

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 27.11.2013

CRIMINAL APPEAL NO.461/2003

TIRATH SINGH RAWAT

..... Appellant

Through: Mr. A.P.Mohanty, Advocate with
Mr. P.K.Patnaik, Advocate.

versus

C.B.I.

..... Respondent

Through: Mr. P.K.Sharma, Standing Counsel
with Mr. Anil Kumar Singh and
Mr. Bakul Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The Appellant herein has preferred this appeal under Section 27 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') read with Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment dated 11.07.2003 and the sentence dated 14.07.2003 passed by the Special Judge, Delhi. The appellant has been convicted under Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') read with Section 7 and 13(1)(d) read with

Section 13(2) of the PC Act. The appellant has also been held guilty and convicted for the substantive offences under Section 7 and 13(1) (d) read with Section 13(2) of the PC Act and accordingly, has been directed to undergo rigorous imprisonment for a period of four years. In addition, a fine of Rs.500/- has been imposed. The sentence of imprisonment is to run concurrently. In the event of default in payment of fine, the appellant will be required to undergo further rigorous imprisonment of three months on each count. The fine has already been paid by the appellant. The order dated 20.11.2003 evidencing the same is on record.

2. The substratum of the charge as against the appellant, who was Sub Inspector, is of having demanded and accepted illegal gratification from one Praveen Kumar, the complainant. The case set up by the prosecution against the appellant is briefly enunciated as under:-

- (i) The complainant, PW-2 is in the business of property dealing and had engaged one Ms Neelam Rani as a receptionist in connection with his work at WZ 47 Lajwanti Garden Chowk, New Delhi, but had terminated her services on 26.06.1995 after clearing her dues. It was alleged that on 24.07.1995, the appellant accompanied by Virender Kumar and the said Neelam

Rani came to his office. The appellant informed him that the said Neelam Rani had made a complaint alleging that PW2 owed Rs.5,000/- to her. As per PW-2, the appellant wanted a bribe of Rs.5,000/- for disposing of the complaint and on request of the complainant tore off the complaint of Neelam Rani, which he had earlier penned in his own hand. It was further alleged that the appellant had asked him to make the payment of bribe money in the evening of 26.07.1995 to Virender. PW-2 reported the matter to Special Branch, CBI and requested legal action be taken in this matter. A complaint was lodged which is exhibited as Ex PW-2/B.

- (ii) It is the case of the prosecution that PW9, the Trap Laying Officer (TLO), requisitioned service of two independent witnesses namely Jai Ram (PW-4) and Nem Singh (PW-5), both officials of the Vigilance Department of NDMC and in their presence arranged for the complainant to speak with the appellant on telephone and for the said conversation to be tape-recorded. A memo (Ex.PW-2/A) with regard to the said proceedings was prepared which indicates that the telephone call was made to telephone no.5503840 from telephone

no.4362494 (in the office of CBI). The tape-recorded conversation is stated to have involved both the appellant and Virender speaking with the complainant and in the course of the said conversation, the allegations of demand of bribe are stated to have been substantiated. The TLO also prepared a transcript (Ex.PW-2/D) of the said audio recording contained in cassette Ex.PX, which was thereafter put in a cloth parcel and sealed.

- (iii) The TLO then asked the complainant to arrange the money for the trap and instructed him and the two independent witnesses to come to the CBI office on the next day. It is stated that the complainant had arranged cash Rs.4,000/- in the form of 40 currency notes of Rs.100/- each (Ex.P1 to Ex.P40). These notes were treated with phenolphthalein powder, and a demonstration of the application of said powder was given for knowledge of members of the raiding party. The numbers of currency notes were noted down. The treated currency notes were given to PW-2 and he was instructed to hand over the tainted money on specific demand by the appellant. PW-4 was deputed to remain with the complainant as a shadow witness, so as to see the transaction that was expected to take place between the

complainant and the appellant. The shadow witness was directed to give a signal by scratching the hair on his head after the money passed hands. These preparations were reduced into writing in the form of handing over memo (PW2/F) with annexure Ex.PW2/E.

(iv) It is alleged that the trap party thereafter reached the area in question, where the complainant and shadow witness PW-4 proceeded into the office of the former, while other members of raiding party took suitable positions in the vicinity. It is alleged that after some time Virender came to the said office and in the presence of shadow witness asked for the money to be paid. It is stated that the complainant warded off Virender on some pretext. He first went away but again returned to the office of complainant after sometime to repeat the demand, when complainant again put him off inter alia on the basis of indication that he wanted to pay the money in the presence of the appellant.

(v) Virender returned to the office of complainant for the third time and informed the complainant that the appellant would be coming within half an hour. It is alleged that the appellant also

arrived at the scene at about 9.45 PM on two wheeler scooter and asked the complainant to hand over the bribe money to Virender, after he had been told that only Rs.4000/- had been arranged. Virender is stated to have received the tainted currency notes from the complainant after which the shadow witness gave the pre- determined signal and the appellant and Virender were apprehended.

(vi) It is also the case of the prosecution that on being challenged with having accepted the bribe, Virender told the TLO that he had accepted the money on the directions of the appellant. The tainted notes were recovered from Virender and post trap proceedings were carried out which were reduced into writing vide recovery memo (Ex.PW-2/G).

(vii) PW-3, S. N. Srivastava, DIG, S.P.G, Safdarjung Lane, New Delhi who accorded sanction for prosecuting the appellant on the basis of a report received from Anti-Corruption Branch has proved Sanction order Ex.PW3/A. He has deposed that he granted the sanction after perusing the documents of this case and after satisfying himself and applying his mind to those documents.

3. The incriminating circumstances held proved against the appellant by the Trial Judge are as follows:-

- i) The events that transpired between the complainant PW-2 and the appellant on 24.07.1995 in as much as the appellant made a demand for bribe in order to not make a case against the complainant in the presence of Virender.
- ii) The authenticity of the complaint written by the appellant on behalf of Neelam Rani that was subsequently torn off.
- iii) The authenticity of the audio recording of the telephonic conversation and the transcript thereof in which details about the date and time of accepting the bribe were finalised. This further corroborates the demand for bribe.
- iv) The acceptance of bribe by Virender at the instance of the appellant on 27.07.1995.
- v) The recovery of the treated GC notes that were accepted as illegal gratification.
- vi) The evidence of the complainant, PW-2, who has deposed affirming the aforesaid particulars.
- vii) The evidence of the shadow witnesses being credible and trustworthy and corroborates the prosecution version.

4. Learned Counsel for the appellant has filed a detailed synopsis exhaustively putting forth his arguments impugning the judgment of the Special Judge. I shall endeavour to deal with every argument advanced on behalf of the appellant.

5. It is submitted on behalf of the appellant that the appellant demanded the sum of Rs.5,000/- in order to settle the dues of Neelam Rani. It was for the purpose of satisfying the claims of Neelam Rani against the complainant that the appellant directed the complainant to pay the said sum to Virender and not for his own benefit as portrayed by the prosecution. The argument is supported by the fact that the appellant tore off the complaint of Neelam Rani in her presence in the office of the complainant only on request of the complainant and his assurance that he would pay the sum of Rs.5,000/-. It is further reiterated that the complainant has specifically deposed in that behalf. The relevant portion of his testimony is reproduced as under:-

“I knew Neelam for about 15-20 days before this case, during which period she was my employee. She had left my service about one month prior to the raid. It is wrong she was demanding Rs.5000/- from me as her salary. I did not know accused Virender prior to the date she came to me. I did not know accused Tirath Singh Rawat before they came to me first time. I had paid dues of Neelam to her, which were about Rs.1200/-. I do not know if Neelam was aggrieved that her dues had not been fully paid. I do not know present whereabouts of Neelam. When both the accused with Neelam had

come to me, there was none else accompanying them. It is correct Neelam had made a complaint accused Tirath Singh about non payment of her dues. (Vol. She had reduced the complaint in writing, when I had asked Tirath Singh to show the complaint of Neelam, she was mentioning at that time.) They had come on 24-7-95, in evening. It is wrong I had entered into a compromise with Neelam agreed to pay Rs.5000/- to her. It is wrong I and Neelam had requested to Tirath Singh to tear the complaint on account of compromise. I had agreed to pay dues of Neelam one or two days after.”

6. Learned Counsel seeks to challenge the recovery of the 40 GC notes from Virender. He does this on two grounds. The first being that the complainant has made material contradictions in specifying exactly who he handed over the bribe money to. The relevant extracts are reproduced below:-

“At around 7.00 or 7.30 PM accused Varinder Kumar came at my shop for collecting the money. He said “PAISE DE DO PAISE MANGAYE HAIN”. I told him that money would come after sometime. Thereafter, Varinder Kumar went away and came back after about half an hour, but evaded the issue by saying money has not come as yet because, I was waiting for SI Tirath Singh to come. It is correct that when accused Varinder Kumar, came to my shop on the second occasion I informed Shri SK Peshin by giving signal that he was Varinder Kumar. It is wrong to suggest that I specifically told Varinder Kumar that I would not give him money unless accused Tirath Singh comes and tells me to pay the money to him. (Confronted with portion “C to C” of his statement Ex.P.W.2/Z where it is so recorded.). Acused Varinder Kumar again came at around 8.30 PM at my shop and demanded money from me. I again told him that money was about to come. Thereafter

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX I cannot admit or deny when SI
Tirath Singh called me outside my shop, Varinder
Kumar and Jaya Ram also came out of the shop with
me. (Witness is confronted with portion D to D of
statement Ex.PW2/X where it is so recorded). It is
correct that outside my shop, I wished "NAMESTE" to
SI Tirath Singh and then he asked "KYA HAAL HAI
PARVEEN THIK HO PAANCH HAZAAR RUPAYE
KA INTZAM HO GAYA". It is correct that thereafter I
replied "THIM HUN SIR SIRF CHAR HAZAAR KAR
PAYA HUN". And on this accused Tirath Singh while
seeing towards Virender, accused, asked "PAISE LIYE
KE NAHIN". It is correct that on this Virender
responded by saying "YEH AAPKA HI INTAZAAR
KAR RAHE THE". And on this SI Tirath Singh told me
"PARVEEN VIRENDER KO CHAR HAZAAR
RUPAYE DE DO". It is correct that thereafter I passed
on those Rs.4000/- to Virender, who accepted the money
in his right and passed it on to his left hand."

7. The second submission with respect to the recovery is that even though the complainant has later clarified that he handed over the money to Virender at the instance of the appellant in his cross examination, yet the Public Prosecutor was unable to elicit from the mouth of the complainant

that his previous statement regarding handing over money to the appellant was incorrect.

8. It is submitted that the entire prosecution case was that a sum of Rs.4,000/- was paid to Virender at the instance of the appellant. The alleged bribe money was not physically handed over to the appellant. However, the evidence of PW-2 is contradictory in as much as he has deposed that the bribe money was handed over to the appellant who accepted the bribe money and kept it in the pocket of his pant and later he has admitted the suggestion that the bribe money was accepted by Virender at the instance of the appellant. It has been vehemently argued that PW-2 has constantly been shifting his stand regarding material facts and has put forth no explanation to justify the same. He ought to have explained the reason for faulting on a crucial aspect of exactly which accused he delivered the bribe money to and the absence of such an explanation makes the recovery doubtful.

9. Learned Counsel next attacks the recovery on the aspect of inconsistencies between the statement of PW-2 and the shadow witness PW-4. It is submitted that PW-2 has deposed that the tainted GC notes were recovered from the pocket of Virender and in the same breath he also pleads ignorance on whether PW-5 recovered Rs.4,000/- on directions of S.K

Peshin from the left fist of Virender. PW-4 on the other hand has deposed that the tainted money was recovered from the left fist of Virender. The relevant extract is reproduced below:-

“It is correct that in the meanwhile SI Tirath Singh began to start his scooter. In the meanwhile, Nafe Singh who was the witness gave signal to the trap party. It is correct that signal to the trap party was given by Jai Ram. On the receipt of signal, members of the trap party rushed to the spot and they apprehended both the accused. Accused persons were apprehended from their wrists. Thereafter both the accused were taken in to my office. I narrated the facts to Shri S.K.Peshin. Thereafter members of the CBI team searched both the accused. Rs.4000/- were recovered from the pocket of accused Virender Singh. I do not remember, therefore I cannot admit or deny that on the directions of SK Peshin, witness Nem Singh recovered Rs.4000/- from the left fist of accused Virender. (Witness is confronted with portion E to E of statement Ex.PW2/X and he states that he does not remember about it).”

(underlining added)

10. It is then submitted that the sodium carbonate solution containing the wash of both the palms and fingers of Virender were not found to be real pink in colour. The deposition of PW-4 demonstrates that at the time of recovery the colour of both the washes i.e. Ex P-42 (left hand) and Ex P-43 (right hand) had turned similar and at the time of recording of his evidence, the liquid in bottle Ex P-42 was milky white while the colour in bottle Ex P-43 was a yellowish shade.

11. It was also argued that the version of recovery as deposed by PW-5 contradicts the one given by PW-2, PW-4 and PW-9. PW-5 has deposed that the appellant parked his scooter and went inside the shop. A little later, he came out and soon thereafter, PW-4 gave a pre-determined signal after which the appellant was apprehended. Therefore, according to PW-5, the factum of acceptance of bribe money was not outside the shop. Per contra, the testimony of PW-2, PW-4 and PW-9 unequivocally evinces that the exchange of money and acceptance by Virender was done outside the shop.

12. Relevant portions of the testimony of PW-2, PW-4, PW-9 and PW-5 are reproduced below:-

PW-2, Complainant

“.....Accused Varinder Kumar again came at around 8.30 PM at my shop and demanded money from me. I again told him that money was about to come. Thereafter Varinder Kumar sat in my shop and started waiting. At around 9.30PM or 10.00PM accused SI Tirath Singh came at my shop on scooter and called me outside. Witness Jai ram also accompanied me outside the shop. SI tirath Singh then demanded money by saying “Paise Do”. Thereafter, I took out tainted money and passed on the same to SI Tirath Singh saying “YE LO US CASE KE PAISE”. Tirath Singh accepted the money in his hand and kept it in the pocket of his pant.”

PW-4, Jai Ram

“.....At around 9-45 P.M. accused Tirath Singh came on his scooter. He was wearing his uniform. After stopping the scooter in front of the shop of the co

plainant, accused Tirath Singh called the complainant outside the shop while sitting on the scooter. On this myself, complainant and Varinder Kumar came out of the shop. Complainant wished "NAMESTE" to accused Tirath Singh, present in court (correctly identified). Tirath Singh asked "KAYA HALL CHALL HAI PAANCH HAZAAR KA INTAZAM HO GAYA KAYA?"

PW-9 DSP SK Peshin

".....At about 8-30 P.M. one person Virender came and went into the shop. Said person namely Virender is present in court today. Witness pointed towards accused Virender Kumar He remained at the shop for sometime and then came out and went away. After sometime he returned and went to the shop and stayed there for about 5 to 10 minutes. He then came out of the shop and again went away. Thereafter complaint Parveen Kumar came to the place where we were standing and talked to the CBI officer and informed that Tirath Singh is about to come. Complainant then went to his shop. After sometime, another person came, whose identity came to know as Tirath Singh. (witness pointed out towards accused Tirath Singh). Tirath Singh had come on his two wheeler scooter, which he parked outside the shop and went inside the shop. Aftersometime, Tirath Singh came out and as he was about to start his scooter, Jai Ram gave appointed signal."

PW-5

".....At about 9.00 P.M. Virender Singh again seen entering the shop of complainant and at about 9.40 P.M. one person wearing uniform of Sub Inspector of Delhi Police came on his scooter and on seeing him complainant, Virender Kumar and shadow witness came out of the shop- Said person was Tirath Singh accused. Accused Virender Kumar is also present in court today. I identify both the accused today. In the meantime it was seen by us that Virender Kumar was accepting currency notes in his right hand and transferred it to his left hand and by this time the pre-appointed signal was also received."

13. It is further submitted that the prosecution has failed to prove the authenticity of the telephonic conversation between PW-2 and the appellant. The telephone No. dialled by PW-2 in the CBI office belongs to Virender. Both the shadow witnesses have deposed that they did not know who exactly PW-2 was speaking to over the phone. Therefore, in effect it has not been established by any independent witness that the appellant made any demand for bribe from the complainant throughout the telephonic conversation.

14. It is finally argued on behalf of the appellant that the acceptance of any illegal gratification as contemplated under Section 7 PC Act is to be made by the public servant himself and none other. Constructive acceptance cannot be attributed to a public servant in respect of illegal gratification even if it is done with the express authority of the public servant. An agent who accepts illegal gratification on behalf of the public servant would not meet the essentials of acceptance under Section 7 so as to bind the public servant for the offence.

15. I have heard the learned Counsel for the parties and perused the evidence on record. Broadly, the challenge to the trial court's judgment, amongst others things, is based on the ground that the prosecution has failed to prove the demand and acceptance of bribe by the appellant.

16. The authenticity of the torn off complaint has not been challenged in this appeal. However, PW-7, Principal Scientific Officer, CFSL has proved his report Ex PW 7/E which opines that the handwriting in the torn off complaint is of the appellant who had given his specimen handwriting. This witness was not cross examined by the appellant. Perusal of the document Ex P-41 shows that the complaint was on behalf on one Neelam Rani, wife of Kunwar Bahadur, employed as a receptionist who had suspicions about her employer, PW-2. The prosecution relies on this document to corroborate the version of PW-2 regarding demand of bribe from the appellant.

17. The fact that the prosecution has only the testimony of the complainant (PW-2) to prove the demand for bribe, is, according to the defence, a weak piece of evidence in view of the untrustworthiness and the inconsistencies of the said hostile witness. The other ground of challenge is, as noticed hereinabove, to the alleged fabrication of the documentary evidence by the investigating agency which has been used to demonstrate the recovery of the tainted money from the appellant.

18. Therefore, let me first deal with what the complainant (PW4) had to say amongst other aspects on the demand and acceptance of the bribe by the

accused in his deposition before the court and whether his testimony ought to be accepted by the court.

19. PW-2 has deposed in his chief that sometime in July 1995, Neelam Rani, who had been engaged by him as a receptionist, came to his office accompanied by Virender and the appellant. The appellant urged that Neelam Rani had complained to him about the complainant not having settled her dues to which he replied in the negative. On this the appellant stated that either he should pay the dues of Neelam Rani or make him happy. After some conversation the appellant demanded Rs.5,000/- as bribe for not making a case against the complainant.

20. He further deposed that he went to the CBI office the next day with his complaint and a telephonic conversation took place between him and the appellant which was recorded in the CBI office. The appellant is stated to have again demanded the bribe from him with instructions to deliver the same to Virender. On 27.07.1995 he again visited the CBI office and produced Rs.5,000/- in 50 GC notes that were treated with a chemical powder and a demonstration of the phenolphthalein test was given.

21. After the aforesaid evidence, PW-2 was declared as hostile as he had resiled from his earlier statement regarding the dates of the events that took place, the fact that he spoke to the appellant on telephone and the amount of money he had brought to the CBI as bribe for the appellant.

22. On being cross examined by the prosecutor PW-2 has deposed that the date of the first visit by the appellant to his office was on 24.07.1995. He clarified that he went to the CBI office on 26.07.1995 and that the telephonic conversation took place on the said with Virender and not the appellant. He denied a suggestion that neither the appellant nor Virender spoke to him on the telephone which was recorded by way of audio recording.

23. He also clarified that he had brought a sum of Rs.4,000/- to the CBI office on 27.07.1995 and not Rs.5,000/- as stated earlier.

24. The argument raised by the counsel for the appellant at the first stage is that the amount of Rs.5,000/- was not a demand for bribe rather the said amount was on account of compromise between the parties and that Virender was facilitating the same. This argument deserves to be mentioned only to be summarily rejected. Not only has PW-2 denied that he owed any money to Neelam Rani but he has also specifically denied the suggestion that he

entered into any compromise with Neelam Rani. Further, even in case a compromise of any kind had taken place between the parties, the appellant was in no way an interested party to the same and should not have been involved in any subsequent event thereafter.

25. Learned Counsel for the appellant has argued that PW-2 has contradicted himself in his cross examination when he subsequently states that he handed over the money to Virender at the instance of the appellant. In my view, the aforesaid contradiction is minor in as much as it does not create a doubt regarding the acceptance of the bribe money. The lingering doubt, if any, is further clarified by the fact that the tainted GC notes were recovered from the pocket of Virender. The shadow witnesses PW-4 and PW-5 have deposed to the effect that the bribe was handed over to Virender at the instance of the appellant thereby corroborating the subsequent clarification by PW-2. An express acknowledgment that the previous statement is withdrawn is not a material requirement when the same has been subsequently clarified and does not affect the credibility of the complainant in the instant case.

26. The next argument is that PW-2 has not corroborated the testimony of PW-5 in as much as he pleads ignorance on the issue that PW-5 recovered

the tainted notes from the left fist of Virender. Again said I do not see the requirement of such corroboration materially affecting the credibility of PW-2 in view of the fact that this aspect stands sufficiently corroborated by PW-4 who was also a shadow witness.

27. Coming now to the argument that the testimony of PW-5 contradicts that of PW-2, PW-4 and PW-9 in as much as they have deposed to the effect that the exchange of money and post trap proceedings occurred outside the shop whereas PW-5 has deposed that the acceptance of bribe was inside the shop. This is not a material contradiction and could be a result of normal errors of observation or normal errors of memory due to lapse of time and due to mental disposition.

28. PW-2 was constantly accompanied by PW-4, the shadow witness, and he has affirmed the testimony of PW-2 on aspect of demand during the telephonic conversation, the events that transpired before the appellant came to the shop of PW-2, the acceptance of illegal gratification by Virender at the instance of the appellant and the consequent recovery. The aspect of demand through the telephonic conversation and the recovery of tainted GC notes is further affirmed through the testimony of PW-5. These two witnesses were independent witnesses and I find their evidence credible and trustworthy.

29. In view of the aforesaid contradictions pointed out by the Learned Counsel for the appellant, I deem it apposite to refer to the case of *Akbar v. State* reported as **2009 Cri LJ 4199**, wherein this Court has enumerated certain principles on appreciation of ocular evidence of a witness. The relevant portion is reproduced below:-

“49. The appreciation of ocular evidence is a Herculean task. There is no fixed or strait-jacket formula for appreciation of ocular evidence. The judicially evolved principles regarding the appreciation of the ocular evidence in a criminal case can be enumerated as under:-

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when

discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. 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.

VII. 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. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. 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.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from 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.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness. (These principles have been culled out from the decisions of Supreme Court reported as *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* 1983 Cri LJ 1096, *Leela Ram v. State of Haryana* 1997 Cri LJ 3178 and *Tahsildar Singh v. State of UP* 1959 Cri LJ 1231)."

30. Keeping in view the aforestated principles coupled with the fact that the complainant and the shadow witnesses were examined nearly 7 years after the incident, minor contradictions are bound to creep in due to lapses in

memory. All of these witnesses were cross examined at length on the aspect that these witnesses were engaged as shadow witnesses in a few other cases by CBI. However, it has also come forth by way of such examination of PW-4 that the instant case was the first of those cases. Therefore, in my opinion the shadow witnesses as also the complainant are worthy of credence and their testimony can be relied upon.

31. Coming now to the argument that the colour of the sodium carbonate solution containing the wash of both the palms and fingers of Virender were not found to be real pink in colour. In this regard, suffice it is to state that PW-1, K. S. Chhabra, Senior Scientific Officer, CFSL has deposed that on analysis of the contents of the sealed bottles sent to him, both samples were found to contain phenolphthalein and sodium carbonate. His report Ex PW-1/A and his testimony was not challenged at trial. It is again noticed that while the sealed samples were sent to CFSL on 04.08.1995, they were produced in court after a period of more than 7 years. The mandate of law in this regard is that the colour of the solution at the time of the incident and sealing is relevant and should turn pink confirming the presence of phenolphthalein and sodium carbonate. The colour of the solution at the time

of recording of evidence is not material and does not raise doubt on the authenticity of the chemical reaction in view of the testimony of PW-1.

32. Learned Counsel for the appellant has laid great stress on the fact that voice samples of the appellant or Virender was not taken and resultantly the audio recording of the telephonic conversation cannot be relied upon. Admittedly, the prosecution has not conducted any spectography test. The prosecution is relying on this piece of evidence to prove demand of bribe by the appellant in addition to the first meeting that took place in the office of the complainant.

33. In this context, the Supreme Court in case of *Ram Singh & Ors v. Ram Singh* reported as **AIR 1986 SC 3** has afforded clarification on the aspect of admissibility of tape recorded conversations. Relevant portions are reproduced below:-

“31. Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows:

1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strick proof to determine whether or not it was really the voice of the speaker.

2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence - direct or circumstantial.

3) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

4) The statement must be relevant according to the rules of Evidence Act.

5) The recorded cassette must be carefully sealed and kept in safe or official custody.

6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

32. The view taken by this Court on the question of admissibility of tape recorded evidence finds full support from both English and American authorities. In **K. v. Maqsood Ali** [1965] All. E.R. 464., Marshall, J., observed thus:

We can see no difference in principle between a tape recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this Court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. There can be no question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged.”

34. The complainant, PW-2 has identified his voice in the tape recorded conversation as also of the appellant and Virender. The audio cassette containing the recording was duly sealed. The transcript of the recording was promptly prepared before sealing the audio cassette in the presence of independent witnesses who have deposed to this effect. There is no evidence brought on record to suggest that the recording was tampered with. Learned Trial Judge has observed in the impugned judgment that the voices were clearly audible and not distorted.

35. In view of the aforesaid circumstances, I see no reason to discard this piece of evidence. Perusal of the transcript unequivocally evinces that there was a specific demand by the appellant for a sum of Rs.5,000/- from the complainant and details of meeting for the said purpose were being discussed between the complainant and Virender along with the appellant.

36. Coming now to the argument that the bribe was not physically received by the appellant. Learned Counsel has emphasised that Section 7 of the Prevention of Corruption Act mandates that the illegal gratification must be accepted by the public servant himself. Merely because it was accepted at his instance, the offence charged with cannot be said to have been proved.

Reliance is placed on *A Subair v. State of Kerala* reported as **2009 (3) SCC**

(Cri) 85 wherein it was held as under:

“7. The essential ingredients of Section 7 are: (i) that the person accepting the gratification should be a public servant; (ii) that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.

8. Insofar as Section 13(1)(d) of the Act is concerned, its essential ingredients are: (i) that he should have been a public servant; (ii) that he should have used corrupt or illegal means or otherwise abused his position as such public servant and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person.”

37. Section 7 and Section 13 Prevention of Corruption Act, 1988 are reproduced below:-

“**Section 7-** Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than six months

but which may extend to five years and shall also be liable to fine.

Section 13- Criminal Misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct, -

(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any, person whom he knows to be interests in or related to the person so concerned; or

(c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) If he, -

(i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or

(ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) If he or any person on his behalf, is in possession or has, at any time during the Period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation. -For the purposes of this section “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance, With the provisions of any law, rules or orders for the time being applicable to public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

38. The terms used in Section 7 are “accepts or obtains or agrees to accept or attempts to obtain” from any person. Therefore, the realm of acceptance of illegal gratification as contemplated under Section 7 is quite broad. Black’s Law Dictionary defines the term ‘obtain’ as follows:-

To get hold of by effort; to get possession of; to procure; to acquire, in any way

39. Thus, the argument that a physical acceptance and consequent recovery from the public servant himself is a pre requisite under Section 7 or

Section 13 deserves to be rejected in view of the meaning attached to the terms contained in these provisions.

40. It is noticed that the appellant as well as Virender do not deny their presence at the spot. The explanation of the appellant is that that there had been a quarrel in the area and that he had happened to pass by and on noticing the incident he had stopped but was falsely involved in this case. Virender has not even attempted to justify the reasons for his presence in the shop of PW2 at the relevant time. PW-4 has categorically deposed that the appellant demanded money from PW-2 and directed that they be given to Virender. Recovery of treated GC notes from Virender has been duly proved in accordance with law.

41. In view of these circumstances, it would be difficult to insist on a requirement that the public servant must physically accept the illegal gratification. I say so for another reason. The object of enacting a separate enactment by way of The Prevention of Corruption Act was to widen the coverage of anti corruption laws and to make provisions more effective in combating corruption among public servants. In my view, the intent of the Apex Court was not to insist on physical acceptance of illegal gratification so as to attract the offence under Section 7. This would not only defeat the

very purpose of this legislation but also lead to catastrophic results where public servants would never physically accept the illegal gratification and direct them to be accepted by any person who is not in a position to facilitate the bribe giver.

42. In the instant case, the appellant was additionally present at the time of acceptance and categorically directed the complainant to hand over the illegal gratification to Virender. There remains no doubt that the appellant and Virender were conspiring to extract money from PW-2 on the pretext of not following up a complaint against him. It cannot be said that the appellant was not party to the whole design only because the money came to be recovered from Virender.

43. In view of the foregoing discussion, the demand and acceptance of illegal gratification being proved in the instant case, a presumption under Section 20 PC Act is raised against the appellant and he has not been able to satisfactorily rebut the same.

44. Accordingly, the appellant is found guilty under Section 120 IPC read with Sections 7 and 13(1) (d) read with Section 13(2) of the PC Act. The appellant is also found guilty and convicted for the substantive offences

under Sections 7 and 13(1) (d) read with Section 13(2) of the PC Act. The appeal is accordingly dismissed. Resultantly, the accused shall be taken into custody forthwith. The bail bond shall stand cancelled and the surety discharged.

NOVEMBER 27, 2013

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**SIDDHARTH MRIDUL
(JUDGE)**

