

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.939 of 2001

Judgment Reserved on : 4.9.2017

Judgment Delivered on : 16.11.2017

F.U. Siddique, S/o Late Shri R.U. Siddique, aged 54 years, Resident of New Police Lines, Durg, (Chhattisgarh) ----- **DEAD, Through Legal Representatives:**

- 1. Smt. Mehrunnisha, W/o Late F.U. Siddique, aged about 64 years,
- 2. Sameem Siddique, S/o Late F.U. Siddique, aged about 32 years,
- 3. Khushboo, D/o Late F.U. Siddique, aged about 22 years,
- 4. Tarannum, D/o Late F.U. Siddique, aged about 20 years,

All residents of Village Ward No.11, Near Anand Talkies, Q.No.146, Village Datiya, Post Datiya, Tahsil and District Datiya, Madhya Pradesh

---- Appellants

versus

The State of Chhattisgarh through Police of Police Station Durg

---- Respondent

For Appellants : Shri Vivek Sharma, Advocate
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 24.9.2001 passed in Special Criminal Case No.2 of 1998 by the 1st Additional Sessions Judge and Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988'), Durg convicting and sentencing accused F.U. Siddique as under:

Conviction	Sentence
Under Section 7 of the Act of 1988	Rigorous Imprisonment for 1 year and fine of Rs.1,000/-, in default additional Rigorous Imprisonment for 3 months
Under Section 13(1)(d)(i)	Rigorous Imprisonment for 2 years

read with Section 13(2) of the Act of 1988	and fine of Rs.1,000/-, in default additional Rigorous Imprisonment for 3 months The jail sentences are directed to run concurrently
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2. During pendency of the instant appeal, accused/Appellant F.U. Siddique died and by order of this Court dated 27.1.2016 his legal representatives have been brought on record.

3. Case of the prosecution, in brief, is that deceased accused/Appellant F.U. Siddique, on the relevant date and time, was working as a Sub-Inspector and posted in Anusuchit Jati Jan Jati Kalyan (Ajak) Police Station, Durg. There was a dispute between Complainant Raman Mishra (PW1) and Rukmani Bai (PW2). The matter was reported by Rukmani Bai against Raman Mishra in Ajak Police Station, Durg. Thereafter, it is alleged that the deceased Appellant called Raman Mishra and demanded bribe of Rs.1,500/- from him and threatened him that if he does not fulfill the demand he will send him to jail. Raman Mishra told him that he was unable to fulfill the demand of Rs.1,500/-. On this, the deceased Appellant made a demand of Rs.1,000/- only. When Raman Mishra again expressed his inability to fulfill the demand of Rs.1,000/-, the deceased Appellant made a demand of Rs.500/-. Raman Mishra did not want to fulfill the demand of bribe,. Therefore, he submitted a written complaint (Ex.P1) to the Superintendent of Police, Durg. The matter was handed over to Additional Superintendent of Police G. Akheto Sema (PW8) for further action. He further handed over the matter to City Superintendent of Police B.P. Chandrawanshi (PW10). Panch witnesses N.R. Sahu (PW9) and Mohd. Akram Khan (PW4) were

summoned. Raman Mishra brought 2 currency notes of Rs.100/- each and 6 currency notes of Rs.50/- each, total Rs.500/- and placed the same before the panch witnesses. G. Akheto Sema (PW8) made a mark of "MAC" on those currency notes. Those currency notes were smeared with phenolphthalein powder and given back to Raman Mishra and he was tutored that after giving the tainted money to the deceased Appellant, he will give a hint to the trap party. A panchnama (Ex.P2) was prepared and trap party was constituted. As planned, Raman Mishra went to the Appellant in his office in Ajak Police Station. The Appellant asked Raman Mishra about the bribe money. Raman Mishra consented to give the bribe. The Appellant came out of the police station and took the bribe money from Raman Mishra at a betel shop situated near the police station. Thereafter, the members of the trap party asked Raman Mishra about the tainted money. Raman Mishra answered in positive. Then, they entered Ajak Police Station where G. Akheto Sema (PW8) asked the Appellant to take out the money received from Raman Mishra. The Appellant took out the bribe money of Rs.500/- from the pocket of his shirt and kept the same on the table. Solutions of caustic soda were prepared at the spot and the hands of the Appellant and Complainant Raman Mishra were washed with the said solutions. After the wash, colour of the solutions turned into pink. The currency notes recovered from the Appellant were seized vide Ex.P7. The solutions which were used for washing of the hands of the Appellant and the Complainant were also seized vide Ex.P3 and Ex.P6. The shirt worn by the Appellant was also got removed from his body and seized vide Ex.P10. The written complaint lodged by Rukmani Bai (PW2) against Complainant Raman Mishra (PW1) was seized vide Ex.P9.

Dehati Nalishi was recorded vide Ex.P18. Statements of the witnesses were recorded under Section 161 Cr.P.C. The documents collected during the investigation were sent for according sanction and sanction was accorded by the competent authority vide Ex.P23. The seized articles were sent for chemical examination. FSL Report thereof is Ex.P21. On completion of the investigation, a charge-sheet was filed against accused/Appellant F.U. Siddique for offence under Section 7/13 of the Act of 1988. Charges were framed against him under Sections 7 and 13(1)(d)(i) read with Section 13(2) of the Act of 1988.

4. In order to prove the guilt of the accused/Appellant, the prosecution examined as many as 11 witnesses in support of its case. Statement of the accused under Section 313 Cr.P.C. was also recorded in which he denied the circumstances appearing against him. He claimed to be innocent and pleaded false implication in the case.
5. After trial, the Trial Court convicted and sentenced the accused/Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants vehemently argued that the prosecution has not able to prove the demand and acceptance of illegal gratification. Panch witnesses Mohd. Akram Khan (PW4) and N.R. Sahu (PW9) have not supported the case of the prosecution. There are material contradictions and omissions occurred in the statements of above witnesses. As per the Court statement of Raman Mishra (PW1), the bribe money was given to the Appellant near the betel shop situated near the police station

that is to say outside the police station. But, the panch witnesses and the other witnesses have not supported this version of the prosecution and deposed that the tainted money was recovered inside the police station. As per the statement of Raman Mishra (PW1), the tainted money was kept by the Appellant in back side pocket of his pant. But, that pant was not seized and only the shirt of the Appellant was seized. There is no evidence on record about the place where the tainted money was given to the Appellant and the place from where the tainted money was recovered from the Appellant. It was further argued that there is material contradiction about the demand of bribe money. In Court statement, Raman Mishra (PW1) has deposed that initially, bribe of Rs.3,000/- was demanded from him, but he did not mention it in his written report (Ex.P1). As per the statement of G. Akheto Sema (PW8), he had marked the tainted currency notes with letters "MAC", but as per the Court statement of Raman Mishra (PW1), only the letter "C" was marked on the currency notes. Numbers of the currency notes which were given to the Appellant as bribe were also not noted before giving to the Appellant. It was further argued that after receiving the information of demand, it was the duty of the Investigating Officer that in verification of the complaint, a tape recorder with micro cassette should have been given to Complainant Raman Mishra for recording of the conversation and thereafter transcription of the recording should have been prepared for reading over the same to the panch witnesses. But, no tape recorder with cassette was given to the Complainant for recording of the conversation made between him and the Appellant. Reliance has been placed on **2015 (4) Crimes 308 (SC) (N. Sunkanna v. State of Andhra Pradesh), AIR 2000 SC 3377 (Smt. Meena**

Balwant Hemke v. State of Maharashtra), (2011) Cri.L.J. 2013 (Dataram Banjare v. State of Chhattisgarh) and (1985) 1 SCC 28 (Khilli Ram v. State of Rajasthan).

7. On the other hand, Learned Counsel appearing for the State, supporting the impugned judgment, opposed the above arguments and submitted that the prosecution has proved its case beyond doubt. The demand of illegal gratification other than the legal remuneration was made by the accused/Appellant by abusing his office and post. The Trial Court has rightly convicted and sentenced the accused/Appellant.
8. I have heard Learned Counsel appearing for the parties and in order to appreciate the evidence available on record I have carefully gone through the same.
9. Admittedly, on the relevant date and time, accused/Appellant F.U. Siddique was a Sub-Inspector of Police and was posted in Ajak Police Station, Durg. As per the Court statement of Raman Mishra (PW1), Rukmani Bai (PW2) had lodged a report against Raman Mishra. After receiving information, Raman Mishra went to the police station and met the Appellant. Rukmani Bai (PW2) has supported the same and deposed that she had lodged a typed report against Raman Mishra in Ajak Police Station. That report was later on seized vide Ex.P9. Raman Mishra has further deposed that when he met the Appellant in the police station regarding the said complaint of Rukmani Bai, the Appellant demanded bribe of Rs.3,000/- to save him from accusation. Raman Mishra told him that he was unable to give him Rs.3,000/-. Then the Appellant told Raman Mishra that he will definitely have to give

the money. As per his further statement, Raman Mishra arranged a sum of Rs.500/- and went to the bungalow of the Additional Superintendent of Police and narrated him about the matter. The Additional Superintendent of Police called him on the next day along with money. Next day, Raman Mishra went to the bungalow of the Additional Superintendent of Police and gave him the currency notes of Rs.500/-. The Additional Superintendent of Police smeared those currency notes with phenolphthalein powder and thereafter gave back those currency notes to Raman Mishra for giving the same to the Appellant. Raman Mishra met with the Appellant. The Appellant asked him about the bribe money. When Raman Mishra answered him in positive, the Appellant called him to the betel shop situated near the police station. Raman Mishra gave the tainted currency notes to the Appellant near the betel shop. Thereafter, the Appellant returned to his office. It is further deposed by Raman Mishra that he was called by the police officials from the said betel shop and was asked about giving of the tainted currency notes to the Appellant. When he answered in positive, the trap party entered the police station. He also entered the police station behind them. He further deposed that the Additional Superintendent of Police asked the Appellant about receiving of the tainted currency notes given by Raman Mishra. The Appellant refused about receiving of any such money from Raman Mishra. On being asked frequently, the Appellant took out the money. The Additional Superintendent of Police made a mark of "C" on the tainted currency notes recovered from the Appellant. Thereafter, the hands of Raman Mishra and the Appellant were washed with solutions of caustic soda. After the wash, the solutions turned into red colour.

10. Additional Superintendent of Police G. Akheto Sema (PW8) has deposed that he conducted the trap proceedings along with City Superintendent of Police B.P. Chandrawanshi (PW10). Panch witnesses N.R. Sahu (PW9) and Mohd. Akram Khan (PW4) were summoned. The currency notes brought by Complainant Raman Mishra were smeared with phenolphthalein powder before the panch witnesses. He tutored Raman Mishra about the trap proceedings and prepared a panchnama about the proceedings done.
11. City Superintendent of Police B.P. Chandrawanshi (PW10) has supported the statement of Additional Superintendent of Police G. Akheto Sema (PW8) and deposed that the currency notes brought by Complainant Raman Mishra were smeared with phenolphthalein powder by G. Akheto Sema. Thereafter, Raman Mishra was tutored about the trap proceedings and was sent to the Ajak Police Station. As per his Court statement, Raman Mishra and the Appellant first went to the betel shop situated near the Ajak Police Station. Thereafter, they entered the police station. After sometime, Raman Mishra came out of the police station and gave the same hint to the trap party already tutored to him. The trap party entered the police station. G. Akheto Sema (PW8) asked the Appellant to take out the tainted money. The Appellant took out the money from the right side pocket of his shirt and kept the same on the table. Post trap proceedings were done. The tainted currency notes were seized vide Ex.P7. The complaint which was made by Rukmani Bai (PW2) against Raman Mishra was also seized vide Ex.P9. Shirt of the Appellant was seized vide Ex.P10. Dehati Nalishi (Ex.P18) was recorded. Seized articles were sent to FSL

vide Ex.P20. FSL Report is Ex.P21.

- 12.** Panch witness Mohd. Akram Khan (PW4) has not supported the case of the prosecution and has been declared hostile. Other panch witness N.R. Sahu (PW9) has categorically stated in paragraph 2 of his examination-in-chief that the Additional Superintendent of Police had asked them to go to the Ajak Police Station because one officer of the said police station had taken bribe from one person. He further stated that neither any complaint was showed to him nor any currency notes were produced before him. Later on, this witness has also been declared hostile.
- 13.** Deputy Inspector General of Police Rustom Singh (PW11) has accorded the sanction for prosecution against accused/Appellant F.U. Siddique vide Ex.P23. He has categorically deposed that after perusal of the case diary, he accorded the sanction for prosecution against the Appellant.
- 14.** As per the Court statement of Raman Mishra (PW1), the Appellant had first demanded bribe of Rs.3,000/-. When he expressed his inability to fulfill the demand, the Appellant demanded Rs.500/-. But, in his written report (Ex.P1), it is mentioned that the Appellant had first demanded bribe of Rs.1,500/-. When he expressed his inability to fulfill the demand of Rs.1,500/-, the Appellant demanded Rs.1,000/-. When he again expressed his inability to fulfill the demand of Rs.1,000/-, the Appellant demanded Rs.500/-.

- 15.** As per the statement of B.P. Chandrawanshi (PW10), the currency notes brought by Raman Mishra were marked by G. Akheto Sema (PW8) with letters "MAC", but G. Akheto Sema has not stated in this regard in his Court statement. Per contra, Raman Mishra (PW1) has stated that the currency notes were marked with a single letter "C".
- 16.** As per the statement of Raman Mishra (PW1), when he met the Appellant, he asked him about the bribe money. Raman Mishra answered him in positive. The Appellant took Raman Mishra to the betel shop situated near the Ajak Police Station and there Raman Mishra gave him the bribe money of Rs.500/-. Panch witnesses Mohd. Akram Khan (PW4) and N.R. Sahu (PW9) have not supported the above statement of Raman Mishra. G. Akheto Sema (PW8) has also not stated anything about giving of bribe money to the Appellant at the betel shop. He further stated that Raman Mishra had only told him that he had given the bribe money to the Appellant. From the above, it is also clear that G. Akheto Sema has not seen Raman Mishra giving the bribe money to the Appellant. There is nothing in the statement of B.P. Chandrawanshi (PW10) that he saw Raman Mishra giving the bribe money to the Appellant. From the above, it is clear that except Complainant Raman Mishra, no other witness saw Raman Mishra giving the bribe money to the Appellant.
- 17.** In his Court statement, Raman Mishra (PW1) has stated that he reached the office of the Appellant after arrival of the trap party to the said office. As per the prosecution story, the Appellant had kept the bribe money in the right side pocket of the shirt and from where he had taken out the bribe money and kept on the table and

thereafter the same was seized from the table. But, in paragraph 12 of his cross-examination, Raman Mishra has stated that the Appellant had kept the bribe money in the back side pocket of his pant. G. Akheto Sema (PW8) has also stated in his cross-examination that the tainted currency notes were recovered from the pocket of the pant of the Appellant. B.P. Chandrawanshi (PW10) has stated that the Appellant had taken out the tainted currency notes from the right side pocket of his shirt and the same was seized at the spot.

18. From the above, it emerges that there is a major contradiction in the statements of these witnesses about the place/pocket of keeping of the bribe money by the Appellant. Therefore, there is a discrepancy as to the place from where the recovery of tainted currency notes was made.
19. In **N. Sunkanna case** (supra), it was held that unless demand of illegal gratification is established, offence under Section 7 of the Act of 1988 is not proved. Therefore, question of its acceptance will not arise. Mere recovery of tainted money from the possession of the Appellant is not enough.
20. In **Khilli Ram case** (supra), it is observed as under:

“9. If Shankerlal was the person with whom PW2 had negotiated in the matter of taking of the bribe, it would indeed be difficult to accept the position that the accused readily agreed to receive the amount when offered. The accused was, according to the prosecution evidence, in full uniform. He had been called up to the bus stand which is a public place. There is evidence to

show that there were many people moving around and the area was crowded. There is also evidence that the place where PW 2 met the accused with the money was close to a hotel where people were standing. In such a surrounding a policeman in uniform would ordinarily not accept a bribe. The police station was not far away and if the accused wanted actually to receive the bribe he would try to choose a better environment for it than the one where the bribe is said to have been given. Human compunction would not permit a man in the position of the accused to behave in the manner prosecution has pictured him to have. There is also evidence that the money had not really been received by the accused and PW 1 raised shouts that the bribe had been accepted before the amount was paid. PW 3 has narrated this part of the story thus:

There the Deputy Sahib and we all stood at one place and Ram Swaroop (PW2) and Prabhu Dayal (PW1) went towards the police station. Both had some talks. Prabhu Dayal remained this side and Ram Swaroop went inside the police station. Ram Swaroop returned and looked here and there. In the mean time Prabhu Dayal constable shouted that the money has been found, come on ; come on

PW 4 stated that he did not see anybody giving or taking illegal gratification. DW 1 has stated :

I told pointing towards Ram Swaroop and his companions that they are summoning. Thereupon the companion of Ram Swaroop (referring to Prabhu Dayal) shouted near the 'Imli' tree that 'caught, caught'. He took out from the pocket of his

pant notes like and putting them in his hand shouted, 'caught, caught'.

DW 3 the hotelier has stated : “I and the Inspector went together, then the notes were in the hand of a constable”. He has further said that the constable was shouting that the amount had been recovered from Khilli Ram. DW 4, an independent witness described this part of the story thus : “At the same time, Banshi waterman and Khilli Ram accused present in the Court came from the side of police station. The man standing near Ram Swaroop (obviously Prabhu Dayal) shouted : 'caught, caught'. He took out the currency notes of Rs.50 from his (witness's) pocket and raised this alarm”. In cross-examination this witness stated that the person who raised the cry said that the notes have been recovered from Khilli Ram but Khilli Ram was saying that he did not take the notes.

10. Two other aspects are relevant to be indicated here. According to PW 1, Kastoori Lal, the Deputy Superintendent of Police ordered him to take the search of the accused whereupon he proceeded to do the needful. PW 2, however, stated that it was the Dy. Superintendent of Police who recovered the notes from the accused. PW 6 has, however, indicated that under his orders search was conducted by PW 1. There is again material discrepancy as to from where the amount was recovered. PW 2 has stated that the accused kept the notes of Rs. 50 given by him in the left side pocket of his shirt. PW 6 has stated : “When Prabhu Dayal conducted the search of the accused, Ex. P-1, 2, 3, 4 and 5 notes of the denomination of Rs. 10 each were found out from the right side pocket of the shirt of the accused”. Ex. P-1 is the recovery memo purported to have been prepared at the spot. It indicates : “Then the settled five currency

notes of the denomination of Rs.10 each were recovered from the right hand pocket of the worn shirt of Khaki uniform”. There is thus a discrepancy as to the place from where recovery was made.

- 21.** In the case in hand also, as per the prosecution story, bribe money was given to the Appellant, who was a Sub-Inspector of Police in uniform near a crowded betel shop situated near the police station. It is doubtful that a Sub-Inspector who was in prescribed uniform accepted the bribe money at the betel shop, i.e., a crowded place out of his office room that is to say leaving the safe place. In this case, there is a material contradiction about the place/pocket used for keeping of the bribe money by the Appellant, i.e., in the shirt or in the pant. There is other material contradiction regarding marking of the currency notes, i.e., either they were marked with letters “MAC” or with letter “C”. Admittedly, numbers of the currency notes which had been given to the Appellant as bribe were not noted before giving to the Appellant. Regarding demand of bribe money, it is admitted that recording of the conversation made between the Appellant and the Complainant was not done. There is other material contradiction regarding the actual amount of bribe demanded by the Appellant.
- 22.** From the above discussion, I find that demand and acceptance of bribe is doubtful. Mere recovery of tainted notes from the possession of the Appellant is not enough. From the foregoing it emerges that the whole prosecution story is doubtful. Therefore, the Appellant deserves to get benefit of doubt.
- 23.** Consequently, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. Deceased accused/Appellant F.U. Siddique is acquitted of the charges framed against him.

- 24.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE