

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 320 OF 1995

Laxman Shankar Koli,)
aged 48 years Occ. Service as Police Head)
Constable, District Kolhapur, Resident of)
At & Post Bastwad, Tal. Shirol,)
District Kolhapur.)...Appellant

vs.

The State of Maharashtra ... Respondent

Mr. Yashpal Thakur, Appointed Advocate for the appellant.
Mr. Arfan Sait, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 9th December, 2015.

ORAL JUDGMENT :

The appellant herein stands convicted of the offence punishable under Section 161 of the Indian Penal Code and sentenced to undergo imprisonment for six months and to pay fine of Rs.100/- and also convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to undergo R.I. for one year and to pay fine of Rs.100/- in default to undergo simple imprisonment for 15 days by the Special Judge, Kolhapur, in Special Case No.1 of 1988 by a judgment

and order dated 17.5.1995. Hence, this appeal.

2. The case of the prosecution is that on 11.12.1987, one Krishna B. Sundholi approached the Office of the Anti-Corruption Bureau (“ACB”) and lodged a report. He is working in the Irrigation Department as Mechanical Sub-overseer at Tilarinagar. That he is the father of Dhananjay. That Dhananjay was prosecuting a diploma course in Automobile Servicing as well as he used to repair radio and tape-recorder at home. One Mr.Kamat was working in Tilari Post Office and given his tape-recorder for repair to Dhananjay. The said tape-recorder was in the house of the complainant. On 14.11.1987, at about 10 a.m., Mr. Kamat had been to the house of the complainant and had called upon Dhananjay. That Dhananjay had accompanied Mr. Kamat. On the same day, at about 6-7 p.m., Kamat had returned to the house of the complainant and had demanded the tape-recorder. The complainant had questioned Kamat about the whereabouts of his son. Shri Kamat was accompanied by Shri Koli, Police Constable of Tilarinagar Out-post. Mr. Koli had informed the complainant that Mr. Kamat had filed a complaint against Dhananjay alleging therein that he had stolen the tape-recorder belonging to Mr. Kamat. The complainant was further apprised of the fact that Dhananjay has been detained in the police

station. The Police Constable had asked the complainant to hand over the tape-recorder belonging to Mr. Kamat. The complainant handed over the tape-recorder and had informed Mr. Koli that Kamat had given the tape-recorder for repairs. They all went to the police station. Dhananjay was found in the police station. The complainant was not allowed to meet his son Dhananjay. On 16.11.1987, the complainant had been to Chandgad Police Station and had enquired about Dhananjay. At that time, it is alleged that the police constable Koli had informed the complainant that the Court has granted 15 days PCR to Dhananjay. Thereafter, the complainant had filed an application for bail through Advocate Shri P.B.Patil. On 20.11.1987, Dhananjay was enlarged on bail. The next date for appearance of the accused was 30.11.1987. on 30.11.1987, at about 11 a.m., the complainant had been to the Court. The Court was on leave. The Clerk had assigned the next date as 14.12.1987. On the same day, in the afternoon, they had met Mr. Koli on the way while they were proceeding to the S.T. Stand. Mr. Koli was in front of the police station. Mr. Koli had enquired with them as to why they have immediately engaged an Advocate, instead they should have met him, he could have helped them. Mr. Koli had enquired with the complainant about the next date. They had told Mr. Koli that the next scheduled date was 14.12.1987. At that time, Mr. Koli had

demanded Rs.200/- for acquitting Dhananjay. The complainant had told Mr. Koli that he would make some arrangement. The complainant was directed by Mr. Koli to see him on 14.12.1987 along with Rs.200/- and give it to him. On 5.12.1987, Dhananjay was allegedly assaulted by three persons. On 6.12.1987, the complainant had again approached Tilarinnagar Outpost and had met Mr. Koli. The report filed by the complainant was reduced into writing by Mr. Koli. Mr. Koli had asked the complainant to settle the said dispute amicably and he had enquired about the Crime No.88 of 1987 in which Dhananjay was an accused. The complainant had informed Mr. Koli that he could not make any arrangement for money. Upon that Mr. Koli had informed the complainant that on 14.12.1987, he would be at Chandgad and that on that day he should get the money. The said demand had initiated the complainant to approach the office of the ACB for lodging a complaint against Mr. Koli for demanding illegal gratification. On 11.12.1987, the office of the ACB had reduced into writing the report lodged by the complainant. A trap was arranged on 14.12.1987. The Dy. S.P., ACB had called upon two public servants to act as panch witnesses. It is pertinent to note that the public servants, who were summoned to act as panchas, were also working in the Irrigation Department. The pre-trap panchnama was recorded. On 14.12.1987, the

trap was arranged. According to the prosecution, the trap was successful. Thereafter, the Dy.S.P. ACB filed a complaint at Chandgad Police Station against the accused-appellant. After obtaining sanction for prosecution, charge-sheet was filed.

3. The case was registered as Special Case No.1/1988. The prosecution examined six witnesses to bring home the guilt of the accused.

4. PW-1 happens to be the original complainant Mr. Krishna Sundholi. He has deposed before the Court in consonance with the report filed by him at the office of ACB. In the examination-in-chief, it is specifically admitted by PW-1 that on 14.12.1987, the raiding party had not entered the police station. The complainant, his son and a shadow witness were standing near the temple which is in close proximity of the police station. The accused Mr. Koli approached them. He was wearing his uniform. He was holding a bag in his left hand and he was also holding some papers. He had asked the complainant to come to the Court and, therefore, he along with his son and Mr. Dhargar i.e. shadow witness had proceeded towards the Court. On their way towards the Court, according to PW-1, Mr. Koli had asked as to whether he had brought the thing which

was demanded. PW-1 answered in the affirmative. Mr. Koli had then asked him to hand over the same to him. Upon that, PW-1 had handed over tainted currency notes to Mr. Koli. He had accepted the same and kept it in his right hand side pocket. Thereafter, PW-1 had given pre-determined signal to the raiding party. Mr. Koli was immediately apprehended. The tainted currency notes were recovered. The police officer had recorded the post-trap panchnama in accordance with law.

5. In the cross-examination, PW-1 has admitted that before arrest of his son, he had no personal knowledge as to the articles given to him by anybody much less Mr. Kamat. He had never seen his son bringing any articles to the house and if he had seen the articles, he did not know the purpose for which it was brought. It is also admitted in the cross-examination that on 14.11.1987, he had not asked Mr. Kamat as to why he had taken his son with him nor enquired as to where his son is being taken. Dhananjay had also maintained silence. It was only in the evening that Mr. Kamat revisited the house of PW-1. PW-1 questioned Mr. Kamat about the whereabouts of Dhananjay. He had handed over the tape-recorder without asking any questions. According to PW-1, since the constable had asked him to hand over the tape-recorder, he had obliged. He had not questioned

Mr. Kamat as to why and how he had lodged the complaint of theft against his son and why he had not informed PW-1 about the same. It is also admitted in the cross-examination that 2 or 3 policemen had not allowed him to meet his son. However, it does not appear that he had complained to the In-charge Police Officer that he is not allowed to meet his son. It is clear from the tenor of the cross-examination of PW-1 that he had no dialogue either with the In charge Police Officer or with Mr. Koli in the police station. PW-1 has denied the suggestion that on 15.11.1987, tape-recorder was seized at the instance of Dhananjay under Section 27 of the Indian Evidence Act. He has also denied the suggestion that Dhananjay was arrested on 15.11.1987. On 16.11.1987, PW-1 had engaged Advocate Shri P.B.Patil to file an application seeking bail for Dhananjay. On 16.11.1987, Dhananjay was not enlarged on bail as he was in police custody on that day. On 20.11.1987, the police has requested the Court to grant Magistrate custody Accordingly, he was granted MCR and he was released on bail. The next scheduled date for appearance in the Court was 30.11.1987.

6. It is pertinent to note that in the cross-examination, PW-1 has categorically admitted that on 30.11.19897, he had attended the Court along with his son. The next scheduled date was 12.1.1988 given by the Court

Clerk.

7. PW-1 has denied the suggestion that the first demand was made by Mr. Koli on 30.11.1987. In fact, it is admitted that Mr. Koli had made first demand on 16.11.1987. It is also admitted in the cross-examination that PW-1 had taken the next date of hearing from the Bench Clerk. PW-1 has further asserted in the cross-examination that no charge-sheet was filed against his son and in fact it was a “B” Summary the Court had acquitted his son within one month from the date of filing of the report to ACB. According to PW-1, the accused Mr. Koli had informed him that he would help his son to get an acquittal from Crime No.88 of 1987 and he had demanded gratification for the same. PW-1 has denied the suggestion that the tainted currency notes were thrust in the pocket of the accused.

8. PW-2 Ravindra Shinde was working as a Junior Clerk in the Court of Judicial Magistrate, First Class at Chandgad. The Court used to be available for just 15 days in a month. That Dhananjay was produced before the Metropolitan Magistrate on 16.11.1987 in Crime No.88 of 1987,. The accused was remanded to police custody till 20.11.1987. The police custody was granted at the request of head constable Koli. On 20.11.1987, the accused was remanded to Magistrate Custody till 30.11.1987. On

16.11.1987, Advocate Shri P.B.Patil had filed an application seeking bail for Dhananjay. On 20.11.1987, the application seeking bail was allowed. They are marked as Exhibits 28 to 30. The accused had furnished personal bond and surety bonds. On 30.11.1987, the Court had camped at Ajara and, therefore, charge-sheet was not filed. Hence, the next scheduled date was 12.1.1988. PW-2 admits to have told the accused that the police may filed the charge-sheet on 12.1.1988. It is elicited in the cross-examination that on 16.11.1987, the accused had no complaints against the police. Hence, it is established that the next scheduled date was rather 12.1.1988.

9. PW-3 Vithal Dhangar was serving as a meter reader in Kolhapur Water Supply Department on the relevant date. On 11.12.1987, the office had received a requisition for deputing two persons to act as panchas. Accordingly, he was sent to the office of the Anti-Corruption Bureau. On 11.12.1987, at about 5 p.m., he had reported to Mr. Mandlik in the Local Crime Branch. He was accompanied by Mr. Bhadulkar working in the same department. On 12.12.1987, PW-3 and another panch had approached the office of ACB. They were introduced to PW-1. Thereafter, they had left for Tilarinagar. They had reached Tilarinagar in the intervening night. On the next day, i.e. 14.12.1987, PW-3 had enquired

with the original complainant about his identity as well as the facts of the case. The panchas were made to understand the manner in which the trap would be conducted, the signal which was to be given by the original complainant etc. PW-2 has specifically asserted that he was instructed to go with the complainant to Chandgad Police Station. That Mr. Sundholi was specifically directed not to hand over the currency notes unless there is a demand. As far as the actual incident is concerned, PW-3 has narrated before the Court that while they were near the police station, they saw one police officer approaching towards them. At that juncture, he was informed by original complainant that the said person approaching them was Mr. Koli. Thereafter, Mr. Koli had requested them to accompany him to the Court. According to PW-3, while they were crossing the road, Head Constable had asked Mr. Sundholi whether he had brought the thing as demanded on the previous day. Sundholi had replied in the affirmative and therefore PW-1 had handed over the amount to Mr. Koli. Accused Mr. Koli was apprehended. The post-trap panchnama was recorded. In the cross-examination, PW-3 had admitted that Bahadulkar and himself were working in the Water Supply Department. It is also admitted that PW-3 has denied the suggestion that the complainant was instructed to hand over the tainted currency notes to Mr. Koli only in the eventuality that there is a demand for

bribe. That PW-3 and Mr. Bahadulkar were instructed to see whether Koli accepts the bribe or not. PW-2 has further admitted that except seeing that Sundholi gives money to Koli, he had not seen any other thing. An admission has been elicited in the cross-examination as follows :-

“I do not now in whose pocket the notes were thrust. I do not know what happened thereafter. I was not read over the panchnama as well as the statement recorded by Mr. Mandlik. If it is so mentioned in the panchnamna, that Sundholi should go to Koli open talks about his work and if Koli would demand for bribe he should given that amount to Koli and unless and until Koli demands for bribe money Sundholi should not touch the currency notes. I cannot say as to why it is so mentioned in the panchnama and my statement.”

It was apparent that in the cross-examination, the witness had resiled from the earlier statement and therefore the learned prosecutor conducting the case had rightly submitted to the Court that the witness be declared hostile and accordingly the witness was declared hostile. After the witness was declared hostile, the witness has thereafter resorted to the earlier statement and in the cross-examination by the prosecutor, it is admitted as follows :-

“It is true that at the time of pre-trap panchnama at the rest house Mr. Mandlik had given instructions to me and Sundholi. It is true that that time Sundholi was instructed that unless and until Koli emands for the bribe Sundholi should not touch the currency notes. It is true that I was instructed that Sundholi should hold talk with Koli regarding his work and I should listed to it carefully.”

10. Learned APP has, at this stage, submitted that after the above-mentioned admissions, it cannot be said that the witness has turned hostile and therefore his evidence deserves to be relied upon for arriving at a conclusion that the prosecution has proved demand and acceptance by the accused.

11. The learned counsel appointed for the appellant submits that it would be hazardous to rely upon the testimony of such a witness who would revert from one side to another after administration of oath. The testimony is not of a sterling nature and therefore it would be unsafe to place implicit reliance upon the evidence of such a witness.

12. The learned counsel for the appellant had drawn attention of this Court to further cross-examination by the prosecutor which is as follows :-

“It is true that for the first time, I came to know about Koli in the gate of the police station.”

The learned counsel submits that this admission would make it clear that PW-3 was not present in the office of Anti-Corruption Bureau when the

complainant had narrated his complaint to the Dy.S.P. of Anti-corruption Bureau. As has been rightly submitted no implicit reliance can be placed upon the substantive evidence of such a witness who would favour one party or another during the course of his substantive evidence.

13. The learned counsel appointed for the appellant has further drawn attention of this Court to the post-trap panchnama which is at Exhibit 38. The recitals of Exhibit 38 would indicate that at the time of raid, Mr. Koli was holding a bag and some documents in his left hand. That at the time of post-trap panchnama, the officer had seized the said documents and bag and had inspected the same. There was no emission of glow on the said document in ultra violet. The description of the document as given in Exhibit 38 is as follows :-

“Original charge sheet and case papers and two set of those papers of the Chandgad Police Station C.R. No.88/87 U.S. 457, 380 of I.P.C. Against accused Dhananjay Krishnarao Sundholi R/o. Tilarinagar. These documents and sets of copies were seized and taken into custody.

A Tape recorder was in the plastic bag in the hand of Koli hawaldar. The paper label was pasted on it and upon written as “punchanama dt. 14-11-87 seized from the custody of accused Dhananjay Krishnarao Sundholi. Also signature of panchas and head constable Tilarinagar are on it. Said Tape recorder was returned to H.C.Koli”.

14. The learned counsel appointed for the appellant vehemently submits that it is apparent on the face of record that at the relevant time, Mr. Koli was proceeding towards Court to file charge sheet against Dhananjay Sundholi as the tape-recorder was muddemal article in Crime No.,88 of 1987. According to the learned counsel, this fact would hit at the foundation of the prosecution case that illegal gratification was demanded for discharging/acquitting the accused Dhananjay. That in fact, Head Constable Koli was on his way to file charge-sheet in the Court and, therefore, he had also requested PW-1 and his son to proceed towards the Court.

15. At this stage, the learned APP has drawn attention of this Court to Exhibit 45 which is the sanction order issued by the Superintendent of Police, Kolhapur to prosecute the accused. The sanction order was admitted by the defence under Section 294 of Cr.P.C. It is in these circumstances that the prosecution has not recorded the substantive evidence of the sanctioning authority. The learned APP submits that admission of a document would amount to admission of the contents of the document. It is also submitted that the sanction order would give the entire case of the prosecution as far as demand and acceptance are

concerned. According to learned APP, therefore, the accused has admitted the case of the prosecution and that he foreclosed his defence. It cannot be said that the accused has rebutted the presumption which is drawn under Section 4 of the Prevention of Corruption Act, 1947. The Legislature in its wisdom has used the word 'shall' which mandates the Court to draw the presumption once the prosecution has been able to establish the acceptance of the tainted currency notes. It is true that the presumption has to be drawn. However, the evidence on record has to corroborate all the necessary particulars and only because the accused has admitted the sanction order, it cannot be said that he has accepted the prosecution case and his defence cannot be foreclosed. The defence of the accused has to be considered and after drawing presumption, if the accused by evidence on record is able to establish the preponderance of probabilities, the admission need not be considered by the Court.

16. PW-4 Dhananjay Sundholi is the son of PW-1 who was an accused in Crime No.88 of 1987 registered at Chandgad Police Station. He has deposed before the Court that while he was in police custody, Mr. Koli had told that since it was his first offence, he would be released on execution of bond by Court. He has deposed before the Court that on

14.11.1987, Mr. Kamat had given a complaint to police station against him alleging that he had stolen his car tape. He has denied the suggestion that he was arrested on 15.11.1987. He has also denied the suggestion that police had attached the car tape from his house on 15.11.1987. He has evaded to answer as to whether Kamat's complaint was recorded by P.S.O. Patil on 14.11.1987 and that investigation was to be conducted by Mr. Koli. It is pertinent to note that there is a specific admission by PW-4 that on 30.11.1987, he was told that next date was 12.1.1988. When Mr. Koli asked his father about the next date, he had informed Mr. Koli that next date was 14.12.1987 as on that date he had to go to the Court. All this would make it clear that PW-1 and PW-4 had deliberately hatched a plan to trap Mr. Koli on 14.12.1987. In fact, there was no reason for them to tell Mr. Koli that the next date was 14.12.1987 when they were fully aware that the next date was 12.1.1988. The witness has denied the suggestion that he and his father were insisting upon Koli not to submit charge-sheet against him, he has also admitted that on 6.12.1987, he had learnt from Koli that he was available at Chandgad on 14.12.1987. It is also admitted that the police station and the Court are on two sides of the road. He has further deposed that on that day he had not seen as to what was in possession of Mr. Koli. The admission by PW-4 that there was no talk between his father

and Mr. Koli about the criminal case against him before the demand was made on the date of the incident speaks volumes for itself. There was no talk about the criminal case till the arrival of Mr. Mandlik on the spot between his father and the accused. It was only upon arrival of Mr. Mandlik, that there was a talk between PW-1 and the accused. All this would show that the acceptance of tainted currency notes was not preceded by the demand at the time of incident.

17. The learned counsel for the appellant has drawn attention of this Court to Exhibit 32 which is the Roznama of the Case No.88 of 1987. On the Roznama, there is an endorsement of the next date 12.1.1988. The said adjourned date is endorsed by Dhanraj Sundholi i.e. accused in Crime No.88 of 1987, who happens to be PW-4.

18. PW-5 Prabhakar Sawant was officiating as a PSI at Chandgad Police Station. He is the superior officer of the accused Mr. Koli. He has deposed before the Court that the charge-sheet of Crime No.88 of 1987 was shown to him. He had inspected the same and had endorsed upon it and he has further deposed that on 14.12.1987, the muddemal clerk had given the property in that case (Crime No.88 of 1987) namely tape-recorder to

Police Head Constable Kol,i. He has also admitted that PW-1 and PW-4 had never complained against Mr. Koli.

19. PW-6 is the first informant and the Investigating Officer of Crime No.98 of 1987. He has deposed before the Court about the steps taken by him in the course of investigation. In the cross-examination, PW-6 has admitted that in the course of investigation, there was nothing on record to indicate that 14.12.1987 was the next scheduled date of Crime No.88 of 1987. He has further admitted that Exhibit 38 does not speak of the demand preceding the acceptance by the accused. It is pertinent to note that PW-6 has specifically admitted before the Court as follows :-

“It is true that, after the trap the accused explained that, Sundholi had given the amount for giving it to the advocate. It is true that on that day, the accused was going to the Court for submitting a charge sheet and producing the muddemal in that case (Crime No.88 of 1987).

20. The learned counsel for the appellant rightly submits that the prosecution has miserably failed to establish that the demand had preceded the acceptance. Demand is sine qua non to acceptance.

21. In the case of **K.S.Panduranga vs. State of Karnataka (2013) 3 SCC 721**, the Hon'ble Apex Court observed as follows :-

“It is well settled in law that demand and acceptance of the amount as illegal gratification is sine qua non for constitution of an offence under the Act and it is obligatory on the part of the prosecution to establish that there was an illegal offer of bribe and acceptance thereof.”

“Keeping in view that the demand and acceptance of the amount as illegal gratification is a condition precedent for constituting an offence under the Act, it is to be noted that there is a statutory presumption under Section 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted other than for the motive or the reward as stipulated under Section 7 of the Act. When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability. It is not to be proven beyond all reasonable doubt.”

Moreover, the defence of the accused has to be considered to ascertain as to whether he has established the preponderance of probabilities. Upon perusal of evidence, it is clear that the accused has rather established the preponderance of probabilities. It is his defence that PW-1 had requested him to engage an Advocate. He had thrust the currency notes into his pocket. He wanted to return the said notes and at that time the raiding party

had accosted him. According to the learned counsel, therefore, there was emission of glow of ultraviolet on his hand as well as in the inner pocket of his pant pocket. The defence of the accused has to be tested on the same scale as that of the evidence of the prosecution.

22. In view of the above discussion, the accused deserves to be acquitted of all the charges levelled against him.

23. The learned counsel for the appointed appellant has put in his best efforts to espouse the cause of the appellant. His professional fees are quantified at Rs.5,000/- (Rupees five thousand only), to be paid to the learned counsel within three months from today.

ORDER

- (i) The appeal is allowed.
- (ii) The judgment and order dated 17th May, 1995 passed by the Special Judge, Kolhapur, is quashed and set aside.
- (iii) The appellant is acquitted of the offence punishable under Section 161 of the Indian Penal Code and under Section 5(2) read with

Section 5(1)(d) of the Prevention of Corruption Act, 1947.

(iv) Bail bonds are cancelled.

Appeal is disposed of.

(SMT.SADHANA S.JADHAV, J.)