because the bogus character of those dealings had to be concealed from the auditors, a show of repayments was made by bringing in moneys from the Empire of India Life Assurance Company and the Tropical Insurance Company. Clearly, therefore, the repayments were influenced by the four prior dealings which were relevant facts. Repayments themselves would accordingly be relevant facts u/s 8 of the Indian Evidence Act and the evidence thereof would be admissible.

23. The evidence to show that the reimbursement of monies to the Jupiter General Insurance Company was made with the monies obtained from the Empire of India Life Assurance Company and the Tropical Insurance Company, and not with the monies paid back by Raghavji or Misridevi or accused No. 5 (since they paid nothing in fact) nor from the sale proceeds of the Tropical shares, would be admissible to rebut the defence which would otherwise be open to the accused, namely, the defence that there was no fraud committed in this case on the Jupiter General Insurance Company, that the sum of Rs. 28,15,00 was utilised not for purchasing the Jupiter shares but for advancing a loan of Rs.

25,10,650 to accused No 5 and purchasing the properties of the Delhi Swadeshi Co-operative Stores for Rs. 2,60,000, that the amount which was paid back by accused No. 5 was utilised for giving loans to Raghavji and Misridevi and for purchasing 54,000 shares of the Tropical Insurance Company and that ultimately the monies had gone back to the Jupiter Company by Raghavji and Misridevi paying off their loans and by accused No. 5 also paying off his fresh, loan (Rs. 5,30,000) and from the sale proceeds of the Tropical Insurance Company's shares. As I have just mentioned, creation of evidence of bogus repayments by bringing in monies from the Empire of India Life Assurance Company and from the Tropical Insurance Company would be a relevant fact and evidence about it would be admissible for rebutting the above defence which would otherwise be open to the accused the authority for this conclusion is to be found in a decision of the Privy Council in *Makin v. Attorney-General for New South Wales* (1894) A.C. 57. In that case, their Lordships observed (p. 65) :

...the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue, before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.

In the result, we find no substance in Mr. Chari's contention that the repayments to the Jupiter General Insurance Company in October 1950, being remote from the fraud alleged by the prosecution ,the evidence thereof was not admissible. In our view, such evidence was admissible.

24. Next Mr. Chari made a grievance of how the learned Judge had dealt, with what he (Mr. Chari) had called certain "irrational features" of the case. In para. 556 of his charge, the learned Judge told the jury :

It is at this stage that, I shall point out the defence versions of these various acts of these accused persons. It is submitted that these acts show that the accused had no dishonest intention or guilty knowledge at the time, it is alleged, they did various acts. Mr. Chari has pointed out to you the "20 irrational features", as he called them. He has pointed out that the licensed persons would not be creating evidence against themselves assuming that they had the guilty knowledge, their actions were irrational and could only be explained on the ground of innocent mind. He has pointed out that if the accused wanted to take the moneys dishonestly, Why was it necessary for them to draw a cheque in the name of Delhi Swadeshi Co-operative Stores or order and then ask Guha to sign and make it payable to Tropical Insurance Co. or order which necessitated licensed No. 2 to sign. Gentlemen, I trust you will consider the arguments of the defence and consider whether you think that the accused persons who dealt with these cheques (Kxhs. Z-66, Z-67, Z-68) had the dishonest intention or not.

It is clear that in the previous paragraphs of his charge, the learned Judge had dealt with certain acts and conduct of the accused upon which the prosecution

relied. The comment of Mr. Chari in regard to those acts was that they were not compatible with guilty mind, but on the contrary were indicative of innocence. The tenor of Mr. Chari's criticism in regard to those acts was generally speaking the same, namely, that if the accused had a criminal intention or sinister purpose in their minds, they would not have done those acts. According to Mr. Chari. those were normal and natural acts of straightforward people. The attack of Mr. Chari upon the learned Judge's charge in this context was that, while dealing with several pieces of the conduct of the accused, the learned Judge did not direct the jury each time that if the accused had been concerned in the conspiracy, their conduct would not have been what it was. In our view, Mr. Chari's attack was scarcely justified. It is to be remembered that 107 witnesses were examined for the prosecution in this case. The day-to-day hearing of the case lasted for 170 days. The record of the evidence and exhibits was enormous. It came to 1800 and odd pages. The charge to the jury took five days to be delivered and it covered 493 pages. If every circumstance arising out of every half a dozen lines and every inference, natural or far-fetched, obvious or latent, arising from every page of the huge record were to be put to the jury, the charge to the jury would have been much longer than it was and would scarcely have been called "summing up". When a Judge sums up a case, he must state the facts of the prosecution story and the version of the defence if any. He must explain the relevant law. He must invite the jury's attention to the evidence led by the prosecution in support of the, facts contended by it and to the attack made by the defence upon that evidence. If the accused has led any evidence, the Judge must draw the jury's attention to it. The expression "summing up" signifies conciseness, clarity and brevity without sacrificing what is essential for the understanding of the prosecution case and the defence case and for the appreciation, correlation and interpretation of evidence. In the present case, the learned Judge's charge to the jury amply satisfies these requirements. Indeed, the charge might have been diviedly shorter without sacrificing the essentials. A jury consists of persons with experience of the world. There is a natural presumption in their favour that they are persons of common sense capable of understanding what is natural and probable and what is otherwise. They could be trusted to use their discretion and draw, from the facts and circumstances disclosed, by the evidence before them, inferences which are obvious and natural. A Judge is not guilty of a non-direction if he does not tell the jury on every occasion, while dealing with the evidence on every fact, that they must see what nobody can fail to see. We have thought it necessary to point this out, though it is obvious, because often times the defence, unable to find misdirections in the charge of the learned Judge, endeavours to spell out nondirections. A discrimination must be made between omission to state what is essential, fundamental and required for the correct guidance of the jury and omission to state what is obvious and cannot fail to be noticed. In our view, the directions given by the learned Judge in para. 550 of his charge to the jury were correct directions.

25. The next criticism of Mr. Chari against the learned Judge's charge was that, although certain persons of the names of Chandulal Ratanchand Shah and H.F. Parikh, who had been examined by the prosecution, as its witnesses in the Court of the committing Magistrate, were not examined by the prosecution during the sessions trial, the learned Judge did not ask the jury to draw an inference adverse to the prosecution. According to Mr. Chari, the learned Judge ought to have asked them to do so. It is to be remembered, however, that although the prosecution did not examine Chandulal Ratanchand Shah and H.F. Parikh as their witnesses in the sessions trial, they had kept those persons ready in the Court if the defence had wanted to examine them and that was enough. In *Emperor v. Kasamalli Mirzalli* (1941) 44 Bom. L.R. 27. a Full Bench of this Court observed (p. 41) :

The learned Judge also used a statement to the police in the case of the witness Nazir. Now, Mazir's evidence is in a very unsatisfactory condition. He was called before the Committing Magistrate, and presumably told, a story which the prosecution believed to be false ; and consequently they did not wish to call him in the Sessions Court. In our opinion their proper course in such a case was, not to call him themselves, hut to give his name to the defence, see that he was present in Court, and tell the defence, if they did not already know it, what he was prepared to say. As he had given evidence before the Committing Magistrate, the defence probably knew what he was prepared to say, and the defence, if they thought fit, could have called him as a witness. In our opinion, the duty of the prosecution in criminal cases is clear. It must always be perfectly fair. It has been said over and over again that it is not the function of the Crown to procure the conviction of an innocent person. That is obvious. But the Crown is not bound to call before the Court a witness, who, it believes, is not going to speak the truth. If the Crown informs the accused of the name of the witness and produces him in Court, it can then leave it to the accused to call him or not, as he thinks fit.

Thus, there is no substance in the contention of Mr. Chari that the learned Judge's charge suffered from a nondirection, because the learned Judge did not ask the jury do draw an adverse inference against the prosecution as the prosecution did not examine Chandulal Ratanchand Shah and H.F. Parikh as their witnesses in the sessions trial, though they had been examined as prosecution witnesses in the committing Magistrate's Court.

26. In respect of accused No. 5, Mr. Chari contended before us that there was no evidence to show that he was a member of the criminal conspiracy between. December I, 1948, and January 31, 1949, which was the period specified in the charge against the accused. In this connection, it is to be remembered that monies went from the Jupiter General Insurance Company, Bombay, to the Tropical Insurance Company, Delhi, on January 18, 19 and 20, 1949-by virtue of the various cheques which were drawn by the Jupiter Company in favour of the Tropical Company. In respect of the said monies (Rs. 25,10,630), which the

Tropical Insurance Company was shown to have received from the Jupiter Company, a receipt was passed by accused No. 5 in September 1950. These facts must be correlated and the correlation would show that accused No. 5 must have been a member of the criminal conspiracy between December 1, 1948, and January 31, 1949, since the dates January 18, 19 and 20, 1949, fell within that period.

27. Then Mr. Chari said that it was not proper on the part of the learned Judge to say in para. 703 of his charge :

Mr. Deshpande has further stated in his evidence that a letter of Sardar Shardulsingh Caveeshar requesting the company to pay the amount of the loan to Tropical was shown to him. This letter is again not forthcoming. He (meaning thereby Deshpande) had also seen the promissory note executed by Sardar Shardulsingh Caveeshar which was cancelled. Of course, he is not in a position to identify the signature of Sardar Shardulsingh Caveeshar on these documents. As you know, Sardar Shardulsingh Caveeshar has denied that he gave any promissory note for Rs. 25,10,650/-which is mentioned in the report of the auditors.

We are unable to see any impropriety in these observations of the learned Judge. What he did was obvious. He referred the jury to the evidence of Deshpande who was one of the auditors who had examined the accounts of the Jupiter General Insurance Company. He referred to a statement made by Mr. Deshpande in his evidence in regard to what was represented to him to be a letter of accused No. 5 and in regard to his having seen a certain promissory note, which was represented to him to have been executed by accused No. 5. Having drawn the attention of the jury to the aforesaid evidence of Mr. Deshpande, the learned Judge, fairly and justly, drew the attention of the jury to the fact that Mr. Deshpande was not in a position to identify the signature of accused No. 5 either on the letter or on the promissory note. He also told the jury what accused No. 5 had to say about it. He told them that the alleged signature of accused No. 5 on the above-mentioned letter and the promissory note was denied by accused No. 5. Having put the above-mentioned position clearly before the jury, the learned Judge told them :

It is for you therefore to consider whether such a promissory note or such a letter of authority as has been mentioned by Deshpande existed or not.

We are unable to see any impropriety in this direction which the learned Judge gave.

28. Then Mr. Chatri contended that the verdict of the jury, which the jury returned in favour of accused No 3, was based on certain facts, that the facts against accused No. 5 were the same and that, notwithstanding the facts being the same, the jury had returned an unanimous verdict against accused No. 5 that he was guilty of the offences u/s 120B read with Section 409 and Section 409 read with Section 109 of the Indian Penal Code. Mr. Chari contended that the

facts alleged by the prosecution against accused Nos. 3 and 5 being the same, the verdict of the jury as against accused No. 5 was a perverse verdict which would entitle us to go behind the verdict and examine the evidence for ourselves. Mr. Chari is not correct in his submission. It is only too evident that the set of facts against accused No. 5 was materially and substantially different from the set of facts against accused No. 3. It was at the instance of accused No. 5 that, according to the evidence on the record, the Jupiter General Insurance Company had advanced monies to the Tropical Insurance Company. Again, a show was made as though the monies were returned or repaid by the Tropical Insurance Company to accused No. 5. There is a receipt exh. Z-305-A on the record of this case, in respect of which there is the evidence of Chopra, purporting to show that the Tropical Company had paid off their debt to accused No. 5. It would appear from the statement of accused No. 5 himself that his application for a loan of Rs. 6,00,000 was a bogus application, since, the person who was to avail himself of that loan was not himself, but Lala Shankarlal. These and other facts referred to by the learned Judge during the course of his elaborate charge to the jury would distinguish the case of accused No. 5 from the case of accused No. 3. We are unable to endorse Mr. Chari's contention that the verdict of the jury against accused No. 5 was a perverse verdict.

29. Regarding the case against accused No. 1, Mr. Chari contended that the securities belonging to the Jupiter General Insurance Company were got back by that company from the Bank. The letter in that connection exh. Z-32 was written by Mr. Bakshi, the Sub-Manager of the Jupiter General Insurance Company. The securities were taken delivery of by L. N. Mehta, who was the Chief Cashier of the Jupiter General Insurance Company. The letter exh. Z-32 was countersigned by Rege, the Chief Accountant of the company. Mr. Chari's contention was that if the intention of accused No. 1 was a sinister or dishonest intention, the above-mentioned course of conduct, which was a fair and straight forward course of conduct, would not have been adopted. Mr. Chari contended that the learned Judge did not point this out to the jury. Here again, Mr. Chari is not correct. If we turn to para. 530 of the learned Judge's charge, we find that the learned Judge made the following observations before the jury :

Then it is further pointed out by the defence that this withdrawal was not done in secrecy and it is therefore submitted that the withdrawal of securities had nothing to do with any criminal intention. It is pointed out that the letter written to the Bank for such withdrawal was signed by Baxi, the Assistant Manager and the person who brought the securities to the Jupiter General Insurance Co. was L.N. Mehta, Chief Cashier, both of whom are not alleged to be co-conspirators. It is pointed out that this letter is also signed by Rege, the Chief Accountant. I see some force in this argument. But it is for you to consider this submission.

We are unable to understand what more the learned Judge could have done. He did tell the jury that he saw a certain amount of force in the contention of the defence in this behalf, but he ultimately left it to the jury, who were Judges of

facts, to decide it for themselves what value to attach to this contention of the defence.

30. Then Mr. Chari contended that the letter which was written to Harkisondas in connection with the sale of the securities-the letter exh. Z-36 dated January 13, 1949-was written by accused No. 1 himself. Again, it was accused No. 1 who wrote on January 15, 1949, to the Punjab National Bank Ltd., Bombay, telling the bank that he was forwarding certain securities, so that the said securities, might be given to Harkisondas, upon Harkisondas paying the price in that behalf. Mr. Chari's contention was that this conduct of accused No. 1 in writing to Harkisondas on the one hand and in writing to the bank on the other hand was not compatible with guilty mind. Mr. Chari contended that this aspect of the case ought to have been put by the learned Judge before the jury, but it was not so put. Mr. Chari's submission involves a question of the consideration of natural probabilities and have dealt with this aspect of the case already in considerable details. The jury were Judges of natural probabilities. They knew that accused No. 1 had signed the above-mentioned letter to Harkisondas and had also signed another letter to the bank. They also knew that accused No. 1 was holding a responsible office of a Director in charge of the company. These circumstances being before them, it was for them to draw their own conclusion whether the conduct of accused No 1 was consistent with criminal intention or not.

31. Then Mr. Chari said that Harkisondas was not asked by accused No 1 to deal with the securities in a manner which was otherwise than a normal manner. For instance, accused No 1 did not take the precaution, which he would otherwise have taken, of asking Harkisondas not to send the contracts in the matter of the sale of the securities to the office of the Jupiter General Insurance Company. According to Mr. Chari, if accused No. 1 had a criminal intention in this matter, he would have told Harkisondas that he would call for the sale proceeds of the securities himself. Then again, Mr. Chari invited our attention to the letter exh. Z-38 which was written by accused No 1 to the Bank of India asking the bank to deliver (securities worth rupees one lakh to Harkisondas and credit proceeds to the account of the Jupiter General Insurance Company. Mr. Chari's contention was that if accused No. 1 had any criminal intention, he would have got the securities" himself from the bank and would have then given them to Harkisondas. Now, it is a matter of common knowledge that if a criminal wants to commit an offence, he would as far as possible preserve a show of normality. If an abnormal show is made, if something which is not usually done is done, it would excite suspicion against the person doing it. In other words, the inferences which Mr. Chari wanted the learned Judge to put before the jury were obvious inferences, and we do not think that the learned. Judge committed a fault of non-direction if he did not tell the jury what according to Mr. Chari. he should have told them, namely, that the above-mentioned conduct of accused No. 1 was normal conduct. It was a point so easy and so obvious that the jury could not have failed to notice.

32. These were all the points which Mr. Chari for the appellants pressed before us. We asked Mr. Chari whether he could point out anything else, any other observations in the learned Judge's charge to the jury, which might amount to a misdirection. We asked him whether there was any other no direction in the charge. His answers to these questions were in the negative. Our conclusion, therefore, is that the learned Judge's charge to the jury did not suffer from any misdirections or no directions amounting to misdirections. Accordingly, it would not be open to the Court to go behind the verdict of the jury and examine the evidence for ourselves and to come to our own conclusion upon that evidence. As no misdirections or no directions amounting to misdirections in the learned Judge's charge to the jury have been pointed out to us, we cannot go behind that verdict.

33. The appeals accordingly fail and are dismissed. Accused Nos. 2 and 4 must surrender to their bail in Bombay. Accused No. 1, who is in Delhi, must surrender to his bail in Delhi and inform the Registrar of this High Court about it.

34. We cannot conclude this judgment without recording that Mr. Chari argued these appeals with a degree of ability, clarity, precision and fairness which must evoke the admiration and appreciation of the Court. When Mr. Rhaudalawala rose to reply, we soon discovered, that ability, precision and fairness were matched with ability, precision and fairness. It was a pleasure to hear Mr. Khandalawala reply, and reply clearly and effectively, to the points which were pressed before us by Mr. Chari. The great and valuable help rendered to us both by Mr. Chari and Mr. Khandalawala rendered it easier to understand the case, the facts whereof were so numerous and reactions inter se of those facts so intricate.