

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. APPEAL NO. 240/2002**

% **Reserved on : 15.03.2011**
Date of Decision : 25.03.2011

RAM RATTAN

...Appellant

Through: Mr. K.S.Chauhan, Mr. Ajit Kr. Ekka and
Mr. Kartar Singh, Advocates.

Versus

STATE

Through Central Bureau of Investigation

... Respondent

Through: Mr. Narender Mann, Advocate.

CORAM :

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

M.L. MEHTA, J.

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1. This is an appeal against the judgment dated 21st February, 2002 whereby the appellant/accused was held guilty and convicted of offences under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter, for short 'the Act') and the order dated 5th March, 2002 where under he was sentenced to undergo SI for two years with fine of ₹500/- under Section 7 and SI for three years with fine of ₹1,000/- under Section

13(2) read with Section 13(1)(d) of the Act. In default of payment of fines he was ordered to undergo SI of seven days and fifteen days, respectively.

2. The prosecution case as set up in the complaint against the appellant/accused in brief is that the complainant, Ashish Kumar and his brother, Prashant Kumar along with one Santosh Duggal and her minor daughter, Kavita Duggal were accused under Section 376/506/34 IPC vide FIR No.312/94 lodged at the instance of the one Rakesh Jain. The said case was pending before Addl. Sessions Judge, Karkardooma Courts, Delhi. Kavita being a minor, her case was being tried separately in the Children's Court. The accused was posted as a Public Prosecutor and was representing the State in the Children's Court in the case against Kavita. On 3rd June, 1996, the complainant, Ashish Kumar along with his brother, Prashant and Smt. Santosh Duggal are stated to have visited the Children's Court. There a case under Section 506/34 vide FIR No.191/96 was registered at Police Station Mukherjee Nagar against them at the instance of the appellant/accused, Ram Rattan, the Public Prosecutor. The complainant's case was that Ram Rattan had been asking for some money indirectly for doing favour to Kavita in the said case. On 5th July, 1996 he met the appellant/accused who demanded ₹5,000/-

for doing favour to Kavita which would ultimately be of help to them also in their trial in the Sessions Court at Karkardooma. It is alleged that the accused assured them that he shall also save them from the proceedings relating to FIR No.191/96 IPC. On the same day, i.e. 5th July, 1996, the complainant paid ₹1,000/- to the accused and the balance of ₹4,000/- was to be paid to him in the Children's Court at 4.00 P.M. on 8th July, 1996. Since the complainant was not willing to pay any bribe, he made a complaint to CBI on 8th July, 1996, whereupon, this case was registered. CBI Inspector Rajesh Kumar organized a trap. One independent witness, Aneesh Kumar and two other members of the raiding party assembled in the room of CBI Inspector, Rajesh Kumar where the complainant produced 40 notes of ₹100/- denomination each. The numbers of these notes were taken down in the handing over memo. As per the procedure, the complainant was asked to hand over the money to the accused only on specific demand and the public witness, Aneesh Kumar was to act as a shadow witness. The trap party reached the Children's Court at about 3.45 P.M. The complainant and the shadow witness Aneesh were asked to contact the accused at 4:20 p.m.. After sometime, the complainant and PW4 Aneesh were seen coming out along with a person whose identity later came to be known as accused Ram Rattan. At about 4:25 p.m., PW4 Aneesh gave pre-appointed signal. The accused

got suspicious and started running in the Juvenile Court Campus and while running, he took out the notes from his pocket and threw the same on the ground. However, he was overpowered and caught by Inspectors Rajesh Kumar and S.R. Singh. The notes were picked up by PW4 Aneesh. The same were compared by PW-4 and Inspector Mallik with the numbers as noted in the handing over memo. The numbers were found to be tallying. The washes of both the hands of accused and that of right pocket of his pant and the handkerchief were taken separately which turned the sodium carbonate solution pink. The rest of the investigation was conducted. The CFSL opinion confirmed the presence of Phenolphthalein powder and Sodium Carbonate in all the four washes. After completion of investigation and requisite sanction, the accused was challaned and sent to face prosecution. He was charged under the aforesaid Sections of the Act to which he pleaded not guilty. The prosecution examined as many as 11 witnesses. The accused in his statement under Section 313 Cr.P.C. denied the prosecution case. He stated that on 3rd June, 1996, the complainant with his brother and co-accused, Santosh had come to the Children's Court and threatened the prosecutrix Priya Jain, her mother and father. On this, the accused made a complaint to P.S. Mukherjee Nagar whereupon a case was registered against the complainant and his brother. The accused

stated that thereafter the complainant lodged a complaint against him on 7th June, 1996 to the Commissioner of Police followed by another complaint with the Director of Prosecution followed by reminder dated 24th June, 1996. The accused stated that he submitted his reply to the Director, Prosecution on 7th July, 1996. He also stated that since no action was taken on the complaints against him, the complainant foisted a false case upon him on 8th July, 1996. The accused also examined one Mukesh as his only witness from the office of Chief Public Prosecutor to the effect that a complaint (Ex.PW-5/DA) against the accused/appellant Ram Rattan was received on 10th June, 1996 which was sent to the accused for his comments. He stated that another reminder (Ex.PW-5/DB) was also received on 28th June, 1996 which was also sent for his comments and that the comments of the accused (Ex.DW-1/A) were received on 7th July, 1996.

3. It is seen that the learned Special Judge has based his judgment relying upon the testimonies of the complainant, PW-5, public witness, Aneesh Kumar (PW4) and the IO Rajesh Kumar (PW10). He also sought corroboration from the CFSL report (PW2/A).
4. The learned defence counsel, Dr. Chauhan has assailed the impugned judgment on various grounds. His first submission is that the accused being a public servant and working as Asstt.

Public Prosecutor with the Govt. of NCT of Delhi, there was no valid sanction of his prosecution proved on record. This submission of the learned defence counsel is apparently untenable. The prosecution examined the Chief Secretary of the Govt. of NCT, Sh. P.V. Jayakrishnan as PW-1. He was the Appointing-cum-Disciplinary Authority. He stated that he had accorded the sanction for prosecution of the accused vide Ex.PW1/A after going through all the documents and the files put up before him and after satisfying himself regarding involvement of the accused in the matter. There is nothing material in the cross-examination of this witness. The learned Special Judge has relied upon various judgments to arrive at the conclusion of the sanction being valid and legal. It is noted in this regard that earlier also, an application was filed by the accused for his discharge and dropping the proceedings on the ground of want of valid sanction. The same was dismissed vide detailed order dated 22nd July, 1999 of the learned Special Judge. I do not see any infirmity and illegality in the sanction order Ex.PW1/A and the findings recorded by the learned Judge in this regard.

5. It was next submitted by the learned counsel that the only public witness PW4 did not identify the accused and that being so, the accused was entitled to be acquitted on account of benefit of doubt. This submission of the learned counsel is also not tenable.

It is seen that when this witness failed to identify the accused during his examination-in-chief, he was allowed by the Trial Court to be cross-examined by the Public Prosecutor. It is seen that in his cross-examination, he not only admitted the prosecution case and corroborated the complainant/PW5, but also identified the accused. He had heard the conversation between the accused and the complainant and was able to reproduce the same verbatim. He stated that the accused said, "*Paise To Laye Ho Na*" (Have you brought the money), to which the complainant said, "*Jaise Aap Ne Mangay The Laaya Hoon*" (As you demanded, I have brought). On this, the accused said, "*Lao Do, Abhi Meine Bahut Sarae Jaruri Kaam Karne Hain*" (Give me, I have to do some important works). In answer to the question put by the Prosecutor in his cross-examination, this witness stated that he could not identify the accused due to lapse of time.

6. This witness (PW4) corroborated the complainant by stating that he (the complainant) took out the tainted money from his pocket and handed over to the accused in his presence. The accused accepted the money and kept it in the right side pocket of his pant. Thereafter, the accused threw the tainted money on the ground. He (PW4) and Inspector caught hold of the accused. He along with other members picked up the tainted money thrown by the

accused from the ground. He with the help of one Inspector Sh. A.K. Mallik tallied the numbers of notes with those as already noted in the handing over memo and the same were tallied. He said that the accused got perplexed when he was apprehended. The suggestions were put to him that he was not present on the spot and that the accused/appellant did not demand or accept any money from the complainant or that he has conspired with the complainant and trapped the accused/appellant. All these suggestions were denied by him. This witness also supported the prosecution case in all minute details of the pre-raid and post-raid proceedings as conducted by the IO. In his cross-examination by the defence also this public witness maintained that he was standing close to the complainant. He stated as under:-

“...I heard the complainant saying that only if his work will be done on which Ram Rattan told him that his work will be done and further asked “PAISE LAYE HO” to which the complainant replied that “HAAN LAYA HOON” and Rattan said that his work will be done...”

“...I and Ashish Complainant were standing very closely to each other. The money was accepted in the court compound. I gave the signal near the gate and then the police reached there...”

“...Many people assembled there and accused threw away the GC notes on the ground on seeing the CBI Officials. I do not know how many people assembled there. I was directed by the CBI officials to collect the GC notes from the ground. None else other than me collected the notes. I tallied the number of GC notes by ticking on the handing over memo where the numbers were already noted down in the CBI office and the numbers were found to be the same. All these proceedings were conducted in the Court Compound...”

“ ...It is incorrect to suggest that accused Ram Rattan did not demand or accept any money. It is incorrect to suggest that I had conspired with the complainant and got trapped accused Ram Rattan in a false case. It is incorrect to suggest that the complainant is a friend of mine...”

7. PW4 stood lengthy cross-examination of defence. He remained unshaken in cross-examination and nothing could be elicited to doubt his testimony. There was no reason as to why this witness would depose falsely against the accused in such a serious case. There was not even a suggestion to this witness that he had any animosity towards the accused. I am left with an impression that he is a truthful witness and can be relied upon. With regard to the credence that could be given to such a witness, the law is trite that there is no rule of law that even if a witness is otherwise reliable and independent, his association in a pre arranged raid makes him accomplice or a partisan witness. Conviction is not untenable on the testimony of such witnesses [vide Maha v. State AIR 1976 SC 449]. The Court may well be justified in acting upon the uncorroborated testimony of a trap witness, if it is satisfied from the facts and circumstances that the witness is truthful [vide Prakash v. State AIR 1979 SC 400].
8. It was next submitted by the learned defence counsel that the accused was falsely implicated inasmuch as he had lodged a complaint against the complainant and his brother with P.S.

Mukherjee Nagar whereupon FIR No.191/96 came to be registered against them since they had threatened the prosecutrix, Priya Jain and her father and mother on the day when they had come to the Children's Court. It was submitted that, in any case, since the accused was not the prosecutor in the case pending against the complainant at Karkardooma Court, there was no reason for the accused to have demanded from complainant any money as bribe.

9. It is a fact that the complainant with his brother and Santosh Duggal were present in the Children Court on 3rd June, 1996 and that subsequently on the complaint of the accused, a case came to be registered against them at P.S. Mukherjee Nagar vide FIR No.191/96 under Section 506/34 IPC. It is also a fact that the complainant also made a complaint against the accused to his department as stated by DW-1, Mukesh Kumar. Though, there is nothing on record to substantiate this plea of the accused that the present complaint was foisted against him as a counterblast, but keeping in view the fact that the accused had lodged a complaint against him and his brother at PS Mukherjee Nagar, I have taken a very cautious approach in analyzing the testimony of the complainant.
10. The complainant had stated and maintained that the accused had demanded ₹5,000/- from him so as to help his co-accused, Kavita

Duggal who was facing trial in the Children's Court in FIR No.312/94 in which they were also co-accused and facing trial at Karkardooma. He said that on 5th July, 1996, when the accused had demanded money, he paid him ₹1,000/- and the balance of ₹4,000/- was to be paid on 8th July, 1996. It was only then that the complainant made this complaint against the accused. The complainant was put to lengthy cross-examination by learned defence counsel. He was very categorical in saying that when the accused demanded, he gave him the money. He has narrated the verbatim conversation which took place between them. It has been seen that the conversation as stated was also narrated by the independent witness, PW4. He stated that the money which he gave was taken by the accused and kept in his right side pocket of the pant. After accepting the money, the accused tried to move towards the Children's Court after crossing the iron gate. When the CBI officials asked him to stop, he became suspicious and started running and in the meanwhile took out the tainted money from his right side pocket of the pant and with his left hand splashed the same in the air. The accused was apprehended and when interrogated, he remained mum and became nervous. The conduct of the accused is also one of the relevant and admissible piece of evidence, the aid of which is available in corroboration of the testimony of a witness. All the three material witnesses,

namely, complainant (PW5), independent witness (PW4) and IO (PW10) separately deposed about the accused getting nervous when challenged by the officers of raiding party. In the case of **Rao Shiv Bahadur v. State of Vindhya Pradesh**, AIR 1954 SC 322 and **State of Madras v. A. Vidyanatha Iyer**, AIR 1958 SC 61, the Apex Court relied on the evidence relating to the conduct of the accused when confronted by the police officials with the allegation that he had received bribe. In the case of Rao Shiv Bahadur (supra) the evidence relating to conduct on which reliance was placed was to the effect that the accused was confused and could not furnish any explanation when questioned by the officer. Likewise, in the case of Vidyanatha (supra) also evidence to the effect that the accused was seen trembling and that he silently produced the notes was acted upon for recording conviction.

11. The complainant further said that PW-4 picked up the money from the ground and he along with Inspector Mallik (PW10) tallied the numbers with those mentioned in the Handing Over Memo. He identified the currency notes Ex.P1 to P-40 taken into possession vide memo Ex. PW4/2 as the same which were used as trapped money. He denied the suggestions put to him that the accused did not demand and accept ₹1,000/- on 5th July, 1996 or ₹4,000/- on 8th July, 1996. He also denied that he had threatened the

witnesses as alleged or that this complaint was filed by him on account of accused having filed a complaint with P.S. Mukherjee Nagar and because no action was taken on his complaint made to the department of the accused. Nothing material could be elicited in his lengthy cross-examination to doubt his testimony. As is seen, the testimony of this witness finds corroboration from the testimony of PW-4 on demand, acceptance and recovery of the bribe by the accused from the complainant. The testimonies of complainant and public witness PW4 are also fully corroborated from the testimony of PW10 with regard to the recovery of the tainted money from the accused.

12. With regard to the testimony of complainant the Apex Court in the case of ***State of UP v. Dr. G.K. Ghosh*** AIR 1984 SC 1453 observed as under:-

“**24.** ...In the case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.”

13. In the case of ***Rajender Kumar Sood v. State of Punjab*** 1983 CrL. LJ 1338 the Division Bench of Punjab and Haryana High

Court while dealing with the proposition whether testimony of complainant required independent corroboration observed as under:-

“We are of the opinion that there is no question of the Court insisting upon any such independent corroboration of the complainant in regard to the circumstances of the kind. When a given complainant first visits a public servant for doing or not doing some task for him he does not go to him as a trap witness. He goes there in a natural way for a given task. To require a witness to take a witness with him at that stage would amount to attributing to the complainant a thought and foreknowledge of the fact that the accused would demand bribe.”

14. Another submission of the learned defence counsel was that the place of conversation between the accused and the complainant was not clear and there was discrepancy in this regard in the statements of the witnesses. He also submitted that if the money was kept in the right side pocket of the pant of the accused, how could he splash the same with his left hand. Both these contentions are without any merit. PW-4 stated that the accused did not meet them outside the compound, but inside the compound while he was talking to someone. On seeing him, the accused signaled him to stay and then came to him and wished him. In his cross-examination, the complainant (PW5) stated that the conversation between him and the accused took place in the compound near the public witness Aneesh Kumar (PW4), but he did not remember the distance where Aneesh Kumar was standing.

PW4 also corroborated him stating that when they reached the Court compound, the accused gave them signal to stay and after some time he came and asked them to come out of the compound. He stated that when they were coming out of the Court compound towards the iron gate, the conversation took place between the complainant and the accused in his presence. In his cross-examination also, he maintained that he and the complainant were standing close to each other when the conversation took place between them. PW-10 also deposed on the similar lines when he stated that the complainant (PW5), Aneesh Kumar (PW4) along with the accused were seen coming out the Children's Court at about 4.25 P.M. and doing a conversation which was in full view of the members of the raiding party. The fact that the conversation took place between the complainant and the accused is deposed by all the three witnesses. The discrepancy sought to be pointed out as to whether it was inside the compound or outside, was in fact, no discrepancy inasmuch as both PW-4 and PW-5 have stated that the accused gave them the signal to stay and came out. This was a very normal and natural discrepancy if a witness is to depose after many years of the incident. Likewise, it was also no discrepancy as to how the accused could have splashed the money kept in his right pocket of the pant with his left hand. It is not stated by any of the witnesses that the money lying in the right side pocket was

taken out by the accused with his left hand. What was stated was that it was thrown by left hand. Taking out the money with the right hand and transferring the same in the left hand was not a difficult task which could create any suspicion.

15. With regard to the minor discrepancies, which normally may occur in the prosecution case, the law is well settled by various judgments. Reference can only be made to the illustrated judgment of the Hon'ble Supreme Court in the case of ***Bharuda Broginhbai Harjibhai Vs. State of Gujarat*** AIR 1983 SC 753 wherein it was held that discrepancies which do not go to the root of the matter and shake the basic version of the prosecution should not be attached undue importance. Their lordships have enumerated following reasons for arriving at this conclusion :-

- 1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- 2) Ordinarily, it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. Thus mental faculties, therefore, cannot be expected to be attuned to absorb the details.
- 3) The powers of observance differ from person to person, what one may notice, another may not. An object or movement might emboss image on one person's mind, whereas it might go unnoticed on the part of another.
- 4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by

them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

- 5) In regard to exact time of an incident or the time duration of an occurrence, usually, people make their estimates by guess work on spur of moment at the time of interrogation and one cannot expect people make very precise or reliable estimates in such matters. Again, it depends upon the time-sense of individuals which varies from person to person.
- 6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.
- 7) A witness though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details of imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved, though the witness is giving a truthful and honest account of the occurrence witnessed by him, perhaps it is a sort of psychological moment.

16. In another judgment of the Hon'ble Supreme Court in the case ***Boys Ganganna & Anr. Vs. State of Andhra Pradesh*** AIR 1976 SC 164, it was held that even in case of trained and educated person, memory sometimes plays false; that the evidence given by a witness would very much depend upon his power of observance and it is possible that some aspects of an incident may not be witnessed by another though both are present at the scene of occurrence. It would not, therefore, be right to reject the testimony of such witnesses merely on the basis of minor contradictions.

17. Section 20 of the Act provides that where at the trial it is proved that an accused has accepted or obtained or agreed to accept or attempted to obtain any gratification (other than legal remuneration), it shall be presumed unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain such gratification as a motive or reward as mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. The requirement of this Section is only that it must be proved that the accused has accepted or obtained or agreed to accept or attempted to obtain gratification. It may be proved by direct evidence as in the present case it has been proved from the direct evidence of testimonies of PW-4 and PW-5 that the gratification was accepted as a motive or reward for helping the complainant in the criminal case pending against him and other co-accused persons. In the case of ***Madhukar Bhaskarrao Joshi v. State of Maharashtra*** (2000) 8 SCC p. 571, the Apex Court held as under:-

“**12.** The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word 'gratification' need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again

be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing." If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

18. In the case of **C.M. Girish Babu v. CBI, Cochin, High Court of Kerala** (2009) 3 SCC 779, it was held as under:-

"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification."

19. Though, the burden of proof on the accused to rebut the presumption under Section 20 is not akin to that of the burden placed on the prosecution to prove the case beyond reasonable doubt, but the same, in any case, was required to be discharged at least by preponderance of probability.
20. In the present case, as is seen above, nothing could be brought out from the cross-examinations of Complainant (PW5), public witnesses (PW4) and IO, (PW10) to persuade this Court to doubt their reliability or untrustworthiness. On the other hand, the

accused has not led any evidence to rebut the presumption. If there was allegation that the complainant threatened Priya Jain and her parents and also attempted to win over them, the same could have been very conveniently proved by the accused.

21. In view of the analysis of the evidence of prosecution witnesses, namely PW-4, PW-5 and PW-10, I do not see any infirmity and illegality in the appreciation of the evidence of these witnesses by the learned Special Judge and therefore I do not see any reason to interfere with the same.

22. With regard to the quantum of sentence, the learned defence counsel prayed for lenient view stating that the case is about fourteen years old and the accused has already gone through lots of hardships. In the case of ***State of A.P. v. V. Vasudeva Rao***, (2004) 9 SCC 319 also occurrence took place nearly 14 years back as in the present case. The Supreme Court held in that case that the protracted trial is no ground to mitigate the gravity of the offence. However, in the said case, keeping in view the factual matrix, as in the present case, the minimum sentence of one year was imposed. Minimum sentence under Section 7 of the Act being six months and under Section 13(2) one year, I am also inclined to impose the minimum sentence, as prescribed, in this case as well.

Thus, while maintaining the conviction as recorded by the learned

Special Judge, the sentence under Section 7 of the Act is modified to six months and that under Section 13(2) to one year. The rest of the order shall remain unchanged. Both sentences shall run concurrently. The period of imprisonment already undergone shall be set off. The accused shall be taken into custody to undergo the imprisonment as awarded. The appeal is disposed of accordingly.

**M.L. MEHTA
(JUDGE)**

MARCH 25, 2011
skw/AK