BARJURE KAIKHOSROO MAARFATIA

v.

STATE OF MAHARASHTRA

December 16, 1977

[P. K. GOSWAMI AND V. D. TULZAPURKAR, JJ.]

Indian Penal Code Sec. 408, 461, 471 *and* 477*A—Forgery—Crl. Procedure Code* 1973*—Powers of High Court to interfere with order of acquittal.*

The appellant was prosecuted under section 471 read with section 461 and section 408 and 477A of the I.P.C. According to the prosecution there is a Rosary Cooperative Housing Society Limited, in Bombay. It owns a building having 48 flats. Doongaji was elected as the Chairman of the Managing Committee of the Society. Mr. K. N. Singh was working as the figure-head Secretary of the Society. The Society had a Bank Account which was operated jointly by Doongaji and K. N. Singh. One B. A. Sagar was working as the estate Manager of the Society and he retired due to old age. The appellant. who was working as Accounts Clerk in Sir Dorabji Tata Trust was appointed by Doongaji as an Honorary Accountant of the Society. A bill for Rs. 7.50 was submitted by M/s A. G. R. Patni & Co. The bill was forged by adding the figure 160 before the figure 7 inflating the amount to Rs. 1607.50 in figures without altering the amount in words. The prosecution case further was that an inflated voucher/receipt was also brought into existence. The prosecution case further was that for the sake of convenience and facility of work a practice was followed in the Society that at a time about 8 to 10 blank cheques used to be signed by Doongaji and Singh and these used to remain with the appellant who used one of such cheques for making purported payment of the inflated bill on the strength of the inflated voucher/receipt but converted to his own use the proceeds thereof. The prosecution case further was that the appellant wilfully and with an intent to defraud falsified the books of account of the Society, namely, the cash book by makng therein a false debit entry.

The defence of the appellant was that there was no practice to keep in his custody the cheque book of the Society containing blank cheques signed by Doongaji and K. N. Singh. According to him the amount of Rs. 1607.50 was paid in cash by him to Sagar P.W. 2 on the instruction from Doongaji.

The Trial Court came to the conclusion that the prosecution had failed to establish any of the charges against the appellant beyond reasonable doubt. The Trial Court observed that though there was a ring of plausibility and possibility in the case of prosecution in respect of the charges levelled against the appellant conviction could not be based merely on possibilities unless the charges were established against an accused beyond reasonable doubt.

In appeal, the High Court reversed the acquittal recorded in favour of the accused and convicted him of all the charges that were levelled against him. The High Court. however. imposed only one day's imprisonment and a fine of Rs. 2000/-.

The appellant contended :

(1) The High Court had erred in interfering with the acquittal recorded by the Trial Court. The High Court before reversing the acquittal should have given cogent reasons for rejecting the reasoning of the Trial Court. Reliance was placed on the decision of this Court in *Rajendra Prasad* v. *State of Bihar.*

(2) The entire prosecution case was based on the theory that about 8 to 10 blank cheques at a time signed by Doongaji and K. N. Singh used to be kept in the custody of the appellant. The Trial Court rightly rejected that theory.

A (3) The Trial Court rightly held that the reasons which Sagar mentioned why he handed over the bill of Rs. 7.50 to the appellant were unacceptable.

The Counsel for the respondent contended :

(1) The reasons given by the Trial Court while recording the acquittal were clearly found to be erroneous by the High Court and High Court had given proper reasons for reversing such acquittal.

B

(2) The High Court was right in coming to the conclusion that the prosecution had established its case against the appellant beyond reasonable doubt and therefore, rightly interfered with the order of acquittal passed by the Trial Court.

Dismissing the appeal :

HELD : 1. *Rajendra Prasad's* decision related to a case dealing with direct C testimony of witnesses whereas the instant case could not be treated as a case where direct testimony of witnesses was required to be appreciated. [487FG]

Rajendra Prasad v. *State of Bihar,* (1977) 2 SCC 205; distinguished.

Vasudeo Kulkarni v. *Surya Kant Bhatt and Anr.,* (1977) 2 SCC 208; reiterated.

The High Court rightly convicted the petitioner for the following reasons :

D (i) It was the duty of the appellant to write and maintain books of accounts of the Society. [488E]

(ii) It was not disputed that Patni & Co. had submitted the bill for Rs. 7.50 and had received neither Rs. 1607.50 nor Rs. 7.50. [488F]

(iii) Any one who came across the bill of Rs. 7.50 would have knowledge and reason to believe that the same was forged. [488G]

(iv) The voucher bore forged signature of Sagar and forged initials of E Doongaji whose evidence corroborated the Handwriting Expert's opinion. [489A]

(v) There was a practice of both Doongaji and K. N. Singh signing the blank cheques and keeping them with the appellant. [491A-B]

(vi) The oral evidence is corroborated by the documentary evidence. [492E]

(vii) But for the fact that the blank cheques were signed beforehand F there was no need to write

"under verbal orders of Mr. RDD", in the counter foil of the cheque book. [492G-H]

(viii) The Trial Court overlooked important aspect of the case and therefore the High Court was justified in having a reappraisal of the evidence and coming to its own conclusions. [495F-G]

(ix) There was ample evidence to prove that the appellant had mis- G appropriated the proceeds of the bearer cheques after the same were handed over to him by the peon Shivram Lad. [496D, 498-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 262 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 30th September, 1974 of the Bombay High Court in Crl. A. H No. 176 of 1974,

J. P. Mehta, B. R. Aggarwala and *P. B. Aggarwala* for the Appellant.

M. N. Phadke and *M. N. Shroff* for respondent. A

The Judgment of the Court was delivered by

TULZAPURKAR, J. This appeal by special leave is directed against the judgment and order of the Bombay High Court dated September 30, 1974, convicting the appellant-accused for offences under s. 471 read with s. 467, ss. 408 and 477A of the Indian Penal Code and sentencing him to one day's imprisonment and a fine of Rs. 2,000/- B and in default to suffer rigorous imprisonment for six months under s. 408 with no separate sentence for the offences under s. 471 read with s. 467 and s. 477A I.P.C.

The prosecution case against the appellant-accused may briefly be stated thus : There is a Rosary Co-operative Housing Society Ltd. C in a suburb of Bombay. It owns a building having 48 flats of which 23 flats belong to the well-known Tata concerns. Sir Dorabji Tata Trust holds 3 flats out of these 23 flats. It appears that in view of the large number of flats held by the Tatas they wanted to have a representation on the managing committee of the society and participate in its affairs. One R. D. Doongaji (PW1) was the General Secretary of Sir Dorabji Tata Trust apart from his being a D Legal Adviser to Tatas in their Share Department; on and from November 6, 1964, he after being elected, was working as a Chairman of the Managing Committee of the Society. One K. N. Singh, Advocate (PW12) was working as the figure-head Secretary of the Society. The Society had a Bank account with Maharashtra State Co-operative Bank Ltd., which was operated jointly by Doongaji (PW1) and K. N. Singh (P.W. 12). One B. A. Sagar (PW2) was E working as the Estate Manager of the Society from April 1, 1967 and he retired due to old age with effect from December 31, 1969, whereafter one Mathew Figrado (PW7) worked as Estate Manager. As Estate Manager, Sagar's duties were to collect the monthly compensation at the rate of Rs. 100/- from each flat-holder of the Society, to look after the maintenance of the said building, to undertake the repairs after obtaining the oral sanction of the managing F committee and incur expenditure therefor either from the collection of compensation or from his own pocket, to draw his own salary and the salary of the staff of the Society from such collections, and to hand over the balance to the Honorary Accountant of the Society together with a statement of account and vouchers in respect of sundry expenses incurred. However, he was not allowed to spend more than Rs. 100/- at a time for carrying out the repairs to the G building. The appellant-accused, who was working as Accounts Clerk in Sir Dorabji Tata Trust, was appointed by Doongaji (PW1) as an Honorary Accountant of the Society in May 1966 and he worked in that capacity for the Society till July 1, 1970 when his services were dispensed with. As an Honorary Accountant of the Society his duties *inter alia* were to write and maintain the books of accounts (Cash-Book, ledger, journal and the voucher file), to receive amounts H of compensation collected by the Estate Manager from the members of the Society, to reimburse the Estate Manager by cheques for sundry expenses which the latter may have incurred, to pay the municipal

A taxes and to make other payments of bills again by cheques only and that too after verifying from the minute book that such payments had been sanctioned by the managing committee of the Society and also to make payments by cheques only against the vouchers after satisfying himself about the genuineness of the vouchers. According to the prosecution in the month of December 1969 a proprietory firm M/s A. G. R. Patni & Co. had carried out a small job of B clearing a choked pipe line of the storage tank of the Society and had submitted its bill No. 49 dated December 14, 1969 for Rs. 7.50 (Exh. 5 Colly.). It was received by Sagar (PW2) and was ordinarily required to be paid by him but it appears that since he was retiring at the end of December, 1969, he did not disburse the amount to Patni but handed it over to the appellant-accused. According to the prosecution this bill (Ext. 5 Colly.), when it was originally received C and was handed over by Sagar (PW2) to the appellant-accused was for Rs. 7.50, the identical amount being mentioned both in figures and words, but some time later it was interpolated by adding the figure of "160" before the figure "7" inflating the amount to Rs. 1607.50 in figures without altering the amount in words; in other words, as altered the bill showed the amount as Rs. 1607.50 in figures but rupees seven and fifty paise only in words. Further, ac- D cording to the prosecution, another document purporting to be a typed unstamped voucher-cum-receipt dated 3-4-1970 for Rs. 1607.50 (Ext. 5 colly.) connected with and related to aforesaid interpolated and inflated bill purporting to bear the signature of B. A. Sagar, Estate Manager (PW2) and the initials of R. D. Doongaji, the Chairman of the Managing Committee (P.W.1), came into existence. The prosecution was unable to say who had actually E interpolated and inflated the bill No. 49 (Ext. 5 colly.) as also who had brought into existence the aforesaid voucher/receipt (Ex. 5 colly.) on which forged signature of Sagar and forged initials of Doongaji appeared. But the prosecution case was that the appellant-accused fraudulently or dishonestly used as genuine the said bill and the said typed voucher/receipt knowing or having reason to believe that these documents were forged for the purpose of issuing a bearer F cheque for the said inflated amount and misappropriating the same. The prosecution story was that for the sake of convenience and facility of work a practice was followed in the Society that at a time about 8 to 10 blank cheques used to be signed by Doongaji (PW1) first and then by K. N. Singh (PW12) and the cheque-book containing such signed blank cheques used to remain in the custody of the G appellant-accused and whenever payment was required to be made by cheque the appellant accused used to write the body of the cheque in his own hand and make the payment by issuing the same; that as regards bill No. 49 of Patni & Co., the appellant-accused in his capacity as Honorary Accountant on the basis of inflated bill as well as the forged voucher/receipt (Ex. 5 colly.) made use of one of such blank cheques signed by Doongaji and Singh by issuing a bearer H cheque No. 377137 dated 3-4-1970 for Rs. 1607.50 in favour of Shivram A. Lad (PW8), Peon in Dorabji Tata Trust; that Lad withdrew the amount from the Society's Bank at the instance of the appellant-accused and handed it over to him, which the appellant-

accused dishonestly misappropriated. The prosecution case further was that in connection with the above, the appellant-accused willfully and with intent to defraud, falsified the books of accounts of the Society, namely, the cash-book by making therein a false debit entry of Rs. 1607.50. Thus, according to the prosecution, the appellant-accused on or about April 3, 1970 dishonestly used as genuine two forged documents, namely, the bill No. 49 dated December 14, 1969 as well as the voucher/receipt dated April 3, 1970, knowing or having reason to believe them to be forged at the time of such user that he committed criminal breach of trust in respect of the sum of Rs. 1607.50 and also falsified the books of accounts of the Society. It appears that in the last week of June 1970, Sagar (PW2) the retired Estate Manager, complained to Doongaji (PW 1) that certain amounts which had been paid by him to the appellant-accused were not to be found in the books of accounts of the Society maintained by the appellant-accused, whereupon Doongaji took Sagar to Professor Choksi, the managing trustee of Sir Dorabji Tata Trust and in July or August, 1970 Karsi Gherda (PW11). Controller of Accounts in Tata Electric Company was requested to look into the accounts of the Society. Upon scrutiny of the accounts and enquiry, which was actually undertaken by Nariman Deboo (PW6) under the supervision of Karsi Gherda (P.W.11), the appellant-accused was found to be involved in defalcation of as many as 8-items including the aforesaid amount of Rs. 1607.50 and a report in that behalf was submitted by Nariman Deboo (PW6) on the strength of which, after obtaining the sanction of the Managing Committee of the Society, Doongaji (PW1) lodged a written complaint (F.I.R. Ext. 12) with the police on October 17, 1970. The crime was registered by the Palton Road Police Station and subsequently the investigation was taken over by the Crime Branch C.I.D. and after completion of the investigation the appellant-accused was charge-sheeted and then committed to the Court of Sessions to stand his trial for offences under s. 471 read with s. 468 (two counts) one in respect of each of the two documents, the bill and the voucher/receipt, s. 408 and s. 477A. I.P.C.

A B C D E F G H

The appellant-accused abjured guilt and denied having committed any of the offences with which he was charged. He disputed that there was any practice to keep in his custody the cheque-book of the society containing the blank cheques signed by Doongaji (PW1) and K. N. Singh (PW12) as suggested by the prosecution or that he had made use of any such signed blank cheque by issuing the bearer cheque No. 377137 on April 3, 1970 for Rs. 1607.50 for the purpose of misappropriating the amount as alleged. According to him the amount of Rs. 1607.50 was paid in cash by him to Sagar (PW2) on the instructions from Doongaji (PW1) but at that time he had told Doongaji that a large amount was due by Sagar to the society and if at all the payment was to be made to him it should be adjusted against the amount due to the Society from him, but Doongaji did not accept his suggestion but insisted that the amount should be paid to Sagar without any adjustment. The appellant-accused denied that the bill of Patni & Co. was handed over to him by Sagar at any time or at about the time when the payment was made to him at the

A instance of Doongaji but what was handed over to him was a bill-cum-receipt of M/s Patni & Co. written in Gujarati containing the rubber stamp of M/s. Patni & Co., on the strength of which the payment was vouched but this Gujarati writing was not forthcoming. Even though he had made cash payment of Rs. 1607.50 to Sagar under instructions of Doongaji, he wanted an entry of this amount in the Bank column of the Cash-Book of the society and this he did B by way of precaution since according to him at that time a large amount was due to be paid by Sagar to the Society. Accordingly, he filled in the body of the cheque and in the presence of Doongaji on the top of the counter-foil of the cheque he made an endorsement "under verbal order of R.D.D." He wrote down the name of Lad, a Peon of J. N. Tata in the body of the cheque. The Maharashtra State Co-operative Bank was not permitting the bearer cheque to be C cashed unless the Chairman and the Secretary of the Society gave their signatures on the reverse of the cheques and since it was difficult to obtain the signatures of the Secretary Singh, he wrote the name of Lad as the payee of the cheque while on the counter-foil he mentioned the name of A.G.R. Patni and Co. because the payment of Rs. 1607.50 had been made towards the satisfaction of the D bill for that amount to Patni & Co. by Sagar. His case further was that after Lad cashed the cheque, Lad gave the amount to him which he kept in the cash-box; in other words, his defence was that from out of the cash-box he made cash payment of Rs. 1607.50 to Sagar on the insistence of Doongaji and then replenished the cash-box after encashment of the cheque through Lad. He further emphatically disputed that he had used the forged bill and forged voucher/receipt E in connection with the payment of Rs. 1607.50 which he made to Sagar at the instance of Doongaji. He also denied that he had misappropriated the amount or had falsified the cash-book as alleged and the case of the prosecution being entirely false he deserved to be acquitted.

F At the trial the prosecution led oral as well as documentary evidence in support of its case. The oral evidence consisted of as many as 15 witnesses out of whom 7 witnesses were material, namely, Doongaji (PW1), Sagar (PW2), Abdul Gani Patni (PW3), Shivram Lad (PW8), Nariman Deboo (PW6), Kars Gherda (PW11) and K. N. Singh (PW12). At Ext. 5 collectively were produced the two documents, namely, the inflated bill dated December 14, 1969 and G the voucher-cum-receipt dated April 3, 1970, the bearer cheque bearing No. 377137 dated April 3, 1970 in favour of S.A. Lad for Rs. 1607.50 was produced at Ext. 9 whereas the counter-foil thereof in the name of M/s A. G. R. Patni and containing the endorsement "under verbal order of R.D.D." was produced at Ext. 7; the cash-book containing the relevant entry for Rs. 1607.50 was produced at Ext. 10 and the F.I.R. lodged by Doongaji on October 17, 1970 was H produced at Ext. 12. One Nand Kumar Parekh, an Hand-writing Expert and the State Examiner of Documents in the State C.I.D. was examined who gave his expert opinion that the purported signature "B. A. Sagar" and the purported initial "RDD" appearing on the

voucher-cum-receipt dated April 3, 1970 (Ext. 5 colly.) were not in the hand of witnesses Sagar and Doongaji respectively but were traced forgeries and gave reasons for his said opinion of course, this was in addition to the positive evidence of these two witnesses who had stated that the concerned signature and the concerned initial were not their's. The learned Session Judge on a consideration of the evidence on record came to the conclusion that the prosecution had failed to establish any of the charges against the appellant-accused beyond reasonable doubt. He did not accept the prosecution case that signed blank cheques 8 or 10 at a time used to be kept with the appellant-accused and did not accept the evidence of either Doongaji (PW1) or K. N. Singh (PW12) in that behalf, for according to him, the reasons for resorting to such practice were not satisfactory. He also took the view that it was not possible to accept the prosecution case that the appellant-accused was in possession of the original bill No. 49 dated December 14, 1969 of Patni & Co. and he felt that defence version had been rendered probable that the appellant-accused must have made the payment of Rs. 1607.50 to Sagar at the instance of Doongaji especially as on the counter-foil of the concerned bearer cheque No. 377137 dated April 3, 1970 there was an endorsement made by the appellant-accused "under verbal order of RDD"; in other words, he was inclined to accept the defence case that the appellant-accused had first paid out cash of Rs. 1607.50 to Sagar from out of the cash-box and thereafter replenished the cash-box by issuing the bearer cheque and getting it encashed through peon Shivram Lad. He observed that though there was a ring of plausibility and possibility in the case of the prosecution in respect of the charges levelled against the appellant-accused, conviction could not be based merely on possibilities unless the charges were established against him beyond reasonable doubt and since there were various circumstances which supported the defence it was a balancing case, the balance tilting very much in favour of the accused. He, therefore, gave the benefit of doubt to the accused in respect of the four charges levelled against him and acquitted him. Against this acquittal order passed by learned Addl. Sessions Judge dated September 5, 1973, the State of Maharashtra preferred an appeal to the High Court of Bombay being Criminal Appeal No. 176 of 1974. In appeal the High Court reversed the acquittal recorded in favour of the accused by the learned Addl. Sessions Judge and convicted him of all the charges that were levelled against him by its judgment and order dated September 30, 1974. In particular the High Court accepted the prosecution case that the practice of keeping 8 to 10 signed blank cheques in custody of the accused had been satisfactorily established, that the two documents namely, the bill No. 49 dated December 14, 1960 from Patni & Co. as well as the voucher-cum-receipt dated April 3, 1970 were clear forgeries the distortion and cutilation were with the appellant-accused a of each, that the two documents were with the appellant-accused and that on the basis of those two documents he had purported to make the payment of Rs. 1607.50. The High Court rejected the defence version that the appellant-accused had first paid cash out of the cash-box to Sagar as suggested by him or that he had done so at the

A instance of Doongaji or that he had issued the bearer cheque under verbal order of Doongaji as suggested. It found that the Society had not got so much cash with it on or about April 3, 1970, that the cash balance on hand with the Society for quite some time prior to April 3, 1970 was only Rs. 505.07p; that Sagar's evidence that he had not gone to the office in the month of April, 1970 after his retirement was acceptable and, therefore, the accused's version that B he had first paid cash to Sagar and had replenished cash by issuing and encashing the bearer cheque was utterly false and he had dishonestly misappropriated the amount. Holding that the prosecution had established its case against the appellant-accused beyond doubt, the High Court convicted him of all the charges levelled against him. However, on the question of sentence, for certain reasons mentioned by it in its judgment, the High Court sentenced him to C one day's imprisonment and a fine of Rs. 2000/- and in default to suffer rigorous imprisonment for six months. It is this conviction and sentence imposed upon him by the High Court that is being challenged by the appellant-accused before us in this appeal.

Mr. J. P. Mehta, learned counsel for the appellant-accused has principally raised two or three contentions in support of the appeal. In D the first place he contended that the High Court had erred in interfering with the acquittal that had been recorded by the Sessions Judge in favour of the appellant-accused especially when the Sessions Judge, while appreciating the prosecution evidence, had given substantial reasons for not accepting the same and coming to the conclusion that the defence version was more probable. He urged that before re- E versing the acquittal recorded by the Trial Court, the High Court should have given cogent reasons for rejecting the reasoning of the Trial Court and that it was also well-settled that the High Court must be satisfied that the grounds given by the Trial Court for acquittal were palpably wrong or manifestly erroneous, shocking one's sense of justice and in this behalf he relied upon two decisions of this Court, namely, *Rajendra Prasad* v. *State of Bihar*(1), and *Vasudeo Kul-* F *karni* v. *Surya Kant Bhatt and Another*(2). Secondly, he contended that the entire case of the prosecution was based on the theory that blank cheques about 8 to 10 at a time signed by Doongaji (PW1) and K. N. Singh (PW12) used to be kept in the custody of the accused which practice facilitated the commission of the alleged offences, but the learned Trial Judge had rejected this theory as it found that the reasons given in support of this theory by Doongaji were hardly satis- G factory and the theory was, in fact, contrary to the contents of a letter dated January 20, 1972 (Ext. 59) addressed by Singh to the Chairman of the Society wherein Singh made a categorical statement that the cheque-books and all the papers and documents of the Society were in the custody of the chairman of the Society and the High Court had gravely erred in accepting the aforesaid theory. Thirdly, he contended that the user of the two forged documents, particularly, the bill No. 49 dated December 14, 1969 from Patni & Co. mainly H depended upon whether the said document had been handed over by

(1) [1977] 2. S.C.C. 205.
(2) [1977] 2 S.C.C. 298.

Sagar to the appellant accused and was with the appellant-accused on the basis of which it was suggested that the appellant-accused had issued the bearer cheque (Ext. 9) in question and the Trial Court had rightly found that the reasons which Sagar mentioned why he handed over the document to the appellant-accused were unacceptable and therefore his evidence in that behalf had been rightly rejected and High Court's finding that the said bill as also the voucher-cum-receipt were in the possession of the accused at the material time was contrary to the evidence on record. Mr. Mehta, therefore, urged that if on these two principal aspects of the prosecution case the Trial Court's reasoning could not be assailed by the High Court, the High Court ought not to have interfered with the acquittal of the appellant-accused as recorded by the Trial Court. Lastly, he contended that even if it could be said that the defence version had not been established nor rendered reasonably probable by the accused or even if the same could be regarded as false that did not mean that the prosecution case was proved, for it is well-settled that the prosecution must succeed on its own evidence which must be clear, cogent and convincing. He, therefore, urged that the convictions recorded by the High Court against the appellant-accused should be quashed and his acquittal by the Trial Court be restored. Mr. M. N. Phadke, learned counsel for the State of Maharashtra on the other hand contended that the reasons given by the Trial Court while recording the acquittal were clearly found to be erroneous by the High Court and the High Court had given proper reasons for reversing such acquittal. According to him if the reversal of the acquittal by the High Court was based not merely on a reappraisal of the evidence but on a consideration of several important aspects of the case overlooked by the Trial Court or if on appreciation of evidence no two views were possible and the trial court's view was erroneous, the interference by the High Court with such acquittal would be justified and in that behalf he relied on two or three decisions of this Court. We may point out that the first ruling (*Rajendra Prasad's* case) relied upon by Mr. Mehta related to a case dealing with direct testimony of witnesses whereas the instant case could not be regarded as a case where direct testimony of witnesses was required to be appreciated and as such would be strictly inapplicable and as regards the second decision (*Vasudeo Kulkarni's* case) it may be pointed out that this Court has clearly observed that in appeal against acquittal the High Court may reappreciate for itself the entire evidence and reach its own conclusion but when such conclusion was contrary to that of the Trial Court, the High Court had a further duty to satisfy itself that the grounds given by the Trial Court for acquittal were manifestly erroneous and according to Mr. Phadke, the High Court has at more than one place indicated how the trial Court's reasoning has been manifestly erroneous. The three decisions on which Mr. Phadke relied are *Sham Balu Chaugule* v. *State of Maharashtra*(1) *Jai Ram and other* v. *State of U.P. and Another*(2) *Sarwan Singh & Others* v. *State of Punjab*(3) in all of which the

(1) [1976] 1 S.C.C. 438.
(2) [1976] 2 S.C.C. 191.
976] 4 S.C.C. 369.

A acquittal recorded by the trial court was interfered with by High Court and such interference was confirmed by this Court and he urged that in the instant case the High Court was justified in reversing the acquittal and such reversal fell within the ratio of the said decisions. He contended that on the prosecution theory of signed blank cheques remaining with the accused as well as the possession of the two forged documents being with the appellant-accused, certain important as-
B pects emerging from the evidence on record of the case had been completely over-looked by the learned trial Judge and it was after ignoring such important aspects that he had rejected the prosecution evidence on both these points and therefore the High Court was justified in having a reappraisal of the entire material. He also urged that the High Court has enlisted numerous circumstances which rendered defence version totally false, some of which had been wrongly ex-
C plained away by the learned trial Judge. According to him, therefore the High Court was right in coming to the conclusion that the prosecution had established its case against the appellant-accused beyond reasonable doubt and had, therefore, rightly interfered with the order of acquittal passed by the trial Court. We find considerable force in the contentions urged by Mr. Phadke.

D At the outset two or three undisputed facts which emerge on record may be stated. It was not disputed before us that from May 1969 onwards the appellant-accused was working as an Honorary Accountant of the Society upto July 1, 1970 on which date his services as such Accountant were dispensed with and that as such Accountant of the society his duties were to write and maintain the
E books of accounts of the Society, to receive from the Estate Manager the collections made by him from each member of the Society, to credit the full amount of collection in the bank account of the society, to pay municipal taxes and make other payments of big amounts by cheques only after varifying the minute book and satisfying himself that such payments had been sanctioned by the Managing Committee and to reimburse the sundry expenses, which the Estate Manager
F would incur, by cheques only. It was also not disputed before us that in December 1969, M/s. A. G. R. Patni & Co. had submitted their bill No. 49 dated December 14, 1969 for Rs. 7.50 in respect of some small job to Sagar, the Estate Manager, (PW2). It was also not disputed that the said bill when it was submitted by Abdul Gani Patni (PW3) and when it was received by Sagar (PW2) the amount thereof both in figures and words was Rs. 7.50 and it was some time
G later that this bill No. 49 got interpolated and become inflated to Rs. 1607.50 by addition of the figure "160" before the figure "7" but such interpolation only appeared in the amount expressed in figures while the amount expressed in words continued to be "rupees seven and fifty paise only". It is true that the prosecution has not been able to show as to how and who made such interpolation in this bill but it cannot be disputed that anyone who would come across
H such bill (being Part of Ex. 5 colly) would immediately notice the interpolation and discrepancy therein, so that whoever uses the bill at any time subsequent to its tampering would have knowledge and reason to believe that the same has been forged. Similar is the

position with regard to the other document, which is also a part of Ext. 5 collectively, namely, the voucher-cum-receipt dated April 3, 1970. This voucher-cum-receipt purports to bear the signature of Sagar (PW2) as also the initials "RDD" of Doongaji (PW1), both of which according to the Hand-writing Expert's opinion are traced forgeries and what is more there is positive evidence of these two witnesses that the purported signature and purported initials are not theirs and there is no reason why their evidence in this respect should not be accepted, but that evidence apart, whoever sees this document and reads its contents will immediately realise and at any rate will have reason to believe that the same is also distorted and forged, for the document is incomplete and in the amount mentioned therein there is a clear discrepancy. The amount in figures is stated as Rs. 1,607.50 while in words the amount is mentioned as Rupees one thousand six hundred and seventy only. The incompleteness lies in the last part of the document where it runs thus, "I also certify that the work had been carried out in December but due to my sick I was unable" and at the foot the purported signature of Sagar appears. It is thus clear and it was, therefore, not disputed before us by Mr. Mehta appearing for the appellant-accused that both these documents on the face of them would bring home to the person who uses them either knowledge or reason to believe that the same were forged. This being the nature of the two documents in question if the appellant-accused had used them in the sense that he had made them the basis for issuing the bearer cheque No. 377137 dated April 3, 1970 he could be said to have used both these forged documents with the requisite knowledge or reason to believe them to be forged at a time when he used the same. The main question, therefore, that arises for determination is whether the appellant-accused had issued the bearer cheque dated April 3, 1970 on the strength of or on the basis of these forged documents and had misappropriated the proceeds of that cheque as alleged by the prosecution or whether the bearer cheque was issued by him in the circumstances suggested by him in his statement under s. 342 of the Criminal Procedure Code and what is more this question will have to be determined in the light of the further undisputed fact—a fact which has been deposed to by A. G. Patni (PW2) that he or his firm had received no payment whatsoever neither Rs. 7.50/- nor Rs. 1607.50 and that the bill has remained unpaid till now. In other words the question would be whether the proceeds of the bearer cheque after encashment thereof were misappropriated by the appellant-accused or were used for replenishing the cash from out of which the amount of Rs. 1607.50 was allegedly paid by the appellant-accused to Sagar at the instance of Doongaji as suggested by him. It was in this situation that the two aspects assumed great significance in the case, namely, whether it was the practice to keep about 8 to 10 blank cheques signed by Doongaji and K. N. Singh in the custody of the accused or not and whether the appellant-accused was in possession of the forged documents, particularly bill from Patni & Co. at about the time when the bearer cheque was issued by him, on both of which the conclusions reached by the High Court were contrary to those reached by the trial Court.

A Dealing first with the prosecution theory that blank cheques signed by Doongaji and Singh used to remain in the custody of the accused there is evidence of two prosecution witnesses on the point, namely, Doongaji (PW1), and Singh (PW12); Doongaji (PW1) has stated that the bank account could be operated jointly by himself as the Chairman and Singh as the Secretary, that Singh used to reside at Goregaon and every time whenever the cheque was required to be B drawn it was not possible for Singh to give his signature on the same and further that Singh used to insist that before he would put his signature on the cheque of the society, the Chairman should put his signature on the same and, therefore, with a view to facilitate the convenience of Singh, it was the practice of the society that at a time about 8 to 10 blank cheques used to be signed by him first and they were sent to Singh through witness Sagar the Estate Manager, and C Singh used to put his signatures thereon, and the cheque book containing such signed blank cheques always used to remain in the custody of the accused and on every occasion the particulars of the cheque both in words as well as in figures used to be written by the appellant-accused. Doongaji also stated that the books of account, the vouchers and cheque book used to be kept in the custody of the accused in the office of Sir Dorabji Tata Trust. To the same effect D was the evidence of Singh (PW12), who confirmed that he used to put his signatures on blank cheques whenever they were signed by the Chairman of the Society and he used to receive such blank cheques duly signed by the Chairman of the Society first through Sagar and later through Sagar's successor Figrado and that at a time he used to sign blank cheques between 5 to 10 in number and sometimes they used to be 15 also. E This evidence was sought to be demolished by the defence by relying upon two or three factors. In the first place it was pointed out that both Doongaji as well as the accused used to sit in the office of Sir Dorabji Tata Trust for the purpose of doing the work of the Society, that the accused used to sit at a distance of only 14 paces away from Doongaji and that even if Doongaji was required to sit in Oriental Building—another building for doing work in the Share Department F of Tata Iron and Steel Company that was only for part of the day and, therefore, there was no necessity for Doongaji to sign blank cheques. In our view this fact cannot run counter to the practice of keeping blank cheque signed by Doongaji and Singh with the accused, for, it was not because of the distance between the place of work of Doongaji and that of the accused that such a practice grew. The practice grew because Singh, the Secretary, used to stay at G Goregaon and it was difficult to obtain his signatures on every occasion whenever a cheque was required to be issued, and further Doongaji used to sign the cheque first because of Singh's instance in that behalf and that is how the practice of keeping blank cheques signed by Doongaji and Singh with the accused—8 to 10 at a time, grew. Secondly, Doongaji was confronted with 5 or 6 blank cheques that bore only the signature of Singh—a circumstance which ran H counter to his story that blank cheques used to be signed by him first and thereafter by Singh but both Doongaji and Singh have clearly explained this circumstance by stating that after the appellant-accus-

ed's service were dispensed with, from and after July 1, 1970 Doongaji himself had personally started handling the cash, and the new Estate Manager Figrado assured Singh in that behalf and, therefore, Singh started giving his signature on blank cheques even though the Chairman had not given his signature first on the same. In view of this explanation which seems quite reasonable we do not find this circumstance as running counter to the prosecution story that initially the practice had grown to keep blank cheques signed by Doongaji first and then by Singh with the accused. Lastly, reliance was placed upon the contents of the letter (Ext. 59-D) dated January 20, 1972 written by Singh to the Chairman of the Society in which Singh had stated thus : "The cheque-books and all other papers and the documents of the Society were under custody of the Chairman of the Society", and according to the appellant-accused this statement contained in Singh's letter (Ext. 59D) ran counter to the prosecution theory that the cheque-book used to remain in his custody. It may, however, be stated that the letter Ext. 59-D addressed by Singh to the Chairman on January 20, 1972 was by way of reply to the Chairman's letter dated December 30, 1971 which he had received from the Chairman and as such the contents of the reply and particularly the sentence on which reliance has been placed will have to be considered in its proper context. It appears that the Chairman along with his letter dated December 30, 1971 had forwarded a copy of the proceedings of the Society's General Body's Meeting held on September 3, 1971, in which the conduct of the Secretary in not taking proper interest in the affairs of the Society had been criticised and it was by way of reply to this criticism that the letter Ext. 59-D was addressed by Singh to the Chairman, in which he pointed out that notwithstanding his having ceased to have interest in the Society's building, he was retained as the Secretary and that he was told that he could continue in that post merely for signing cheques and attending to two ejectment suits on behalf of the Society in Small Causes Court. It was in the context of such criticism that was made against him that Singh explained his position in this reply and while explaining his position he stated that the cheque-books and all other papers and documents were in the custody of the Chairman of the Society; in other words, as between the Chairman of the one hand and the Secretary on the other, Singh suggested that all documents including the cheque-books etc. used to remain in the custody of the Chairman. The relevant statement contained in the letter, therefore, cannot be used for the purpose of drawing the inference that as between the Chairman on the one hand and the appellant-accused as Honorary Accountant on the other, the cheque-books and the documents used to remain with the Chairman. In fact, in this reply Singh has categorically referred to and asserted the practice that had grown of signing blank cheques—particularly the altered practice that grew after Doongaji had started handling the cash by stating thus—"as it was not possible for him and the Chairman to meet often he sent for a number of cheques to be signed by him at a time so that when money was required from the bank he would countersign and get the moneys withdrawn". The trial Court has wrongly regarded this letter as running counter to the prosecution theory. In our view far from

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A running counter to the prosecution theory, the contents of this letter lend support to the prosecution case fully and this effect of the letter Ext. 59-D which is an important aspect has been completely missed and overlooked by the trial Court. The learned Addl. Sessions Judge has, in fact, made a half-hearted finding on this part of the prosecution case by observing as follows in para 36 of the judgment :

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> "The probabilities would rather show that the cheque-book containing the blank cheques signed by Mr. Doongaji as well as by Mr. Singh would continue to remain with Mr. Doongaji and as and when an occasion arose for issuing a cheque the accused would be summoned and he would be asked to fill in the body of the cheque and then the cheque would be issued."

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The observation suggests that the learned trial Judge has accepted the prosecution case partly, namely that on probabilities the cheque-book used to contain blank cheques signed by Doongaji as well as by Mr. Singh but according to him such cheque-book containing signed blank cheque would continue to remain with Doongaji. We fail to appreciate as to why, if at all, the cheque-book was to remain with Doongaji and the cheques would be issued by the accused in the manner suggested by him, blank cheques would be signed by Doongaji at all. The evidence of the two witnesses as also the contents of the letter Ext. 59-D clearly show that the practice as put forward by the prosecution did obtain in the society. Apart from the aforesaid oral evidence of the two witnesses and the support it receives from the contents of the letter Ext. 59-D, there is yet one circumstance which supports the prosecution story on the question of aforesaid practice and that circumstance arises from the defence version itself. According to the appellant-accused in order to keep a record of the fact that it was on the insistence of Doongaji that he paid cash amount of Rs. 1607.50 to Sagar and issued a bearer cheque for replenishment of the cash-box he had put on endorsement on the counter-foil (Ex. 7) of the bearer cheque to the effect "under the verbal orders of Mr. RDD". Now, ordinarily if there was no practice of keeping blank cheques signed by Doongaji and Singh with the accused (signature of the two appearing on the blank cheques would amount to written order to the appellant-accused) and if cheques including the cheque in question were written out by the accused first and then they were signed by Doongaji there would be no necessity of putting the endorsement "under verbal orders of Mr. RDD" on the counter-foil, the very fact that such an endorsement was made by the appellant-accused on the counter-foil of the cheque clearly suggests that the practice of keeping blank cheques signed by Doongaji and Singh with him did obtain. Having regard to the aforesaid discussion, in our view, the trial Court was clearly wrong in disbelieving the prosecution story in regard to the practice of keeping signed blank cheques in the custody of the appellant-accused and the High Court was right in accepting the same. It is obvious that this practice which obtained in Society clearly afforded an opportunity to the appellant-accused to commit the offences alleged against him.

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The next question that is required to be considered is whether after the bill No. 49 dated December 14, 1969 was submitted by Patni & Co. to the Society, the same was handed over and remained in possession of the appellant accused till the time the bearer cheque in question was issued by him. On this aspect of the matter evidence of Sagar (PW2) is very material. This witness has stated in examination-in-chief that he retired as Estate Manager on December 31, 1969 due to his old age, that before he retired as Estate Manager he had received bill from M/s. Patni & Co. for Rs. 7.50 (Ext. 5 collectively) in respect of a small job carried out by them and that on or about December 20, 1969 he handed over the same to the appellant-accused and he asserted that at the time when he handed over the bill to the accused, the amount of the bill in figures was "Rupees seven and fifty paise". He was shown the voucher-cum-receipt dated April 3, 1970 and he asserted that the signature "B. A. Sagar" appearing thereon was not his signature at all. His further evidence has been that he never presented this voucher-cum-receipt to the appellant accused nor did he receive any payment of Rs. 1607.50 from the appellant-accused in April, 1970 as alleged by him. The defence has attacked the evidence of this witness on the point of his handing over the bill to the appellant-accused on two or three grounds. In the first place, it was pointed out that since the bill was for a small amount of Rs. 7.50 normally it was the duty of the witness as the Estate Manager to disburse the same and, therefore, there was no occasion for him to hand over the same to the appellant-accused. Secondly, it was contended that the witness has given two reasons for not making payment of the bill to M/s. Patni & Co. *viz.*, (1) that it was the last month of his service and (2) that he did not have sufficient funds with him and according to the defence both the reasons do not bear scrutiny and if the reasons for not disbursing the bill are false his evidence that he handed over the bill to the appellant-accused cannot and should not be accepted. It has been elicited in his evidence that he used to keep with him cash of the Society out of the collections made by him for days and months and in any case it would be difficult to believe that he did not have a paltry sum of Rs. 7.50/- with him and it has been further elicited that though it was the last month of his service he had made collection from the occupants of the flats. It was thus urged that both the reasons put forward by the witness for not disbursing the bill being false his evidence should be rejected. It is true that the bill was for a small amount that it was his normal duty to disburse the same and that the reasons given by him for not doing so may be wrong but these aspects would not be material because whatever be the reasons and whatever be his negligence the fact remains that the witness had not disbursed the bill—which fact is independently proved by the unchallenged evidence of witness Abdul Gani Patni (PW3) and the question would be what would Sagar do with regard to such undisbursed bill before he retired from service? He would naturally hand over the same to the appellant-accused before he went out of service. Sagar's evidence, therefore, lends support to the prosecution case that the appellant-accused had in his possession bill No. 49 dated December 14, 1969. There are two other pieces of evidence on record on

A which the prosecution relied to support Sagar's evidence and those are the testimony of witnesses Nariman Deboo, the internal Auditor (PW6) and Mr. Karsi Gherda (PW11). Nariman Deboo (PW6) has stated in his evidence that before starting his work of auditing the accounts of the Society which was entrusted to him by Karsi Gherda, he had contacted the appellant-accused, who was the B Honorary Secretary of the Society and had collected several documents (7 items) including the cash-book of the society pertaining to the period from 1-7-1968 to 30-6-1970 and two files of payments of vouchers for the same period, and that after going through the accounts, from the file of vouchers he came across 8 vouchers which appeared to be fictitious and fraudulent in character including *the bill and the voucher produced at Ext.* 5 collectively. This evidence C shows that the bill and the voucher at Ext. 5 collectively were among the several documents which had been collected by this witness from the appellant-accused and as such the appellant-accused could be said to be in possession of documents at Ext. 5 collectively. It was pointed out that this evidence of the witness could not be accepted inasmuch as the witness had passed a receipt produced at Ext. 43-D in respect of the several documents which he had collected from D the appellant-accused and this receipt Ext. 43-D does not refer to the item of two files of vouchers about which he has given evidence in examination-in-Chief. It may be stated that this receipt Ext. 43-D was put to the witness in his cross-examination and his attention was drawn to the absence of any mention of two voucher files therein and the witness explained the position by stating that "at the time of handing over the various documents to him by the accused, the E accused had demanded from him receipt in respect of the counterfoils of the receipt-book as also the statement of collections submitted to him by Sagar, Estate Manager, from time to time. As per the desire I had executed the receipt in favour of the accused". This explanation given by the witness cannot be regarded as satisfactory inasmuch as the receipt Ext. 43-D includes, apart from the two items in respect of which the witness had stated that the accused F demanded a receipt from him, some other items also and, therefore, it cannot be said that he had executed the receipt Ext. 43-D as per the desire of the appellant-accused. The evidence of this witness, therefore, cannot avail the prosecution for establishing clinchingly that the bill and the voucher Ext. 5 collectively had been handed over to him by the accused. However, in our view, the other piece G of evidence on which the prosecution has relied will clinchingly establish that the appellant-accused was fully conscious and aware of the forged bill dated December 14, 1969 and had on the strength of that bill as well as the forged voucher issued the bearer cheque in question and that is the evidence of Karsi Gherda (PW11). Karsi Gherda after he had been apprised by Nariman Deboo about the existence of these two documents (Ext. 5 collectively) which were fictitious and fraudulent in character, had a meeting of the persons H concerned and had confronted the appellant-accused with these two documents, particularly, the bill part of Ext. P5 and from what the accused stated at that time to the witness it would be clear that the appellant-accused was fully conscious and aware of the clear inter-

polation in the figure of Rs. 1607.50 in the bill and inspite of such awareness the amount was paid by him though allegedly under the authority of Doongaji. His evidence in this behalf is very material which runs thus : "I entertained a doubt about the genuiness of the bill. I, therefore sent for the accused. When I showed this bill part of Ext. 5 collectively and asked him as to what he wanted to say with regard to the clear interpolation in the figure of Rs. 1607.50 *the accused agreed with me* and told me that even if it was clear case of interpolation, he paid off the amount under the authority of Doongaji, who was Chairman of the Managing Committee of the Society". Nothing was elicited in his cross-examination so as to cast any doubt on this part of the evidence given by him in examination-in-Chief. We might, however, state that for the first time in the appeal when it was being heard by the High Court an application was made seeking permission to recall the witness for the purpose of contradicting him with his police statement where, according to the appellant-accused, the witness had not given his version as to what transpired between him and the accused during the meeting in such details but that application was rejected by the High Court and, in our view, rightly. The aforesaid evidence of witness Karsi Gherda, therefore, clearly brings out the aspect that on his own admission the appellant-accused had made the payment of the bill on the strength of the bill with full consciousness and awareness that the same was an interpolated and forged document. The clear implication arising from the aforesaid part of Karsi Gherda's evidence has been overlooked by the learned trial Court. In our view, the evidence of Sagar (PW2) read in the context of the admitted fact that the bill had remained unpaid all through out as well as the aforesaid evidence of Karsi Gherda clearly establishes the fact that the appellant-accused had not only the possession of the forged bill, being part of Ext. 5 collectively, but had purported to make payment by issuing the bearer cheque in question on the basis of such forged bill.

Having regard to the above discussion it seems to us clear that on the two important aspects of the prosecution case, namely, (a) theory of blank cheques signed by Doongaji and Singh remaining in the custody of appellant-accused and (b) possession of the forged bill with the accused on the basis of which the bearer cheque was issued by him, the conclusions of the High Court were right and because certain important aspects of the case had been overlooked by the learned trial Judge the High Court was justified in having a reappraisal of the evidence and coming to its own conclusions on these points contrary to those of the trial Court.

The next question pertains to the user of the forged voucher-cum-receipt dated April 3, 1970 on the part of the appellant accused with the requisite knowledge of reasonable belief that the same was a forged one. As stated earlier Doongaji (PW 1) and Sagar (PW 2) have stated that the purported initial and signature appearing on the document were not theirs and there is no reason why their evidence in that behalf should not be accepted. But apart from this aspect, as observed earlier, on the face of it the document is incomplete and contains grave discrepancy in the matter of the amount for which the receipt

A came into existence and it was not disputed before us by Mr. Mehta that such a document on the face of it would cause any one who read it to entertain reasonable belief that it was a forged one. As regards user, it is clear that the issuance of the bearer cheque by way of satisfying the bill of Patni & Co. would require to be vouched by some sort of a receipt from Patni & Co. That the appellant-accused was fully conscious of this aspect is clear from the fact that in his statement B under s. 342 Cr.P.C., the accused has come out with a story that at about the time when he made payment in cash to Sagar through Doongaji and issued the bearer cheque and got it encashed for replenishing of the cash, some Gujarati voucher by way of a receipt from Patni & Co. had been produced to him but somehow or the other that Gujarati voucher was not forth coming. In other words, that the disbursement of the bill would require to be vouched by a voucher-cum-receipt was C very well known to the appellant-accused. The Gujarati writing, it seems to us, is not forth coming because there was no such Gujarati writing at all in existence and the appellant-accused purported to make the disbursement of the forged bill on the basis of getting the same vouched by means of the forged voucher-cum-receipt, (being the other part of Ext. 5 collectively.) In our view, therefore, on the aforesaid material which we have discussed above it appears to us clear that the D prosecution could be said to have established its charge under s. 471 read with s. 467 I.P.C. under both the counts against the accused beyond any reasonable doubt and the High Court was justified in reversing the acquittal recorded by the trial Court in his favour on these counts.

E The next question that arises for consideration is whether the appellant-accused had misappropriated the proceeds of the bearer cheque after the same were handed over to him by the Peon Shiv Ram Lad or he utilised the proceeds for replenishing the cash-box as suggested by him. The answer to the question must depend upon whether the evidence of Sagar on behalf of the prosecution deserves to be accepted or the defence version could be said to have been rendered F reasonably probable by the appellant-accused. The evidence of Peon Lad is categorical that after encashment of the cheque he handed over the proceeds to the appellant-accused and this was not disputed by the appellant-accused. His version has been that before the issuance of the bearer cheque (Ex. 9) and encashment thereof he made payment of Rs. 1607.50 in cash from the cash-box to Sagar through Doongaji, in his presence and upon his insistence, notwithstanding his (accused's) G suggestion that no such payment should be made as a large amount was due from Sagar to the Society or atleast the payment should be adjusted against such dues of Sagar to the Society, and, thereafter, he issued a bearer cheque for Rs. 1607.50 in favour of Peon, S. A. Lad and after Lad handed over the proceeds of the cheque to him he replenished the cash by putting the amount in the cash-box. His version further has been that in order to have a proper record that the payment was made H at the insistence of Doongaji, he made an endorsement on the counterfoil of the cheque (Ex. 7) to the effect "under verbal orders of Mr. RDD". On the other hand, Sagar's evidence has been that he had nothing whatever to do with the voucher-cum-receipt (Ext. 5 collec-

tively), that the signature purporting to be his signature appearing thereon was not his and that he had not received the amount indicated in that voucher-cum-receipt from the appellant-accused at any time. Doongaji also denied this entire version and particularly denied that he had ever issued oral instructions or order to the accused to make the payment to Sagar or that the payment was made in his presence or that the accused made the endorsement on the counter-foil of the cheque in his presence. Nariman Deboo's (PW 6) evidence also shows that during the scrutiny and inquiry undertaken by him when the counter foil (Ex. 7) was shown to Doongaji the latter had denied having given any verbal order as suggested or endorsed by the accused on the counter foil of the cheque. So it is not as if Doongaji came out with such denial for the first time at the trial. Now, there are a number of circumstances which lend support to Sagar's evidence and completely falsify the defence version. In the first place all reimbursements to be made to the Estate Manager in respect of the sundry expenses for repairs incurred by him were required to be made by the appellant-accused by means of cheques only and not in cash and, therefore, ordinarily, if Sagar was to be reimbursed in respect of the bill of Patni & Co., the appellant-accused should have ordinarily done so by means of a cheque and not cash. Secondly, there has been no cross-examination of Sagar on this part of his evidence that he was not paid the amount indicated in this forged voucher by the accused on or about April 3, 1970 or at any time. Apart from these circumstances, the prosecution has brought on record the fact which emerges from the cash-book that round about April 3, 1970 and for quite a few months prior to that date the only cash on hand that was lying in balance with the society was only Rs. 505.55 and as such the appellant-accused could not have paid to Sagar from the cash of the Society a sum of Rs. 1607.50. The learned trial Judge had explained away this circumstance by observing that apart from working as ordinary Honorary Accountant of the Society, the appellant-accused was also doing the work of Koyna Relief Fund and Rural Welfare Board and he could have and must have made the cash payment of Rs. 1607.50 from out of the cash of such funds, without any material having been brought on record by the accused as to what was the State of cash on hand in regard to these funds also. If once the prosecution established clearly that cash on hand of the Society was only 505.55 on April 3, 1970 and for quite a few months prior to that date and the accused could not have made payment of Rs. 1607.50 to Sagar out of the Society's cash it was up to the appellant-accused to render probable an alternative adequate source from which he could have made the payment but beyond suggesting that the appellant-accused was also doing the work of Koyna Relief Fund and Rural Welfare Board no other material was brought on record to show what was the state of cash on hand from these Funds. The High Court has rightly observed that the trial Court could not indulge in guess work on this aspect. This state of evidence completely falsified the accused version that he had paid Rs. 1607.50 in cash to Sagar on or about April 3, 1970 and as such the further question of replenishing the cash with the proceeds of the bearer cheque would not arise. Further if the accused version were true that he had paid cash of Rs. 1607.50 to Sagar and had replenished the same by crediting the proceeds of the bearer cheque to the cash-

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A book of the society, proper entries would have been made by him in the cash-book, namely, there would be a debit entry in the cash-column of the cash-book and credit entry in bank column of the cash-book but such entries are conspicuously absent. We may point out that in paragraph 77 of its judgment, the High Court has enumerated several circumstances including the aforesaid circumstances which clearly bring out the falsity of the defence version and some of which substantially corroborate the prosecution case. The learned trial Judge has improperly tried to explain away these circumstances in favour of the appellant-accused. There is no doubt in our mind that the charge of criminal breach of trust under s. 408 I.P.C. in respect of the amount of Rs. 1607.50 as also the charge of falsification of accounts under s. 477A I.P.C. have been established by the prosecution against the accused beyond reasonable doubt.

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In the result we confirm the convictions as wel as the sentence imposed upon the appellant-accused by the High Court and dismiss the appeal.

P.H.P. *Appeal dismissed.*