HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.400 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the State represented by Inspector of Police, SPE/CBI, Visakhapatnam aggrieved by the Judgment dated 30-07-2005 in C.C.No.13 of 2001 passed by learned Special Judge for CBI cases, Visakhapatnam acquitting Accused Officer for the charges under Section 120B IPC and Sections 7 and 13(1) (d) (ii) r/w 13 (2) of Prevention of Corruption Act, 1988 (for short "PC Act").

2) Facts which led to file the instant appeal can be stated thus:

a) P.Satyanarayana Murthy—(AO) was the Assistant Accounts Officer, Financial Advisor to Admiral Superintendent (FA to ASD), Wage—II, Naval Dockyard, Visakhapatnam since January, 1988.

b) The prosecution case is that Md.Shariff—complainant, who was working as Electrical Fitter (HSK-II) in the same organisation, was suspended from service due to registration of criminal case against him for the charge of theft and later he was acquitted by the criminal Court. After revocation of suspension, he has to be paid arrears of subsistence allowance which was worked out at Rs.25,700/-. The arrears bill was dispatched to the accounts section (FA to ASD) on 29.09.2000 for final payment. So, the complainant met the AO as he was the in-charge of wages section and authority to pass his arrears bill and requested for payment of the bill. At that time AO demanded bribe of Rs.3,000/- for passing the bill. Thereafter, the complainant met AO three more times and on all occasions AO reiterated his demand for the bribe.

c) Unwilling to pay the bribe amount, complainant gave a complaint on 12.10.2000 to S.Eshak Mohammad—Inspector of Police, CBI, Visakhapatnam (PW7), who registered a case in RC23(A)2000-CBI/VSP and successfully laid trap against AO on 13.10.2000 at his office and after completion of investigation, PW8 filed charge sheet.

d) On appearance of accused, charges under Section 120B IPC and Sections 7 and 13(2) r/w 13(1)((d) of P.C. Act were framed against AO and trial was conducted.

e) During trial, PWs.1 to 9 were examined and Exs.P1 to P18 were marked and MOs.1 to 7 were exhibited on behalf of prosecution. DWs.1 and 4 were examined and Exs.D1 to D21 and C1 and C2 were marked on behalf of defence.

The plea of accused is one of total denial.

f) The trial Court on appreciation of oral and documentary evidence found the accused not guilty of the charges for which he was charged and accordingly acquitted him.

Hence the appeal.

3) Heard arguments of Sri P.Kesava Rao, learned Special Standing Counsel (Spl.SC) for CBI cases and Sri K.Srinivasa Rao, learned counsel for respondent/AO.

4a) Severely fulminating the judgment, learned Spl.S.C argued that the trial Court committed severe blunder in appreciation of facts and evidence on record particularly PWs.1 and 2 and it magnified the minor and irrelevant discrepancies and lapses and came to the wrong conclusion that prosecution failed to prove the guilt of the accused.

Expatiating his stand, he argued that trial Court erred in treating non-examination of Moulali who accompanied PW1 to give Ex.P1—report as a defect in prosecution case and so also, non-examination of unnamed labourer who informed PW1 that the accounts department would take bribe for passing the bills as another defect in its case. He argued that their non-examination is inconsequential because the evidence of PW1 on the aspects of demand and acceptance of bribe is wholly trustworthy and he had nothing to do with the earlier dispute between union members and accounts department regarding passing of their medical bills.

b) Learned Spl.S.C further argued the trial Court erred in concluding that union pitted PW1 to implicate the accused and in the process, PW2 also assisted them. Severely taking objection, he argued that neither PW1 nor PW2 have had any differences or animosity with accused to implicate him in a false case and accused could not establish the said animosity between him and PWs.1 and 2. Moreover, PW2 is not a union member but belongs to administrative side and therefore, his joining hands with the union to implicate his colleague officer is quite unbelievable. On the other hand, the criminal conspiracy between AO and PW2 is manifest from the fact that AO instructed PW1 to hand over bribe amount to PW2. The trial Court wrongly held that prosecution did not examine any witness to prove the criminal conspiracy between AO and PW2. He submitted that since criminal conspiracy will be generally hatched in secrecy, it is difficult to secure any direct evidence and hence it can be established only by circumstantial evidence. The factum of AO instructing PW1 to give the amount to PW2 is sufficient to prove the criminal conspiracy. He thus submitted that with the evidence of PWs.1 and 2 the prosecution clearly demonstrated as to how AO demanded and accepted bribe through PW2. He thus prayed to allow the appeal.

5) Per contra, supporting the judgment, learned counsel for respondent/AO argued that in this case the prosecution failed to establish the two vital ingredients of the offence i.e. demand and acceptance of bribe by cogent evidence inasmuch as the witnesses it projected i.e. PWs.1 and 2 are not trustworthy.

a) PW1 is concerned, he belonging to Naval Dockyard union which had any amount of grudge due to previous scuffle that took place between workers union and audit section in connection with passing of medical bills whereas PW2 is concerned, he is an accomplice and there is no corroboration for his evidence on material particulars. He argued that accomplice and approver are untrustworthy of credence and the evidence of such witnesses cannot be accepted on face value unless they are corroborated. On this aspect he relied upon the following judgments.

1. ***Mrinal Das v. State of Tripura***

2. ***Venkatesha v. State of Karnataka***

He submitted that the trial Court was thoroughly convinced that the evidence of PWs.1 and 2 was not trustworthy and other evidence on record was not sufficient to establish the guilt and acquitted the AO and there are no merits in the appeal and thus prayed to dismiss the appeal.

6) In view of rival submissions, the point for determination in this appeal is:

"Whether the judgment of the trial Court is factually and legally sustainable"?

7 a) **POINT**: It is an appeal against the acquittal. In this context, it is important to remind the note of caution issued by Apex Court in its following judgments to the appellate Courts dealing with an appeal against acquittal to the effect that though the appellate Court has every power to re-appreciate, review and reconsider the evidence at large both on facts and law but however, it must be kept in mind that its interference will be justifiable only when the judgment of the trial Court suffers from perversity in appreciation of evidence but not when there was a mere possibility of appellate Court's coming to a different conclusion basing on the evidence. It is also observed that the appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though view of the appellate court may be more probable one. The trial Court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses. It was further observed that the presumption of innocence which was available to an accused before the trial Court was reinforced by the acquittal recorded by it.

1. ***Bhaskar Ramappa Madar vs. State of Karnataka***
2. ***Govindaraju @ Govinda vs. State by Sriramapuram P.S.***

3 . ***Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra***

Hence, it has now to be seen whether the judgment of the trial Court is factually and legally sustainable or suffers the vice of defective and perverse appreciation of facts, evidence and law.

b) It being a trap case, the prosecution by cogent evidence must be able to establish the vital ingredients of the offence i.e. demand and acceptance of bribe. In this case, additionally it has to be seen whether there existed any criminal conspiracy between AO and PW2. It has now to be seen whether the prosecution could establish the above said vital ingredients.

c) The case of prosecution unfolds with the relevant facts that PW1 was working as Electrical Fitter (HSK-II) at Centre No.83 in Naval Dockyard, Visakhapatnam. During August, 1992 he was suspended from service as a criminal case was registered against him on the charge of theft. During the suspension period he was paid subsistence allowance which was half of his salary. Later he was acquitted in the criminal case and suspension was revoked paving the way for payment of balance of the salary which was worked out to Rs.25,760/-. The arrears bill was dispatched to accounts section (FA to ASD) on 29.09.2000 for final payment. On 11.10.2000, PW1 met the AO who was working as AAO in TA & DA section and in-charge of wages section and at that time he requested to pass his arrears bill and AO demanded bribe of Rs.3,000/- and asked him to pay the said amount on 13.10.2000 before 4 PM. Unwilling to pay bribe he informed to Moulali—the Union Secretary. On 12.10.2000 the said Moulali took PW1 to SP, CBI, Visakhapatnam and PW1 lodged a complaint against AO. On the instructions of SP, PW7—Inspector of Police, CBI registered the FIR and laid trap against AO on 13.10.2000 with the help of two mediators i.e. PW3 and LW2—B.Srinivas Rao. At about 3.30 PM PW1 went to audit section and met the AO and AO enquired whether he brought the cash, PW1 confirmed and then AO instructed PW1 to handover the amount to PW2 who was a clerk in his section and accordingly PW1 handed over the amount to PW2 who received the cash with his left hand and kept the amount in Ex.P3—note book. Then PW1 came out and gave pre-arranged signal and trap party members rushed and caught AO. During the trap they came to know that PW1 paid the amount to PW2 on the instructions of AO. PW2 revealed that he was innocent and on seeing the CBI officers surrounding AO, he felt that he had unnecessarily taken the money from PW1 and so he took Ex.P3—note book along with the money kept in it and placed Ex.P3 in the old drawer which was in Varandah by the side of bath room and while returning, he noticed that one five hundred note slipped on the floor and he kept the said note beneath GI pipe running on the wall of toilet. Later, PW2 revealed these facts to TLO who recovered the tainted currency and Ex.P3. PW7 completed the trap proceedings and prepared Ex.P4—second mediators report. This is precisely the prosecution case.

d) It should be noted that spontaneous explanation of AO was that he did not know PW1 and PW1 did not come to his office on the date of trap. In that view of the matter, it has to be seen whether the demand and acceptance of bribe by AO through PW2 is true or not. The claim of prosecution and veracity of evidence of PW1 touching the demand and acceptance have to be decided with reference to the contention of AO that he was implicated in a false case by the members of Naval Dockyard with the connivance of PWs.1 and 2 due to previous disputes relating to passing of medical bills of the workers. The impact of the scuffle that took place between union members and audit section employees needs a scrutiny.

8 a) DW2 who was the then Assistant Accounts Officer in the office of FA to ASD Naval Dockyard gave a vivid account of the scuffle that took place in November, 1999. He deposed that at that time there were around 7,500 employees working in Naval Dockyard, out of which 6,000 belong to industrial wing and the remaining were non-industrial and office category and about 7,200 to 7,300 employees

were submitting their medical bills each amounting to Rs.400/- for every month. The CGDA, New Delhi gave instructions as to how to pass medical bills. As per those instructions, the audit department was referring the bills to Sale Tax Officer to confirm the genuineness of the medical shops from where the bills were originated. He stated that in view of CGDA instructions some bills were being returned and bills were not paid for five to six months and thereby the union leaders started agitating against audit department and they even resorted to Dharnas and published Ex.D7 to D9—pamphlets. He stated that at that time audit staff experienced lot of mental tension. From October, 1999 union leaders started threatening them and they mainly went against the accused as the returning of medical bills stated after his joining. In spite of said threats audit section did not budge. He further stated that on 11.09.1999 or 14.09.1999 in between 3.00 and 3.30 PM he went to the room of FA and at that time union leaders surrounded FA. Accounts Officer was also present in that room. FA told him about the situation and in the meanwhile, the union leaders present started using un-parliamentary language and in the meanwhile, AO came there and union leaders tried to pull him inside and close the room. He further stated that there was a scuffle and melee wherein FA and accused were pushed inside the room of Accounts Officer and they were manhandled. On seeing it, this witness requested the union leaders to stop such things and asked them to come to his room for discussion and then he had discussion with them about 45 minutes and they reluctantly came out of the room and went away by shouting slogans against AO stating that on that day he was saved and subsequently a day would come where they would see his end. A Board of Enquiry was convened to enquire into the incident. Ex.D10 is the enquiry proceedings. DWs.3 and 4 also deposed about the proceedings of Board of Enquiry. The prosecution did not seriously challenge about Board of Enquiry proceedings but it has suggested to the witnesses that the scuffle and enquiry relate to the medical bills of the workers whereas Ex.P6—bill relates to arrears of salary of PW1 and both issues were different.

b) So, the evidence placed by the defence would show that about one year prior to trap incident there was a lot of unrest and agitation regarding non-passing of medical bills of the workers whereby audit and accounts sections were targeted for withholding bills. The Board of Enquiry took place about few months prior to the trap. It is significant to note from the evidence of DW2 that right or wrong, the present AO was one of the targeted persons in the scuffle that took place on 11.11.1999 in the chambers of FA. A perusal of Ex.D10— Board of Enquiry proceedings gives a vivid description of magnitude of the incident and the rift created between union and audit section.

9) It is in this backdrop, a genuine doubt would arise as to whether the AO who was once the victim in the hands of union leaders during the scuffle, would dare to solicit bribe from PW1 to invite the wrath of union leaders once again. It is true that earlier scuffle was related to withholding of medical claims of the workers whereas the present case relates to arrears of salary bill of PW1. That is not the issue. What is pertinent as stated earlier is whether AO dare to purchase trouble from the union by seeking bribe from one its members who are already drawing swords against him. Of course, this may not a sole ground to reject the prosecution case. But in my considered view, these background facts will have a deep impact on the veracity of prosecution case.

a) As observed by the trial Court, another important circumstance also would raise a doubt on the prosecution case. Admittedly, PW1 and one N.N.A.V. Prasad Rao who are colleagues, together faced criminal trial on the charge of theft of tools and instruments and they both were suspended by the management of Naval Dockyard at the same point of time and his bill was also pending with audit and accounts sections during the relevant time as can be seen from Ex.P6. On 29.09.2000, both these employees went to audit office at the same time i.e. 13.35 hours which is evident from Ex.P5— Gangway book and P5(A) entries, perhaps to enquire about their respective bills. Surprisingly, it is not at all the case of the prosecution that AO demanded and accepted any bribe from the said Prasad for passing his salary arrears bill for the suspension period. Interestingly PW1 denied himself and Prasad going together to audit office on 29.09.2000. Thus, the AO not demanding any bribe from Prasad but allegedly demanding bribe only from PW1 though the nature of their bills and background facts are similar is another circumstance which weigh against the prosecution.

b) Another circumstance also would raise a doubt about the prosecution case. Admittedly, PW1 complained to his union members about AO demanding bribe and Moulali—the Secretary who played prominent role in earlier scuffle, took PW1 to SP, CBI to give report. In the normal circumstances if AO demanded bribe, Moulali being union Secretary would straight away question AO or try to complain to the higher authorities about the atrocious acts of staff of audit and accounts departments in harassing the workers. Though his taking PW1 and lodging report isolatedly cannot be found fault but in conjunction with background facts, this incident should be taken note in deciding the veracity of prosecution case.

c) So, in my considered view, due to the preceding incidents i.e. severe scuffle between management and audit section staff which led to conduct Board of Enquiry just some months prior to trap and PW1 reporting the matter to SP, CBI with the help of Moulali who played prominent role in the scuffle where AO was one of the victims and also due to the fact that AO leaving N.N.A.V.Prasad and demanding bribe only from PW1 though the nature of their bills is identical, the evidence of PW1 should be studied carefully and corroboration has to be sought for from independent and reliable witnesses before accepting him. Running the risk of pleonasm, in general circumstances the evidence of PW1 should have been accepted or rejected basing on his own version but in view of the aforesaid background facts it is prudent to seek for corroboration.

10) Now, coming to the version of PW1, as per Ex.P1 he went and met AO in the audit section only once on 11.10.2000 to enquire about his pending bill on which date the AO allegedly demanded bribe.

However, in his chief we will find a little improvisation that he went to the audit office prior to 11.10.2000 also to enquire about the bill and that he was informed that AO was in-charge of concerned section and so he went and met AO and at that time AO told that they were considering his bill. According to PW1, he met the accused twice or thrice to enquire about his bill. This meeting of PW1 should be taken as prior to 11.10.2000 because in the very next sentence he stated on 11.10.2000 he met the AO in the audit office and AO demanded bribe. So, if we take the evidence of PW1 into consideration, he met AO twice or thrice prior to 11.10.2000 when he was informed that his bill was under consideration. Then, he met AO on 11.10.2000 when AO demanded him bribe for the first time. At this juncture, pausing for a moment, we must refer the spontaneous explanation of AO as revealed in Ex.P4 wherein he stated that he does not know PW1 and PW1 did not come to his office on 11.10.2000. So, it must be inferred that PW1 never went to him either on 11.10.2000 or earlier. Otherwise, if PW1 met him repeatedly twice or thrice prior to and on 11.10.2000, AO would certainly have known about the particulars of PW1 though he had no prior acquaintance with him. So, in view of the categorical denial by AO to the effect that he does not know PW1 and PW1 did not come to his office on 11.10.2000 as recorded in Ex.P4, heavy duty is cast on the prosecution to establish the visits of PW1 to AO on different occasions including 11.10.2000. It is significant to note that according to PW1on all those occasions he met AO in his section only i.e. accounts section. It is in this context, a perusal of Ex.P5—Gangway book and entry under Ex.P5(A) would show the visit of PW1 to the audit office on 29.09.2000. Similarly, the entries under Ex.P5 (B) and 5(C) would show he visited to audit office on 10.10.2000 and 11.10.2000. So far so good. However, these entries give only an inference of his visiting the audit office on those dates but they are not conclusive proof of his meeting AO on those days. As already pointed out by trial Court, the probability of his visiting the office but not meeting the AO cannot be ruled out. Since PW1 claimed to have met AO on all those occasions in his office, the best possible evidence which the prosecution ought to have produced to discharge its burden was to examine the staff members in the wages section and TA and DA section to corroborate PW1 and entries under Ex. P5(A) to 5(C). When PW1 repeatedly visited AO and met him in his section during the office hours, certainly the staff members must have watched PW1's visits. Even PW2 stated that on the date of trap there were some staff members present and CBI officers conducted chemical test to some of those staff members including him and AO. In such a scenario, certainly the evidence of staff members regarding visit of PW1 to their section would have given credence to prosecution case. It must be noted that plea of not knowing PW1 and his not visiting to AO's section on 11.10.2000 was not taken by AO for the first time during trial but it was a spontaneous explanation which finds place in Ex.P4—second mediators report.

11) In that view, the prosecution ought to have examined the staff members to confirm the visit of PW1 to the section of AO. Unfortunately the prosecution has not taken such pains. Further, the prosecution has not even examined Md.Moulali to establish the aspects of demand and his taking PW1 to SP, CBI to lodge FIR. Even in the evidence of PW2—accomplice/approver, we do not find about PW1 visiting AO's section on earlier occasions including on 11.10.2000 and AO making any demand for bribe. So, except the evidence of PW1 there is no corroborative and convincing evidence on the aspect of demand of bribe by AO. As already stated supra, it is not safe to go by the sole testimony of PW1. It is true that as contended by learned Spl.S.C there is no established personal enmity between PW1 and AO. However, the fact remains that PW1 is one of the members of the union and he was guided by Md.Moulali to lodge complaint. Hence, I agree with the finding of the trial Court that the prosecution failed to establish the allegation of demand of Rs.3,000/- by AO.

a) Then, coming to the further demand and acceptance of bribe by AO on the date of trap i.e. 13.10.2000 are concerned, for these instances also except the evidence of PWs.1 and 2 there are no other independent witnesses. Admittedly, prosecution did not send any shadow witness along with PW1 and the trap party members are also not in the vicinity of AO's section where allegedly demand and acceptance of bribe took place. Of course, the reason given by the prosecution is that the Naval Dockyard and its office locations are sensitive regions and it is difficult to secure entrance. Be that it may, the fact remains that no shadow witness was sent along with PW1 and further, all the trap party members rushed the spot only after PW1 came out of audit office and gave them signal. Hence, the prosecution story mainly pivots on the version of PWs.1 and 2 on the aspects of demand acceptance of bribe by AO on the date of trap.

b) PW1 is concerned, no doubt, he deposed that on 13.10.2000 at about 3.30 PM he met AO in audit section and AO enquired whether he brought the cash or not and he affirmed and then AO directed him to hand over the cash to PW2 who was sitting in the office at a distance of six feet from the seat of AO and accordingly he gave the amount to PW2 who received with his left hand and kept the amount in his table drawer. Thereafter, he came out and gave pre-arrange signal and CBI officers and others came to audit office and conducted other proceedings. However, as already stated supra, the sole testimony of PW1 cannot be accepted without corroboration. PW2 no doubt offered corroboration. Regarding the veracity of his evidence we will discuss a little while later. In the cross-examination, PW1 stated that three persons were sitting in front of accused at the time when CBI officers went in search of AO and CBI officers enquired those three persons. So, it is evident that during the relevant time of trap other staff members are working in the room of AO. Even Ex.P9—sketch also would show that AO had no separate chambers or cubicle to work. His seat is placed along with other staff members. So, if PW1 met AO in his section and AO made demand and instructed him to pay money to PW2, certainly some of the staff members had the possibility of observing it. Surprisingly, the prosecution did not examine any of the staff to confirm the crucial fact of demand and acceptance of bribe. Here, another inconsistency in the claim of PW1 would appear glaringly. According to PW1, he met the AO in audit section and where the AO enquired whether he brought the amount. The passing of money to PW2 was also taken place in the audit section. If that is true, a genuine doubt would arise whether in the presence of staff members AO would dare to solicit bribe openly from PW1. So, the story of PW1 regarding demand and acceptance of bribe before trap does not appear to be convincing in the teeth of spot explanation of AO that he does not know PW1 and PW1 did not come and meet him on that day. As already discussed earlier, as there is categorical explanation of AO, the TLO ought to have taken pains to examine the staff members to confirm the visit of PW1 to their section just before trap.

c) Then coming to PW2, before discussing his evidence, it must be noted that he is an accomplice and turned as approver. Learned counsel for respondent/AO vehemently argued that as accomplice is untrustworthy of credence, his testimony cannot be accepted in the absence of corroboration on material particulars. I approve his contention.

In the cited decisions 1 and 2 supra the Apex Court clearly enunciated this point.

In ***Mrinal Das***'s case (1 supra) the Apex Court has gone on the evidentiary value of approver/accomplice as follows:

> *"17. Though a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver, yet the universal practice is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars. The evidence of an approver does not differ from the evidence of any other witness save in one particular aspect, namely, that the evidence of an accomplice is regarded ab initio as open to grave suspicion. If the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particulars; but if the suspicion attaching to the accomplice's evidence be removed, then that evidence may be acted upon even though uncorroborated, and the guilt of the accused may be established upon the evidence alone.*

18. In order to understand the correct meaning and application of this term, it is desirable to mention Section 133 of the Indian Evidence Act, 1872 along with Illustration (b) to Section 114 which read as under:

***133. Accomplice:-** An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."*

Illustration (b) to Section 114

"The Court may presume—

xx xx xx

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

*19. Dealing with the scope and ambit of the above-noted two provisions, this Court, in **Bhiva Doulu Patil** v. **State of Maharahshtra** MANU/SC/0141/1962 : AIR 1963 SC 599 : (1963) 3 SCR 830 has held that both the sections are part of one subject and have to be considered together. It has further been held:*

> *"7 The combined effect of Sections 133 and Illustration (b) to Section 114, may be stated as follows: according to the former, which is a Rule of law, an accomplice is competent to give evidence and according to the latter, which is a Rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."*

In ***Venkatesha***'s case (2 supra) the Apex Court reiterated the same point thus:

15. Section 133 of the Evidence Act, makes an accomplice a competent witness against the accused person and declares that a conviction shall not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Even so, the established rule of practice evolved on the basis of human experience since times immemorial, is that it is unsafe to record a conviction on the testimony of an approver unless the same is corroborated in material particulars *by some untainted and credible evidence. So consistent has been the commitment of the courts to that rule of practice, that the same is now treated as a rule of law. Courts, therefore, not only approach the evidence of an approver with caution, but insist on corroboration of his version before resting a verdict of guilt against the accused, on the basis of such a deposition, The juristic basis for that requirement is the fact that the approver is by his own admission a criminal; which by itself makes him unworthy of an implicit reliance by the Court, unless it is satisfied about the truthfulness of his story by evidence that is independent and supportive of the version giver by him.*

So, it has to be seen whether any part of evidence of PW2 has a bearing of having ring of truth around it and the same is corroborated by reliable witness.

12) The crux of evidence of PW2 touching the offence portion is as follows:

" On 13.10.2000 the accused gave me one arrears bill and the value of the bill was Rs.25,700/- and odd. I told the accused that I have no time as I have to attend to expenditure statement. Then the accused told me that he had already verified the bill and that he wanted me to make the enfacement on the bill. Ex.P6 is the said bill that was entrusted to me by the accused. Ex.P6 contains six pages. In the 3rd page of Ex.P6, I made the enfacement with red ink and told the accused that I will not make any signature as I had not verified the bill.

At 3.30 PM one person came to our section and met the accused and enquired about his arrears bill. The accused told him that the bill would be passed and that he should pay the amount as required. The said person told the accused that he brought the amount and when he was taking the amount from his pocket of the trouser the accused called me and when I looked at him, the accused directed the person who came there to hand over the money to me. That person gave money to me and I received the money with my left hand and kept the said amount in a book, which was in my table drawer. Ex.P3 is the said book in this the money was kept."

So, from the above evidence of PW2 particularly his narration of hearing the version between AO and PW1, it can be clearly inferred that PW2 knows that what was demanded by AO and paid by PW1 was a bribe because as an employee in that section he knows that for passing of salary arrears bill no employee need to pay any amount officially. Hence, if this part of his evidence is correct, what should have been his natural reaction is pertinent for discussion. His evidence would reveal just before the arrival of PW1, PW2 initially refused to attend the Ex.P6—bill given to him by AO who is his superior officer on the ground that he has to attend the expenditure statement and even after assurance of AO that he already verified the bill, this witness only made enfacement at page No.3 of Ex.P6—bill with red ink but did not put his signature on the ground that he did not personally verify the bill. If such is his firmness and commitment to duty, which can defy the superior officer's order if it is not satisfying his consion there is no reason why PW2 should meekly accept the amount knowing it fully well that it was bribe or atleast was not a legal amount payable by PW1. It must be noted that it would have been a different matter had PW2 admitted himself to be part of the crime and sought for pardon and made clean breast of the case. That is not the case here. We will find from his evidence and narration in Ex.P4 that he tried to project as if he innocently received the amount and when the trap party members surrounded AO, to save his skin he took the amount along with Ex.P3—note book and concealed in the wooden plank at the dumping place near staff both room. Even assuming that he innocently received the amount without knowing its nature, there was no reason for him to conceal the amount in the wooden plank and behind GI pipe. On the other hand, on seeing the CBI officers he could have narrated what all happened. So from the conduct of PW2 depicted from his own narration, it is clear that he is not a reliable witness. It is not safe to take his evidence as corroboration to PW1 on the vital aspects of demand and acceptance of bribe.

a) The other part of his evidence is also do not infuse confidence as we presently see. PW2 narrated as to what happened after PW1 left the section of AO as follows:

> *"The person who gave money left the section and the accused enquired me about the bill which he gave to me. I gave Ex.P6 bill to*

> *the accused. The accused made an endorsement on Ex.P6 at page-3 that he verified the particulars with the service book of the individual and found the particulars correct. The accused made his signature on the enfacement also in Ex.P6. He directed me to go to AO by name Krishna Murthy and wanted to obtain his signature on Ex.P6 and he also wanted me to put payment seal and hand over the same in the dispatch section. I obtained the signatures of AO—Krishna Murthy on the bill and also affixed the payment authority seal and gave the bill in the despatch section. Thereafter I attended to my work."*

So, according to him only after receiving bribe AO processed the Ex.P6—bill and ultimately sent to despatch section. PW2 stated that he narrated all these facts to CBI officials during the trap proceedings. If what all PW2 deposed above is true, this fact touching the processing of Ex.P6—bill after receiving bribe must be placed in Ex.P4—second mediators report. However, surprisingly except a stray sentence about seizure of Ex.P6—bill, we do not find about the crucial narration of process of Ex.P6—bill in Ex.P4. This causes a doubt about the version of PW2 in Ex.P6. Further, if the version of PW2 that he tendered the bill in the despatch section is true, then there is no possibility of Ex.P6 still lying in his rack and to be seized by trap officers on the evening of trap. We will find in Ex.P14 search list as if the trap team seized Ex.P6—bill containing six pages from the rack of G.Anil (PW2) on 13.10.2000 at 21 hours. A perusal of Ex.P6—bill would show on its face it is mentioned as "*original*". Thus, Exs.P14 and P6 would cumulatively show that original Ex.P6—bill was with PW2 only and it was not sent to despatch section as proclaimed by him. It is not the case of the prosecution that the trap party seized Ex.P6 from the despatch section. Therefore, the version of PW2 that on the instructions of AO he got signatures of PW4 on Ex.P6 and gave it in despatch section before 4 PM on the date of trap appears to be totally false. No doubt, PW4—M.Krishna Murthy deposed as if PW2 came to him at about 3.50 PM and obtained his signatures on Ex.P6—bill. It must be noted that in the chief examination he did not state this fact but only after Spl.P.P declared him as hostile and during the cross-examination he revealed this fact. But his statement alone will not make the evidence of PW2 truthful. So, at the outset, accomplice evidence of PW2 is totally unreliable. It is neither getting corroboration on material particulars nor it able to corroborate the evidence of PW1. Apart from the above, defects in the evidence of PWs.1 and 2 and other circumstances also weakened the prosecution case. The prosecution claims that the left hand of AO and both hands of PW2 yielded positive result to chemical test which is impossible nor ridiculous for the reason that even as per the prosecution AO had not handled the tainted currency personally and PW2 washed his both hands before arrival of trap party. Prosecution could not cogently explain this anomaly.

b) As rightly pointed by the trial Court, from all the above, it is clear that the CBI authorities, PWs.2 and 4 were mislead by the complainant and other leaders in implicating the AO in a false case. The evidence of mediators and TLO have little impact to improve the prosecution case because none of the mediators was sent as shadow witness to observe what was going to transpire between AO and PW1 before trap.

13) So, on a conspectus of entire facts and evidence, I am thoroughly convinced that trial Court on proper appreciation of facts and evidence acquitted the AO and I find no reason to differ with it.

14) In the result, this Criminal Appeal is dismissed by confirming the judgment of the trial Court in C.C.No.13 of 2001.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 19.06.2015

<u>Note</u>: L.R. Copy to be marked: YES / NO

Murthy