

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 122 of 1997**

Chaitram Chakradhari aged about 37 years son of Vaisakhuram Chakradhari resident of Ramsagarpara Bhatapara Raipur (the then Secretary Krishi Upaj Mandi Samiti Lormi District Bilaspur.

---- Appellant

Versus

The State of Madhya Pradesh (now Chhattisgarh).

---- Respondent

For the Appellant	:	Shri Arun Shukla, Advocate.
For the Respondent/ State:		Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

08/03/2017

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 13.12.1996, passed by the Second Additional Sessions Judge/Special Judge, Bilaspur in Special Case No. 8 of 1987, whereby and whereunder the Learned Special Judge has convicted the accused/Appellant under Sections 161 of the Indian Penal Code and 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for one year and fine of Rs.100/- with default stipulation.

2. The case of the prosecution, in brief, is that, complainant- Sharda Prasad Pandey (PW4) was a suspended clerk of Krishi Upaj Mandi Samiti,

Lormi. He was not getting his sustenance allowance. It is alleged that Appellant was dealing with the file of his sustenance allowance and he demanded bribe of Rs.100/- from the complainant, Sharda Prasad Pandey (complainant) (PW4) presented one application (Exhibit P/3) before the Commissioner, Bilaspur mentioning in it about the demand of bribe by the Appellant. The application was forwarded to Special Police Establishment, Bilaspur. On receiving this application, M.K. Heeradhar (PW10) summoned the witnesses, namely Shri Maheshwar Shukla (PW8) and D.R. Khute (not examined). The contents of Exhibit P/3 were verified in presence of the complainant and he was asked to produce Rs.100/-. On the same day, on production of currency note of Rs.100/-, Phenolphthalein powder was applied on it and the said currency note was kept in the left pocket of shirt of the complainant. Thereafter, a demonstration was given to the trap party showing reaction of Phenolphthalein powder with solution of Sodium Carbonate. The number of currency note of Rs.100/- was recorded and the complainant was instructed about the manner of handing over the bribe to the Appellant. He was instructed that he may give signal after giving bribe. The Phenolphthalein powder and solution of Sodium Carbonate which was used in the demonstration were separately packed and sealed. A preliminary panchanama (Exhibit P/2) was recorded.

3. On 26.4.1984, a trap party was constituted which proceeded to the spot and arrived at about 5.00 pm. Appellant was found in the office of Krishi Upaj Mandi Samiti, Lormi. Complainant- Sharda Prasad Pandey (PW4) was sent in advance alongwith one Rajkumar Tiwari. Both of them approached the Appellant who was present in the office. They met with him and had some conversation. The complainant enquired about release of his

sustenance allowance and Appellant asked for bribe of Rs.100/-, on which complainant took out the currency note of Rs.100/- which was received by the Appellant in his hand and kept in his pocket of his shirt. Thereafter Rajkumar Tiwari who was in company of complainant, came out and gave a signal, on which the trap party came to the spot and Appellant was caught by the members of the trap party. Introduction of the members of the trap party was given to the Appellant. Thereafter, solution of Sodium Carbonate was prepared, in which, hands of the Appellant were washed, on which the colour of the solution changed to pink which was preserved and sealed. Shri Maheshwar Shukla (PW8), trap witness recovered the currency note of Rs.100/- from the pocket of shirt of the Appellant and one note book was also recovered. Both the articles were dipped in the solution of Sodium Carbonate, the colour of solution changed to pink which was preserved and sealed. The shirt of the accused was removed and the pocket portion of the shirt was dipped in to the solution of Sodium Carbonate, the colour of solution changed to pink which was preserved and sealed. Then, the hands of complainant- Sharda Prasad Pandey (PW4) and Shri Maheshwar Shukla (PW8) were also washed in the solution of Sodium Carbonate, the solution turned into to pink which was again preserved and sealed. Vide Exhibit P/9, the recovered currency note of Rs.100/-, one notebook and shirt of the Appellant were seized. The documents relating to suspension and sustenance allowance of the complainant were also seized vide Exhibit P/10. *Dehati Nalishi* was recorded on the spot vide Exhibit P/17. First Information Report (Exhibit P/18) was later on lodged on 16.5.1984. The solutions which were preserved and sealed and the seized articles were sent for examination to Forensic Science Laboratory. FSL report (Exhibit P/21) confirmed presence of the phenolphthalein powder on the currency

note and in the solutions preserved and sealed after washing of the hands of the Appellant, complainant, *panch* witness and also on the shirt of the Appellant. A formal sanction (Exhibit P/1) for prosecution of the Appellant was obtained from the State Government. Statements of the witnesses were recorded. On completion of the investigation, the Appellant was charge-sheeted.

4. The Appellant was charged under Sections 161 of the Indian Penal Code and 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act. The prosecution examined as many as ten witnesses. On being examined under Section 313 CrPC, he denied all the incriminating evidence against him lead by the prosecution, pleaded innocence and false implication. The defence was taken that complainant had borrowed Rs.100/- from the Appellant on some earlier date and the same was being returned on the date of incident. Four witnesses were examined in defence. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed, by which the accused/Appellant has been convicted and sentenced as mentioned above.

5. The grounds of the appeal are that the finding of conviction against the accused is erroneous, against the fact and circumstances of the case. The prosecution has failed to prove that the Appellant received bribe at the time of incident. Sufficient evidence was brought in defence to establish that the Appellant was falsely implicated and the complainant who had earlier borrowed money from the Appellant was returning on the date of incident, which was falsely represented as giving bribe to the Appellant. Hence, Appellant is entitled for acquittal.

6. Learned counsel for the Appellant submits that there had been admission in the statement of Shri Brijbihari Mishra (PW9), Constable that the Appellant told the members of the trap party that complainant was returning him the amount borrowed. The complainant being present there did not react or stated anything against it. It is also demonstrated from the evidence of witnesses of trap party that the Appellant took a consistent stand that the complainant was returning the borrowed money and he was falsely implicated. Further, Appellant was also examined as witnesses in his defence, who has clearly stated that Appellant was falsely implicated in the offence in question and his statement remained unrebutted in cross-examination by the prosecution. For these reasons, the accused/Appellant is entitled to be acquitted of the charges framed against him.

7. Learned Counsel for the State has opposed the arguments advanced on behalf of Learned Counsel for the Appellant and submits that the prosecution has successfully proved its case beyond all reasonable doubt. The procedure was conducted by M.K. Heeradhar (PW10). The complainant- Sharda Prasad Pandey (PW4) himself has stated in support of the prosecution. Trap witness Shri Maheshwar Shukla (PW8) has supported the trap procedure in a very detailed manner and his statement remained unrebutted in his cross-examination. Hence, there is no scope for interference in the impugned judgment.

8. Considering the grounds in appeal and the arguments advanced by both the parties, the question which arises for determination in this appeal is, whether the conviction and sentence of the Appellant under Sections 161 of the Indian Penal Code and 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act is supported with evidence of prosecution beyond

reasonable doubt ?

9. Complainant- Sharda Prasad Pandey (PW4) has stated that he presented a written complainant (Exhibit P/3) before the Commissioner, Bilaspur. The same was forwarded to Special Police Establishment, Bilaspur. He alleged in the complaint that the Appellant was demanding a bribe of Rs.100/-. He arrived at the Special Police Establishment, Bilaspur alongwith Rajkumar Tiwari. There he produced currency note of Rs.100/- on which some Phenolphthalein power was applied. Thereafter he stated about the demonstration carried in front of him. He has stated that the currency note of Rs.100/- was kept in the pocket of his shirt. Then, he proceeded to the office of Krishi Upaj Mandi Samiti, Lormi alongwith his friend Rajkumar Tiwari. He was sent in advance and arrived in the office where Appellant was present. He found the Appellant and asked him to release his sustenance allowance, upon which Appellant asked for bribe of Rs.100/-, then, he took out the currency note of Rs.100/- from his pocket and handed it over to the Appellant. Appellant received it and kept it in his shirt pocket. Immediately, the officers of the trap party arrived there and introduced themselves. On asking of the officers of the trap party, the Appellant admitted that he received the currency note of Rs.100/- and produced it. He also admitted that he received the currency note of Rs.100/- from the complainant. Then, he has narrated about the trap procedure. In cross-examination, his statement has remained unrebutted. Though, he has admitted that the Appellant made a statement before the members of the trap party that complainant had returned him the borrowed money, but he has categorically denied that he ever had borrowed Rs.100/- from the Appellant. There is no other evidence in the cross-examination to rebut the statement made by him

in examination-in-chief.

10. Shri Maheshwar Shukla (PW8), trap witness, has stated about the verification of the complaint of complainant- Sharda Prasad Pandey (PW4) in his presence and thereafter, demonstration of the trap procedure. He accompanied the trap party to the office where Appellant was present. The complainant was asked to proceed in advance and he waited for the signal. On getting the signal, he alongwith other members of the trap party arrived at the spot and he was introduced. The Appellant admitted that he has received money. The currency note of Rs.100/- was found on his search. The number of currency note of Rs.100/- was matched with the number recorded in the preliminary *panchanama*. Thereafter, the procedure of hand washing was done. Narration has been given about the whole procedure. In his cross-examination, his statement has remained unrebutted. He has denied the adverse suggestion given to him in defence.

11. M.K. Heeradhar (PW10) conducted the whole procedure. He has stated that on receiving the complaint about the demand of bribe by the Appellant, he summoned the complainant and witnesses namely, Shri Maheshwar Shukla (PW8) and D.R. Khute (not examined) in the office of Special Police Establishment, Bilaspur on 26.4.1984. In the presence of complainant and other witnesses, complaint was verified and the complainant gave a currency note of Rs.100/- on which Phenolphthalein powder was applied. A demonstration was given about the reaction of Phenolphthalein powder with solution of Sodium Carbonate by dipping a paper applied with Phenolphthalein powder into the solution of Sodium Carbonate, the colour of solution changed into the pink. The solution was preserved in a bottle which was sealed and preserved. The number of

currency note of Rs.100/- was recorded and then Phenolphthalein powder was applied on the said currency note. The said currency note was kept in the shirt pocket of the complainant. He was instructed for the procedure to be followed for giving bribe to the concerned and also instructed about the signal to be given after the bribe currency note is handed over to the Appellant. During the preliminary procedure, the packets of solution of Sodium Carbonate and Phenolphthalein power were prepared, sealed and preserved. A preliminary *panchanama* (Exhibit P/2) was prepared. After constituting the trap party, all of them proceeded to the spot i.e. office of Krishi Upaj Mandi Samiti, Lormi. The trap party arrived at the office at Lormi at about 4.00 pm. The complainant was sent in advance, he met with the Appellant, after some conversation, he handed over the bribe of Rs.100/- to the Appellant. After giving the same, the signal was received by the members of the trap party. They approached to the spot and introduced themselves. The Appellant admitted receiving of Rs.100/- from the complainant and stated that he has received back the money borrowed by the complainant from him. Thereafter, the procedure of hand washing in the solution of Sodium Carbonate was conducted. His statement has also remained unrebutted in cross-examination.

12. Remaining witnesses of the prosecution, namely, B.D. Sharan (PW1) has proved the sanction for prosecution which is not under challenge. L.N. Dewangan (PW2) has stated about the posting of the Appellant which is also not under challenge. Radheshyam (PW3) was a member of trap party and he has assisted the trap procedure. R.S. Gupta (PW5) has supported the proof of sanction by prosecution vide Exhibit P/1. K.P. Jatav (PW6) has deposed about the posting of the Appellant. Gayagiri (PW7) is Patwari who

has prepared the spot map vide Exhibit P/8. Shri Brijbihari Mishra (PW9) was present during the procedure of trap.

13. It is not disputed that the complainant moved a complaint vide Exhibit P/3 and on the basis of which the trap procedure was organized and the trap was conducted. It is also an admission by the Appellant that he received Rs.100/- from the complainant. His only defence in this case is that, he has been falsely implicated and regarding the money, he has stated that it was the return of the money borrowed by the complainant. Complainant- Sharda Prasad Pandey (PW4) himself has specifically denied this suggestion that he ever borrowed any money from the Appellant. Other witnesses, namely, Shri Maheshwar Shukla (PW8) and M.K. Heeradhar (PW10) have also stated that the Appellant made such a statement that he was receiving back the money borrowed by the complainant. Special emphasis was given to the cross-examination statement of Shri Brijbihari Mishra (PW9), by counsel for the Appellant suggesting that it is a clear admission that the Appellant was receiving back the money borrowed by the complainant. On perusal of statement of this witness in para-3 of this cross-examination, the statement is this that on asking the accused, he said that Sharda Prasad Pandey (PW4) told him that he had borrowed Rs.100/- from the accused which he was returning, this does not make a sense that complainant himself made any admission before him.

14. Dinesh Kumar Mishra (DW1) stated that he was approached by Sharda Prasad Pandey (PW4) on 23.4.1984 asking to help him for implicating the Appellant as he was not getting his sustenance allowance. He advised him against this proposition. He has denied the knowledge that complainant had borrowed any money from the Appellant. This statement is

not against the prosecution case, because there was no proposition for falsely implicating the Appellant and this witness clearly had not admitted about the knowledge of any money being borrowed by the complainant from the Appellant.

15. Ramkumar (DW2) has stated that he was present in the office on the date of incident. He saw Sharda Prasad Pandey (PW4) coming inside the office and try to offer Rs.100/- to the Appellant, on which Appellant asked him about the reason for offering that money. Then, the complainant said that he had borrowed Rs.100/- from the Appellant in presence of Punarvas Prasad Kesharwani and Ayodhya Prasad, which he was returning. On which the Appellant said that he is not able to recollect, even then, he received the money. In cross-examination by the prosecution, he has denied that Appellant received Rs.100/- as bribe from the complainant. Further, he has admitted that no money was borrowed by complainant from the Appellant in his presence.

16. Punarvas Prasad (DW3) has stated that on the day of Holi festival, he was present with the Appellant when complainant approached the Appellant and said that he has not received salary and it is the Holi festival, hence, he asked to borrow Rs.100/- from the Appellant. Appellant agreed and he gave Rs.100/- to the complainant. In cross-examination, he has denied the adverse suggestion given by the prosecution. He stated that he cannot remember whether Appellant gave Rs.100/- in a single note or in changed notes. Similar statement has been given by Santosh Thakur (DW4).

17. Comparing the stand taken by the Appellant at the time of cross-examining the complainant and the evidence brought in defence, it appears

that the evidence of defence witnesses is an afterthought and cooked up story. It was suggested in cross-examination of Sharda Prasad Pandey (PW4) that due to financial crisis, he borrowed Rs.100/- from the Appellant to which he has categorically denied. There was no suggestion made that complainant borrowed money from the Appellant for celebrating the Holi festival. This being the change in the statement and stand taken by the Appellant, the evidence in defence cannot be considered as reliable and effective to contradict the evidence of the prosecution. The trial Court has rightly rejected the defence evidence and relied upon the prosecution evidence. Hence, the evidence of prosecution had been wholly trustworthy. No error has been committed by the trial Court in arriving at the finding of conviction against the Appellant.

18. Hence, for the reasons aforementioned, the appeal being wholly devoid of any merits, is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge