PETITIONER:
S. L. GOSWAMI

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT04/01/1972

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
PALEKAR, D.G.

CITATION:
1972 AIR 716 1972 SCR (3) 948
1972 SCC (3) 22

ACT:
Evidence-Burden of Proof in criminal case-Prosecution must establish ingredients of offence before burden shifts ti accused-Accused's burden discharged if reasonable doubt created against prosecution case.

HEADNOTE:
The appellant was Professor and Head of the Department of Pharmacology and Therapeutics in the Medical College Jabalpur. In connection with a research project to be carried out by him in collaboration with the Atomic Energy-Commission a Double Distillation Apparatus was purchased from Messrs S. K. Biswas and Co. Calcutta for Rs. 450/- in September 1964. In 1965 the Indian Council of Medical Research entrusted him with another research project for which he required a Double Distillation apparatus of 10 litres capacity. An order for the supply of the same was Placed with Messrs Goverdhandas Desai Pvt. Ltd. Bombay. They were asked to send their acceptance and bills in triplicate immediately. Messrs Goverdhandas aforesaid sent their acceptance and bills in triplicate for Rs. 969710. A draft for that sum was issued by the Accounts officer Indian Council of Medical Research in favour of Messrs Goverdhandas and was received by the appellant on April 12, 1965. The appellant thereafter wrote to Messrs Goverdhandas that he did not want the apparatus as shown in the sketch shown by them but wanted it according to the original order placed by him. Messrs Goverdhandas replied expressing their inability to supply the same. In May 1965 the appellant happened to be in Bombay. He asked Messrs Goverdhandas to accept the draft for Rs. 969 in their favour and to issue a bearer cheque for the same amount to him so that he could purchase the apparatus required by him in Bombay. A receipt for the draft was given to the appellant by Messrs Goverdhandas and he issued a receipt for the cheque to them. The appellant was subsequently tried for misappropriation of the amount. According to the prosecution he did not purchase any apparatus in Bombay and continued to use the apparatus earlier purchased from Calcutta. According to the appellant however, he contracted one Rasiklal Shah (DW3). a partner of Messrs Scientific Sales Syndicate who after a telephonic conversation wrote to him a letter introducing one D'Souza

who could supply the apparatus to the appellant. The appellant claimed that he purchased the apparatus from D'Souza. obtained a receipt for the amount paid and brought the apparatus to Jabalpur and used it in his laboratory. The bill given to the appellant by D'Souza bore the name of M.B. Corporation. An apparatus Art. A was seized by the police, from the appellant's laboratory which according to the prosecution was the apparatus purchased in 1964 but according to the appellant was the one purchased in Bombay. The appellant produced before the investigating officer the letter written by Rasiklal Shah as well as other documents connected, according to him, with the purchase. 'Me trial court convicted the appellant of offences under ss., 409 and 420 I.P.C. and s. 5(2) of the Prevention of Corruption Act. The High Court dismissed his appeal. This Court in appeal by special leave,

HELD : 'The onus of proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible

949

or is palpably false that burden does not become any the less. it is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution. Where the onus shifts to the accused, and the evidence on his behalf probabilities the plea he will be entitled to the benefit of reasonable doubt. [954 C-E]

In the present case the High Court itself held that it was not possible on the evidence of the prosecution witnesses to hold that the apparatus Art. A could be identified as the one purchased in September 1964. The oral evidence produced by the appellant to the effect that a new apparatus had been purchased in 1965 was wrongly rejected by the courts below. The evidence of DW3 regarding the enquiry made by the appellant for a double distillation apparatus and his sending D'Souza with a plant which conformed to the specifications given by the appellant and sending it with a covering letter could not be assailed and had not been rejected by the High Court. There was no suggestion that this letter was fabricated or got up sub equently. Once the genuineness of the letter sent by DW3 to the appellant was believed it corroborated his plea., Once the probability of the accused's plea is established he must be given the benefit of doubt. The appellant had at the very initial stage even before the F.I.R. was issued produced the original receipt and given a copy of the same to the investigating officer. This will indicate that the bill and the receipt were genuine. The appellant was not responsible if no such firm as M.B. Corporation actually existed and a spurious bill (assuming that it was so) was given to him, [958 G.H; 962 D; 963 B-D]

On the facts and circumstances of the case the appellant had established his plea and the courts below were wrong in holding that he had failed to discharge the burden of proof that lay upon him.

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No, 69 of 1969.
Appeal by Special Leave from the judgment and order dated January 24, 1969 of the Madhya Pradesh High Court in Criminal Appeal No. 942 of 1968.
A. S. R. Chari, R. Nagaratnam, S. K. Mehta, K. L. Mehta and K. R. Nagaraja, for the appellant.
I. N. Shroff and M. N. Shroff for the respondent.
The Judgment of the Court was delivered by
P. Jaganmohan Reddy, J.The appellant who was Professor and Head of the Department of Pharmacology and Therapeutics in the Medical College, Jabalpur, has been convicted by the Special Judge, Jabalpur under s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act to one year's rigorous imprisonments and a fine of Rs. 1 000 and in default to undergo rigorous imprisonment for three months. He was further convicted of offence@ 13-L736Sup CI/72
950
under ss. 409 and 420 I.P.C. and was awarded sentences of six months rigorous imprisonment in respect of each of them. All the sentences were directed to run concurrently. An appeal against this conviction and sentence to the High Court of Madhya Pradesh was dismissed. This appeal is by special leave.
Shortly stated the case of the prosecution is that the appellant who was employed in the Medical College, Jabalpur, with the permission of the Government of Madhya Pradesh given on December 20, 1962, accepted a grant-in-aid for carrying out a research project entitled "Study of Manganese in Health and Disease by Neutron Activation Analysis". This Research Project was to be carried on in collaboration with the Atomic Energy Commission of the Government of India for three years 1963-64, 1964-65 and 1965-66. The appellant began his research work in July 1963 and sometime thereafter on September 30, 1964, an instrument for distillation of water known as the Stadler Still Double Distillation Apparatus was purchased from Messrs S. K. Biswas & Company of Calcutta a firm of scientific instruments manufacturers and dealers of Calcutta, for Rs. 450. On April 11, 1964, the Indian Council of Medical Research known as the 1.C.M.R. entrusted him with the research project on "Effect of Hypoxia and Decompression on Body Temperature as function of Adaptation to Hypoxia at various altitude". The terms and conditions of grant-in-aid were mentioned in the circular letter Ext. P-32 dated April 11, 1964, and were current for the years 1965-66 and, 1966-67. For this project the appellant wanted to purchase another double distillation apparatus and after inquiry from several firms placed an order with Messrs Goverdhandas Desai Private Ltd. Bombay (hereinafter called 'Messrs Goverdhandas') as per Ext. P-5 dated February 20, 1965 for a double distillation apparatus, horizontal type, Double Stage, capacity 10 litres, pyrex glass for Rs. 890 and asked them to inform him of their acceptance telegraphically and send triplicate bills in advance. Messrs Goverdhandas sent wire Ext. P-6 and the advance bills Exts. P-8, P-9, and P-10 to the appellant on March 3, 1965. This apparatus was entered in the stock register of the 1.C.M.R. Hypoxia Enquiry as per Ext. P-44 in accordance with the details shown in the bills and the triplicate bills for Rs. 969.10 inclusive of sales-tax and packing and freight charges were presented for payment. It may be mentioned at this stage that the appellant was on

leave from February 9, 1965 to March 20, 1965 because of heart trouble and the inquiry and the order were placed during that period. A draft in favour of Messrs Goverdhandas was subsequently issued by the Accounts Officer, 1.C.M.R. and was received by the appellant on April 12, 1965. On the same day the appellant wrote a letter Ext. P-16 to Messrs Goverdhandas saying that he did not want the appar atus as shown in the sketch sent by them but wanted it

951

according to the original order placed by him. He therefore. requested them to expedite the order urgently as he had, received the payment against the bills and was withholding the same for want of apparatus. As the firm was not able to supply the apparatus as per the specifications the order was cancelled by letter Ext. P-17' dated April 24, 1965. Thereafter the appellant was in Bombay between May 15, 1965 and May 25, 1965 where he had zone for a medical check-up and was staying in the M.L.As. Rest House. On May 17, 1965, he met Mr. Patel a Director of Messrs Goverdhandas and asked him into receive the draft and give him a cheque in order to enable him to purchase the apparatus he wanted from the Bombay market. This was agreed to, and accordingly the draft was handed over to Mr. Patel and a receipt Ext. P-24 was obtained from him on behalf of Messrs Goverdhandas. At the same time the appellant also passed a receipt for the bearer cheque which he received from Mr. Patel for the same amount. On the same day the appellant telephoned to one Rasiklal Shah a partner of the Scientific Sales Syndicate D.W. 3 and enquired whether he could supply the distillation plant as per the specifications given by him. D.W. 3 said he did not have it. Later, however, one D'souza a broker who was sitting with D.W. 3 at the time informed him that he could supply the instrument wanted by the appellant. D.W. 3 says he tried to ring the appellant back but could not get any reply so he sent D'souza with the apparatus along with the introductory letter copies of which are Ext. P-70 and D- 1 3. According to the appellant on the same day the man sent by Rasiklal Shah is said to have brought the apparatus the cost of which was Rs. 989.35. The appellant paid the money, obtained a receipt and brought it to Jabalpur.

The crucial question in this case is whether the accused as alleged by the prosecution did not buy another apparatus for which he had received a draft from the I.C.R. But in fact has been carrying on the work with the distillation apparatus purchased from Messrs S. K. Biswas & Company in September 1964, for the project for which he was receiving a grant-in-aid from the Atomic Energy Commission of the Government of India, by pretending that it is the apparatus which he had purchased in Bombay. By this device it is said the appellant has misappropriated the amount of the draft sent by the 1.C.M.R.

There are in this case certain undisputed facts which are:-

(1) That a double distillation apparatus was purchased for the project of the Atomic Energy Commission from Messrs S. K. Biswa's & Company on September 30, 1964, and in respect of which entries were made in the stock register of the Atomic Energy Commission.

952

(2) That the order for the purchase of the second double stage distillation plant was placed with Messrs Goverdhandas which was accepted by them on March 3, 1965. This firm had along with the acceptance sent a packing note and bills in triplicate on the strength of which a claim was made to the 1.C.M.R. which issued a demand draft in favour of Messrs

Goverdhandas. The demand draft was received by the appellant on April 12, 1965. Chokasey P.W. 21 made entries in the stock register of the 1.C.M.R. that the apparatus was received as soon as the Us were received and submitted for payment.

(3) The appellant on the same day, i.e. April 12, 1965 as indicated in Ext. P-16 had informed Messrs Goverdhandas that the sketch sent by them wag not in accordance with the original order and while informing them that he had received payment against the bills asked them urgently to inform whether they could supply the apparatus as per the specifications.

(4) That inasmuch as Messrs Goverdhandas could not supply the apparatus as per the specifications the order was cancelled on April 24, 1965 by letter Ext. P-17.

(5) That the appellant went to Bombay on May 17, 1965 and handed over the demand draft issued by the I.C.M.R. in favour of Messrs Goverdhandas to Mr. Patel and obtained a receipt from him. The appellant also obtained from Messrs Goverdhandas a bearer cheque for the same amount for which he gave a receipt to Mr. Patel and cashed the cheque.

It appears from the first information report Ext. P-46 dated August 12, 1966, that during the course of investigation on information received through a source Shri Shyam Biharilal Shrivastava, Deputy Superintendent of the Special Police Establishment, Jabalpur, came to know that the appellant the Head of the Pharmacology Department in charge of the Research Laboratory had placed an order on February 20 1965 for purchasing a distillation apparatus, horizontal type, double stage, capacity 10 litres pyrex valued at Rs. 969-10 from Messrs Goverdhandas in connection with research of 'Hypoxia Enquiry' entrusted to him by the I.C.M.R., New Delhi, and he had, written to the said firm to send bill in advance. On receiving three copies of the bill from the firm, it was shown in the stock register that the said distillation apparatus was received when in fact no such type of apparatus was at all purchased from the said firm. He then sent two copies of the said bill to the I.C.M.R.New Delhi and acquired a demand draft for Rs. 969-10 from it. What the prosecution has not disclosed either in the F.I.R. or in the chargesheet filed against the appellant is that the appellant during the course of the investigation had stated that he had in fact purchased the

953

double stage distillation plant in Bombay on May 17,1965 from out of the account of the bearer cheque received from Messrs Goverdhandas in exchange for the demand, draft handed over to their Mr. Patel. Nor did the prosecution mention either the fact that the appellant had obtained a receipt from Messrs Goverdhandas for the demand draft handed over to them or that he had given a receipt for the bearer cheque obtained in exchange by him from Messrs Goverdhandas. There was also no mention in the said document that the appellant had handed over a copy of the receipt for payment of Rs. 989-35 for the purchase of the other apparatus on May 17, 1965, to the investigating officer and had informed him that Rasiklal Shah had sent some one with the apparatus along with the introductory letter dated May 17, 1965. It is not as if the investigating officer had not verified the information given by the appellant that Rasiklal Shah had given such a letter, because a copy of that letter was seized from the Scientific Sales Syndicate, even before the F.I.R. was issued and the charge-sheet was filed. It was only after the accused had made an application during the trial on September 16, 1968, for summoning Rasiklal Shah and

requesting the Court to call for the copy of the letter seized by R. N. Dube, Deputy Superintendent of Police, from Rasiklal Shah under a seizure memo, that the copy was produced by the prosecution. The accused in his statement under s. 342 of the Code of Criminal Procedure produced another copy of this letter as well as the bill with the original receipt a copy of which had been handed over to the investigating officer even before the F.I.R. was issued. Once these facts had come to the knowledge of the investigating officer, it was his duty to have placed them before the Court. In the absence of such a disclosure it is contended by the learned advocate for the appellant that for the prosecution to bring home the offence to the appellant beyond a reasonable doubt, it should also establish that the appellant did not in fact purchase the apparatus and that the said documents were spurious and got up for the purpose of the defence. The burden of establishing this, it is averred, is also upon the prosecution and not upon the defence because unless the probability of the appellant having purchased the apparatus is eliminated, the case against the appellant cannot be said to be established beyond a reasonable doubt.

It may, however, be pointed out that in determining this question the Special Judge as well as the High Court seem to have laid greater emphasis on the fact that the accused had not proved that he had purchased the apparatus as contended by him. While no doubt the question whether the accused purchased the apparatus in Bombay with the money he got under the draft issued by the I.C.M.R. in favour of Messrs Goverdhandas may have to be

954

established by the accused, he can take full advantage of the circumstances in the prosecution case itself to probabilise his plea that he did. The High Court posed the question for determiation as follows :

> "Thus, the short, question that fell for determination by the Special Judge was whether the amount received back by the appellant from Messrs Goverdhandas Desai of Bombay was utilised or not by him in purchasing the apparatus as stated by him and sought to be proved by him, burden of which fact was on him, through his defence witnesses."

This approach both of the Special Judge as well as the High Court is not altogether correct one. In our view, the onus of proving all the ingredients of an offence is always ;upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is Palpably false that burden does not become any the less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests. upon the prosecution. Where the onus shifts to the accused, and the evidence on his behalf probabilises the plea he will be entitled to the benefit of reasonable doubt.

In this case the prosecution seeks to establish the case against the appellant by showing-(1) that there is no firm

by the name of M.B. Corporation from which the appellant is said to have purchased the apparatus on May 17, 1965; and (2) that the distillation apparatus which was first purchased in September 1964 is the same as Article A which the Special Police had seized and not that which the appellant alleges he had purchased and (3) that the apparatus purchased in September 1964 which had been shown as broken on February 1, 1965 and written off has been in fact not broken but has been entered as such in the registers fraudulently.

The evidence on behalf of the prosecution can be classified under three main heads

Firstly with regard to the entry in the stock register that the double distillation apparatus purchased in separate 1964 was broken and written off;

955

Second that the distillation apparatus purchased in May 1965 was the one which was being used in the Laboratory by the appellant and is the same as Article A which was seized by the Special Police and

Thirdly, that there was no firm by the name of M.B. CorPo-ration from which the accused is alleged to have purchased the subsequent distillation plant on May 17, 1965, and that he did not in reality purchase it.

The first allegation is sought to be established by Kamlesh Grover P.W. 22, who was working on the post of Research Assistant In the Pathology Department of the Medical College, Jabalpur from October 1, 1964 to September 30, 1965. The witness was posted from October 1, 1965 as a Senior Scientific Assistant in the research of the Atomic Energy Commission and from December 15, 1965 in the HyPoxia Enquiry and was working under the appellant. According to her, although it was not part of her duties, she was required to do clerical work as there were no other persons and that as the appellant told her that some articles had been broken and the persons who were working previously had not made entries she should make the same as she was a Research Assistant. Because of this, she made the entry and as far as she could remember it, that entry was made on September 19, 1966. Till this stage she made no assertion that she was asked to do something which to her knowledge was false. The learned Advocate for the prosecution however put her a question which we think is in the nature of a cross-examination designed to support the allegation that she did not make the entry willingly. This was :

> "Question:-Whether Dr. Goswami asked you to sign thereon or not ?
> Answer:-Dr. Goswami asked me to sign thereon, but I refused to sign."

Even then she said that the appellant asked her to get a copy made thereon because the breakage register was for be sent and accordingly she made the entry which was in her handwriting and she signed thereon. It was then that she said that. the appellant had asked her to put the same date in her signature, on which he told her that the apparatus was broken. She identified the appellant's initials and asserts that she prepared the breakage register on September 19, 1966. This evidence does not establish that the distillation apparatus was not in fact broken. However, in cross-examination she was asked whether she saw, the distillation apparatus, before she was deputed to the. Hypoxia Enquiry and her answer, was that she

956

does not remember and then said: "Wait for a minute", and after trying to recollect her memory she answered that she

saw the apparatus. But she does not know whether there was any monogram on that apparatus and claims that she can identify if two or three apparatuses of the same type are kept because of their being old or new. Again she says if two or three apparatuses are kept, it will be difficult to identify. When asked whether she kept a note of it anywhere in respect of the breakage or was speaking from memory, she said that she had not kept a note thereof any-. where but remembered it because the appellant had returned from foreign tour at that time, and had joined on Monday September 11, 1966. She said that Shri Dube, Deputy Superintendent of Police made enquiry from her in March 1967, which she stated was on the basis of the note in her diary Ext. D-9 that on September 19, 1966 the appellant called her in his room and asked her to prepare accounts of the articles of the Atomic Energy Come mission. She had told Dube, Deputy Superintendent of Police, about the note-book. This was in direct contradiction of her previous denial that she had kept a note of it. Her evidence in respect of this note-book was not accepted by both the Trial Court as well as the High Court. It would appear that she having entered in the register that the apparatus was broken and written off is really anxious to exculpate herself because she was probably made to believe that it was in fact not broken and she was made to do something which was untrue. This anxiety dominates her evidence which read as a whole does not inspire confidence and gives the impression that she was trying to put a sinister interpretation of what may appear to have been probably true. For instance, she says that she realised that she had to make an entry of the article as broken and thought over it very much. After that she started to note down in her note book and told this fact to some other men in the Department in the general talk. She informed Mr. Rao, Dr. Goswami and Dr. Harshwardhan who were sitting there. Though she first admits that she did not tell them that the appellant had got an entry made by her in the stock register and got breakage register prepared by her, she later says that she told them that distillation plant was shown as broken. It was then that the appellant called her in the office and said that breakage register was to be prepared and sent to the Atomic Energy Commission and asked her to prepare the register and make entry in the stock register. None of the witnesses named by her however say anything about her having informed them.

That the distillation apparatus purchased in September 1964 was the same as Article A has been spoken to by several witnesses with which we will presently deal. But before we do so, it is necessary to notice that according to Nirodh Ranjan Ghosb P.W. 13, Manager of Messrs S. K. Biswas & Company a similar apparatus

957

as the one supplied by them to the appellant could be purchased also in Bombay, so that the probability of the accused having purchased a similar apparatus with the markings of Messrs S. K. Biswas & Company in Bombay cannot be ruled out. This witness, however, does not say that Article A is the same as the one which his firm had supplied. It may be mentioned that Mr. Dube who was investigating the offence against the accused had written a letter to Messrs. S. K. Biswas & Company on December 30, 1966, enquiring whether the type of the stadler still supplied by them was available in the Bombay market, whether they were supplied to M/s M. B. Corporation, Nagar Niwas C. P. Tank Road, Bombay-47 for sale and whether some body from their firm could identify the apparatus supplied to the

Jabalpur Medical College. In answer to these queries Messrs. Biswas & Company wrote to Dube that they had not supplied the type of stadler still to Messrs. M. B. Corporation which however may be available in the Bombay market and that it was not possible to identify the apparatus supplied to the Jabalpur Medical College.

Even the High Court, after considering the evidence of Dr. Rajkumar Gupta, P.W. 15, working as a Demonstrator in the Medical College, under the appellant since the year 1958, Shri A. S. Venkat Subbarao P.W. 16 working as Assistant Professor in the Department of Pharmacology Medical College, during the relevant period, and Dr. Harshwardhan P.W. 19 working as Demonstrator in the Department of Pharmacology during the relevant time observed that all these witnesses have admitted that they are unable- to identify the double distillation apparatus from another apparatus of the same quality and same markings. There is also the evidence of other witnesses, namely, B. P. Namdeo P.W. 20 a research scholar, M. L. Chokasey, P.W. 21 a Laboratory Assistant in the Research Scheme & a Lower Division Clerk, Jamund Prasad Khare P.W. 23 a Laboratory Assistant, and Rashid Khan P.W. 24 a Laboratory Assistant who said that they were working during the relevant period in the research work entrusted to the appellant by the Atomic Energy Commission of the Government of India and the I.C.M.R. These witnesses deposed about having seen Article A in the Laboratory, first in the Laboratory opposite to the appellant's room,, though one of them Chokasey P.W. 21 said that be saw it in the verandah, which was later shifted into another room. Chokasey says he did not disclose to any body and only did so when he received the summons and gave his evidence. If so, how did the police came to know is difficult to understand. Though we do not pay much attention to this incongruity, we are referring to it because the High, Court while dealing with the evidence of D. W. 2 rejected it merely on the ground as will be seen when we discuss that evidence and at the same time accepted the

958

eviddence of this witness, That this witness. had a grouse against appellant because he had asked for a certificate of character which the appellant is said to have given to him but says thereafter it was snatched from him and the appellant called for his explanation. It was suggested to him he was making a false statement that a character certificate was given to him by the appellant. This suggestion appears to be justified is evident from his admission. He also admits that the appellant had written a letter to Dr. Relen when he was working with him, which was shown to him by Dr. Relen. That letter is from the Superintendent, Medical College, asking for Chokasey's explanation. It says

> "Your former employer in the I.C.M.R. Scheme who is the Professor of Pharmacology as well reports that you had been indulging in derogatory activities against him in the sense that you were typing the application on behalf of Shri J.P. Khare while in this office and from the typewriter of this office.
>
> Please let me know why you should not be strictly warned. Your explanation should reach to this office within 24 hours from the date of receipt of this memo."

Jamuna Prasad Khare P.W. 23 was working in the Department from august 5, 1964 to October 30, 1965, but the work started only three or four months thereafter that is from

November or December. He says that the distillation apparatus received from Messrs. Biswas & Company was there upto May-June 1965. This witness on his own admission was dismissed by the appellant and was given service by the Dean of the Medical College. The appellant had made a complaint against him to the Director of Medical Services and was unemployed when Dube made enquiry of him. about the double distillation apparatus. Even though he wrote to the I.C.M.R. about the termination of his services he admitted that he did not write anything therein regarding this double distillation apparatus.

The other witnesses also are not in a position to identify the apparatus as the one which was purchased in September 1964. In our view, when as clearly admitted by the senior members of the staff working in the Laboratory for quite some time that they could not identify that Article A was the same as that purchased in September 1964, it is difficult to believe that there two witnesses or any other witnesses could have done so, particularly when the High Court itself held that it was not possible on the evidence of the three witnesses to which we have referred that the apparatus could be identified, as the one purchased in September 1964.

On the other hand there is the evidence of A. S. Venkatsubbarao P-W. l6 which clearly indicates that there was another double

959

distillation apparatus apart from Article A, the one, purchased in, September 1964. In the examination-in-chief itself, the witness says that from 1964 till the apparatus was packed during the period one more double distillation apparatus wad received in the Department to the best of- his knowledge for 'Me apparatus was in use few days till it was packed and taken away. The apparatus was packed, when it was seized and that it is Article. This admission not only negatives the prosecution case that no apparatus was purchased in May 1965 as alleged by the appellant, but definitely probabilises it. That apart, there is another circumstance which goes to support the statement of P.W. 16 that there was another double distillation apparatus which is not the same as the one purchased in September 1964 and which could, be Article A.

It is seen that the apparatus which was purchased in September 1964 though it was said to be a double distillation apparatus it cost only Rs. 486-62 but a similar distillation apparatus said to have been purchased in May 1965 by the appellant cost Rs. 969-10. If these two, apparatuses are similar, then the cost of the one said to have been purchased in May 1965 has doubled within one year which, prima facie, raises doubts about the genuineness of the transaction. A closer scrutiny however would show that the apparatus purchased in September 1964 from Messrs. Biswas & Company may not be of the same capacity as the one said to have been purchased in May 1965 which is of ten litre capacity. From, a comparative statement of quotations from different companies,, Ext. P-38, it is apparent that the quotation called in 1965 was for a distillation apparatus horizontal type capacity 10 litres for which, M/s. Unique Trading Corporation, Bombay, quoted Rs. 925/-, Messrs. Goverdhandas Rs. 890/- and M/s. Scientific Instrument Company Ltd., Allahabad Rs. 1229/- duty free price and Rs. 1920/,- duty paid, for which an import licence was requested.. From Ext. P-28-Extracts of order register of Messrs Goverdhandas it also appears that the price of a single stage distillation apparatus was Rs. 450/- which was

the one that was cancelled on April 24,. 1965. Evidently Messrs. Goverdhandas wanted to sell two single stage distillation apparatuses and it was because of this that the appellant had cancelled the order.

We have already seen that what was purchased from Biswas & Company was a stadler still, quickfit type of double distillation, automatic with special type clamp. But there is nothing to show from Ext. P-49A that it was for a 10 litre capacity. Nor is there any other evidence as fairly admitted by the learned advocate for the prosecution from which we can ascertains what was the capacity of that apparatus or that of, Article A. This would leave a lacuna in the prosecution case and probablise the appellant's

960

-contention that the apparatus Article A is not the same as that ,purchased earlier for the Atomic Energy Commission, but is the one which he purchased in Bombay in 1965.

It is contended by Mr. Chari for the appellant that the evidence of the prosecution must be, read in the light of the intense feeling of dislike and hostility exhibited by the Dean of the Medical College, against the appellant due to enmity and jealousy in his having been given projects of national importance. He has referred to certain evidence to show that at every stage the Dean has been concerned with the investigation. It is not necessary to go into all the minute details of this controversy except to touch on the broad features.

It is in evidence that initially the grant-in-aid was routd through the Dean in 1963-64 and 1964-65, but later from 1965-66 it was given direct to the appellant. The reason for this was explained by Durgacharan Chopra, P.W. 1 1, Under Secretary to the Government of India in the Department of Atomic Energy with headquarters at Bombay to be due to some trouble between the Dean and the appellant, because of which they had decided to place the grant at the disposal of the appellant for the year 1965-66.

Besides, Dr. Barat D.W. 1 whose evidence will be dealt with latter in his letter to Dr. Subramanian, Ext. D-15, says that the appellant was treated badly. He said that he had leant that the appellant was physically obstructed by the College Chowkidar when he tried to return the equipment belonging to the witness, in which the appellant sustained minor injuries which he saw when he came to him with the apparatus. He also says in that letter that Dr. Chowdhary rang him up in the evening of Monday on February 14. 1967, that Dr. Subramanian did not want the removal and return of the articles by the appellant saying that he cannot under-stand when the articles did not belong to the Government, and were loaned to the appellant through him, and asks why they could not be removed by the appellant when a legal notice was served on him. We have already noticed how after the appellant dismissed Khare P.W. 23 he was immediately employed by the Dean. All this would indicate that there has been a great deal of ill-will and hostility between the appellant and the Dean.

Apart from viewing the prosecution evidence in the light of this background, there is the defence evidence. This evidence has been summarily rejected, and, in our view, without any cogent reasons. Dr. Barat D.W. 1 says that he was the one who had started the research of the I.C.M.R. and Atomic Energy Commission Projects. He is a member of the executive council of the Jabalpur University and is a consulting physician. He says that after the sudden death of Professor Dr. Wahi from coronery heart

961

trouble, the appellant started getting pain in the chest and he consulted him. He had taken his E.C.G. and referred him to Dr. Datey, President of Cardiological Society of India for a thorough check-up. As there was some abnormality he was asked to go for another check-up to Bombay from where the appellant returned after his second check-up, some time in the month of May 1965. The witness had sent his car to bring the appellant from station and to take him to Medical College and the appellant had dropped in at his place to see him on his way to the Medical College. When the appellant came to see him two packages were lying in his car on the black seat by his side and the witness asked him what those were. The appellant told him that he had bought some apparatus'. It appears that in the High Court some interpolation was made in this evidence which would indicate that the appellant had showed him "a lass distillation apparatus". We are not now concerned with this interpolation, but as the evidence was recorded it shows that the appellant had told the witness that he had bought some apparatus. After a week or two when the witness went to the Medical College to see the appellant in his Department he enquired from the appellant as to what he had bought and the appellant showed him a double distillation apparatus with some modification for triple distillation and the apparatus appeared to be new. The witness also says that the appellant complained to him about the treatment given to him by the Dean of the Medical College Dr. B. H. Choudhary. On hearing this complaint the witness had written to the Director of Health Services, Madhya Pradesh, Ext. D-15, and forwarded a copy of the letter to the appellant for his information. The High Court thought that this evidence is not direct evidence to show that really a double distillation apparatus was purchased by the appellant in Bombay. With this bare comment his evidence was discarded, and we think, without justification, because it is difficult to understand how and what D.W.1 has said is not direct evidence. What he saw, what he observed, and what he was told by the appellant when that is in issue cannot, but be direct evidence.

Similarly another witness Hamidullah Khan D.W.2 who was supplying animals for the experiments and who had made a clamp for the double distillation apparatus in October-November 1964 (which is the one obtained from Biswas & Company) was characterised as a purely chance witness and there is nothing in his examination to show how the appellant happened to know that he had seen the apparatus in a broken condition or that he is likely to be a possible defence witness in this case. This witness had gone to the Medical College during the period when the appellant was laid up with a heart attack which was about the 1st week of February 1965. He says it was then that he saw the double distillation apparatus lying in a broken condition. After the appellant came back from

962

Bombay in the last week of May 1965 he had again been to the Hypoxia Laboratory and saw the appellant fixing a double distillation apparatus which was opened from packing. We have gone through the cross-examination of this witness and we find that there is nothing in that evidence which would make it unacceptable. There is no question of this witness being a chance witness. He was not only directly connected with the Department, but had also made a clamp for the double distillation apparatus and was visiting the appellant's office. When asked about the broken distillation apparatus he said that he came to know from a part of

the apparatus which was still attached to the clamp that it was broken. From the mere fact that he said that the appellant had told him that day in the morning that he was cited as a witness though he did not tell him what the case was, his evidence has been disbelieved. We do not think that this by itself is such as to destroy the substantive part of his evidence.

In any case the evidence of Rasiklal Shah D.W. 3 regarding the enquiry made by the appellant for a double distillation apparatus and his sending D'souza with a plant which conformed to the specifications given by the appellant and sending it with a covering letter cannot be assailed, and in fact has not been rejected by the High Court. It however observed that his evidence was not direct evidence on the point that a double distillation apparatus was purchased by the appellant on May 17, 1965. It is true that D.W. 3 did not know whether in fact the appellant had purchased the double distillation apparatus. But that he did send one through D'souza with a covering letter cannot be gainsaid. The letter which is an important piece of evidence is as follows :

> "Sub Standler Quickfit type Double Distillation extra strong Pyres SKB.
> We refer to your telephonic talk and have to inform you that we are out of stock of the above cited item, but the other party is having, who is coming with this letter to you, with the Apparatus, if it serves your purpose, you may buy the same directly from him against cost, for Rs. 989.35 nett. only.
> We are really sorry to learn from your phone message that you are not keeping well, and hope, you will be all right very soon."

Nothing has been urged why this letter should not be accepted in evidence. There is no suggestion or whisper that it was fabricated or got up subsequently. Once the genuineness of the letter sent by D.W. 3 to the appellant is believed, it corroborates his plea that he did make enquiries from Rasiklal Shah, and that Rasiklal Shah
963
had sent a person with the apparatus for which he paid the amount and obtained a receipt. It was urged that neither D'souza nor J. R. Patel who gave the receipt were examined. We have had occasion to observe earlier that the standard of proof which the accused may adduce in support of his plea in defence is not the same which the prosecution is required to adduce. Once the. probability of the accused's plea is established, we must give him the 'benefit of doubt. There is nothing to show that the accused fabricated the receipt. As we have pointed out, the appellant had at the very initial stage, even before the F.I.R. was issued, produced the original receipt and gave a copy of the same to the investigating officer. This would indicate that the bill and the receipt were genuine.

The prosecution, however, has sought to establish by evidence that there was no such firm as M.B. Corporation. But the appellant is not responsible if a spurious bill (assuming that it was so) was given to him or that he knew that it was spurious. This cannot therefore affect the case of the appellant that he had purchased the double distillation apparatus on May 17, 1965 and paid for it. In fact he paid for it about Rs. 20/- more than he got from the demand draft. If he wanted to misappropriate the money by producing a bogus receipt, he could have got the receipt for the exact amount of the draft. It may be mentioned that

Taneja Bansilal P.W. 14 Director-General of the I.C.M.R. also admitted that the appellant had come to Delhi in connection with the purchase of the apparatus and told him that the apparatus was purchased from some firm, whose name he did not remember, but it was not the firm of Messrs Goverdhandas. In the circumstances the plea of the appellant is substantiated.

No doubt in this case the prosecution has established that the appellant has drawn a bill and obtained a draft for Rs. 969-10 before the apparatus was supplied. But this is an irregularity and does not show that he had no intention of purchasing the apparatus or to misappropriate the money. Academicians are not generally known for their administrative sagacity or for being conversant with all the complicated technical rules. We do not by this intend to imply that the rules and instructions should not be complied with, but when it is apparent from the evidence that the appellant had no clerical staff to assist him and was anxious to carry on his research work, any lapse on this account does not make him criminally liable.

The appellant, in our view, has been the victim of suspicion probably due to the unfriendliness, hostility and enmity of the Dean of the Medical College, which ultimately resulted in his being, it we may say so, subjected to this prosecution 'which must have

964

caused him great distress and anguish apart from the Department being deprived of his services in a project of national importance.

We have no hesitation in holding that the accused is innocent. The appeal is allowed and the convictions and sentences in respect of the several offences are set aside. The bail bond will be cancelled. The fine if paid will be refunded.

G.C. Appeal allowed.

965