

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.403 of 2003

Arising Out of PS.Case No. - Year- Thana - District- PATNA

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Dr. Jai Kumar Jain, son of Late Tara Chand Jain, resident of 43/2 Jain Kutir,
Mithapur, Police Station Jakkampur, District Patna

.... Appellant

Versus

Union of India, through Central Bureau of Investigation

.... Respondent

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Appearance :

For the Appellant/s : Ms. Aaruni Singh, Advocate

For the Respondent/s : Mr. Sanjay Kumar, S.C., CBI

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 30-08-2018

Sole appellant has preferred this appeal against the judgment and order dated 29.7.2003 passed by Sri Braj Nandan Sahay, the then Special Judge, C.B.I., South Bihar, Patna in Special Case No. 55/88/R.C.No. 29(A)/88 by which he has convicted the appellant under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947 and sentenced to undergo rigorous imprisonment for two years and a fine of Rs.10,000/- with default clause.

2. Prosecution case, as appears from the complaint lodged by Triloki Mistry (PW 2) before the Superintendent of Police, C.B.I., Patna, in short, is that the appellant, who was posted as Deputy Superintendent, E.S.I. Hospital, Phulwarisharif, had demanded Rs.450/- as gratification for the treatment of his wife, Kaushalya Devi.



The aforesaid allegation (Ext.2) was verified by Sri Bal Krishna Birdi (PW 5), the then Sub-Inspector of Police, C.B.I. and FIR (Ext.1) was registered, Patna. On 30.8.1988 a trap team was constituted and for that services of two independent witnesses, namely, Ramjee Prasad, Asstt. Grade-I(M) and N.K.Gupta, Asstt. Grade-II (M), both of the regional office, F.C.I., Patna, were requisitioned and the object and purpose for constituting the team were discussed and practical demonstration was given to the witnesses and the complainant to make them familiar with the method of laying trap and also with action and reaction of phenolphthalein powder with solution of sodium carbonate and all the members of the team were introduced with each other and complaint petition was read over to them. Further case is that cash of Rs.450/-, each of Rs.50/- denomination, was given by the complainant to the Inspector, who treated the same with phenolphthalein power. The numbers of G.C. notes were written and then the G.C. notes were returned to the complainant with direction to pay the same only when the accused demanded and PW 3 Ramji Prasad was asked to be with the complainant as shadow witness. The trap team proceeded to the place of occurrence and on demand the complainant paid the gratification to the appellant and the appellant kept the notes beneath brief case. Thereafter CBI officials caught hold of him along with the bribe money.



3. After investigation, charge sheet was submitted and the case ultimately traveled to the file of Sri Brij Nandan Sahay, the then Special Judge, CBI, South Bihar, Patna for trial and disposal.

4. During trial charge under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947 was framed and also charge under Section 161 I.P.C. was also framed against the accused appellant.

5. In support of the case, the prosecution has examined altogether nine witnesses, they are PW 1 Shyam Kishun Prasad, PW 2 Triloki Mistry, the complainant himself, PW 3 Ramjee Prasad, independent witness and shadow witness, PW 4 Narendra Kumar Gupta, independent witness, PW 5 Bal Krishna Birdi, who verified the allegation, PW 6 Ram Nath Prasad, who proved the sanction order, PW 7 R.S.Yadav, member of trap team and official of CBI, PW 8 Ram Chandra Chaudhary, I.O. of the case and PW 9 Hari Krishan Sharma.

6. Apart from the above ocular evidence, certain documents have also been brought on record by the prosecution, including Ext. 1- FIR and Ext.-1/A- signatures of R.C.Chaudhary, Inspector, on FIR, Ext.1/B- signature of R.N.Rabi, S.P. on FIR, Ext.2- written complaint, Ext.3- seizure memorandum/Post Trap Memorandum, Ext.4- search list, Ext.5- search list, Ext. 6 - sanction order, Ext.7- preliminary



memorandum, Exts. 8 to 8/1- seizure memorandum and signature of R.C.Chaudhary, Ext.9- verification report and Ext.10- report of chemical examination. Apart from that, some articles were brought on record as Material Exhibits, including nine G.C. notes, which were marked as Exts. V to V/8.

7. On behalf of defence also, four witnesses have been examined, they are DW 1 Sarita Kirti, Grade-A Nurse posted in the E.S.I. Hospital, Phulwarisharif, DW 2 Dr. Jai Kumar Jain, the appellant himself, DW 3 Vishwanath Prasad, staff posted in the E.S.I. hospital and DW 4 Umesh Kumar Singh, staff posted in the E.S.I. hospital, Phulwarisharif.

8. Apart from that, one document has been brought on record on behalf of defence, that is one affidavit sworn by Ramcharitra Sharma dated 14.10.1988 as Ext.A.

9. Learned trial court on conclusion of trial has convicted the appellant under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. No finding has been given with regard to charge under Section 161 IPC is concerned.

10. The present appeal has been preferred against the above judgment and order of learned Special Judge.

11. Contention of learned counsel for the appellant is that in this case the verification report with respect to allegation made in the



complaint petition has not been produced earlier before the trial court along with the list of documents and it has been filed later on and that clearly shows that verification report is manufactured document as evidence of PW 5 para-13 of cross examination discloses that verification report was not before him at that time. Further contention of learned counsel for the appellant is that verification report was not on the record at the time when PW 5 was first examined and verification report was filed in the court after a long period of time and PW 5 was examined, cross examined and discharged on 6.10.1999 and he was examined and cross examined on recall on 13.3.2002 when he proved the verification report and marked the same as Ext.9 and a suggestion was given that verification report was forged. Further submission of learned counsel for the appellant is that a petition was also filed by learned counsel for the accused for sending the verification report to Government Examiner in order to ascertain its age, such prayer was allowed and the report was examined by Government Examiner and the report dated 23.4.2003 disclosed that the document was carefully and thoroughly examined but it was not possible to pin point regarding absolute age of typed statement (Ext.9), as such above facts disclosed that verification report (Ext.9) is manufactured and suspicious piece of document. Moreover, in the present case, complaint (Ext.2) was filed on



30.8.1988, so-called verification was done on 30.8.1988, raid was conducted on the same day and seizure memorandum (Ext.3) was also prepared on the same day, as such all the above action has been completed in one day and that also creates doubt about the prosecution case.

12. Learned counsel for the appellant has further submitted that there is contradiction between the evidence of witnesses so far acceptance of gratification is concerned and, moreover, learned trial court has not considered the defence of the appellant that the amount of Rs.450/- was taken for arrangement of blood and other articles as the same were not available in the hospital and defence witnesses have also stated that due to that, appellant has not kept the money in his pocket, rather he kept it beneath the brief case and with respect to the same, suggestion has also been given to almost all the witnesses but the learned Special Judge has not considered the same which appears to be plausible while convicting the appellant under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947. It has also been submitted that plausible explanation has been given by defence for accepting Rs.450/- and the defence witnesses have supported the same and in such a situation, even if there is presumption against the appellant, that has been rebutted by the appellant by giving plausible explanation and as such the conviction



of the appellant under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act does not appear to be sustainable in the eye of law on the ground of non-consideration of the defence story of the appellant. Learned counsel for the appellant, in support of his contentions, has cited several decisions of the Hon'ble Apex Court, which shall be dealt with later on.

13. On the other hand, learned counsel for CBI has defended the judgment on the ground that evidence shows that there is demand of gratification, acceptance and recovery of Rs.450/- from beneath the brief case of the appellant and, in such a situation, there shall be presumption of motive or reward against the appellant as provided under Section 4 of Prevention of Corruption Act, 1947 and explanation given by the appellant does not inspire confidence as learned trial court has considered this aspect of the matter and come to the conclusion that complainant had gone to the accused on 29.8.1988 for the first time and if complainant had to arrange the blood and technician, for that money should have been arranged on 29.8.1988 itself and till morning the money was not arranged and so it appears that appellant was concealing something and it was inferred that appellant was delaying the operation because he was not paid the bribe by 12.30 or 1 P.M. and learned trial court has come to the conclusion that appellant was demanding and accepting the bribe



money for rendering the treatment of wife of the complainant. On the basis of aforesaid submission, learned counsel for CBI has submitted that conviction of the appellant is just and proper and does not require any interference by this Court. In support of his contention, learned counsel for the CBI has also cited several decisions, which will be dealt with later on.

14. Learned counsel for the CBI has further submitted that verification report is available on record as Ext.9 and learned trial court has also considered this aspect of the matter and come to the conclusion that had the verification not been done, it would not have been mentioned in the FIR itself. It has also been submitted that learned trial court has also considered this aspect of the matter that suggestion has been given to the complainant that appellant told him to take his wife to PMCH and if it is true, the question arises as to why the accused appellant, being Deputy Superintendent, had admitted the wife of the complainant in his hospital. On the basis of above submission, learned counsel for the CBI has submitted that impugned judgment of conviction is just and proper and does not require any interference by this Court.

15. In the background of rival submissions, on perusal of the evidence it appears that PW 2 is the complainant/informant in this case and his evidence disclosed that he was working as Fitter since



1977 in M/s. Speed Craft Pvt. Ltd., Sahay Nagar, Phulwarisharif and he was entitled for facility of free treatment in the Corporation hospital, which is at Phulwarisharif, and on 29.8.1988 his wife was suffered from abdominal pain and he had taken her to Dr. J.K.Jain, Deputy Superintendent, for treatment and he disclosed that there was Appendicitis and the same was to be operated upon and admitted in his hospital and the Doctor demanded Rs.450/- from him as operation charge and when he asked that there is provision of free treatment, the Doctor threatened him to discharge his wife as he was not ready to give the bribe, he made a complaint on 30.8.1988 in CBI office. He proved the complaint petition as Ext.2. S.P. called the Inspector Birdi (PW 5) for verification and during verification in presence of PW 5 in Chamber of Dr. J.K.Jain he demanded Rs.450/-, otherwise his name will be struck off. His evidence further disclosed that at 12 P.M. he went to meet CBI Inspector Chaudhary Sahab and 5-7 persons were sitting there and he had given the amount and number of notes were noted down on a paper and his left hand, with which he had touched the powder, was dipped in a solution which turned pink from milky white and the solution was sealed in a bottle (Material Ext.1) and he further stated that remaining powder was sealed in an envelope after the G.C. notes were treated with powder. The envelope was sealed and marked as Material Ext. III and a Panchnama/Post Trap



Memorandum (Ext.7) was also prepared and Ramjee Prasad (PW 3) was asked to remain with him. His Evidence further disclosed that he went to Phulwari Hospital along with raiding party and entered inside the chamber of Dr. J.K.Jain and Ramjee Prasad (PW 3) was watching at the door and he was asked to meet outside after two and a half hours. Doctor Sahab came and went inside and Ramjee Prasad (PW 3) remained at the door. On demand the complainant had given Rs.450/- to Dr. Jain, which was counted by the Doctor and kept it beneath brief case and signal was made to the raiding party and raiding party arrived there and Yadavji (PW 7) and Sharmaji caught hold the hands of the Doctor and recovered Rs.450/- from the beneath brief case and both the hands of the accused were got dipped in a milky solution, which turned into pink and both the solutions were kept in a sealed bottles, which were marked as Material Ext.I/A and I/B. and thereafter seizure memorandum (Ext.3) was prepared. Even in his cross examination he has stated in paragraph-25 that accused asked him for Rs.450/- then only operation will be made and he denied a suggestion that there was no blood bank there and as such Doctor has asked him to take his wife to PMCH and he has also denied the suggestion that the money was demanded for arranging the blood and medicines. He has also been given suggestion that complaint was filed at the instance of Dr. Sahjanand Prasad, who was earlier posted there.



16. PW 3 Ramjee Prasad is an independent witness and staff of Regional Office of Food Corporation of India and he has also supported the prosecution case, preparation of demonstration of pre-trapping memorandum and he was asked to be present as shadow witness and his evidence also shows that he was at the door of Chamber of appellant Dr. Jain and Doctor asked complainant as to whether he has brought the money for operation and complainant has handed over the money and told that he has given Baksisnama and thereafter on signal, raiding party caught hold of the hands of Dr. Jain and recovered the money from beneath briefcase and thereafter seizure memorandum (Ext.3) was prepared.

17. PW 4 is also an independent witness and employee of FCI and he has also supported the pre-trap memorandum, raid and also demand and recovery of gratification and also preparation of post trap memorandum/seizure memorandum.

18. PW 5 is the Inspector, who has verified the allegation and his evidence disclosed that on 30.8.1988 he conducted the verification of the allegation and found the same as true and reported the same thereafter. His evidence also disclosed about preparation of pre-trap and post-trap memorandum, raid, recovery and seizure memorandum and he has proved the verification report.

19. PW 6 is a formal witness who has proved the sanction



order.

20. PW 7 is R.S.Yadav, who was Inspector of CBI and he has also stated that details of the demonstration, preparation of pre-trap memorandum and thereafter raid, recovery and preparation of post trap memorandum/seizure memorandum and his evidence also discloses that Rs.450/- was recovered from beneath the brief case and on chemical examination, finger of the appellant turn to pink.

21. PW 8 is the I.O. and he has stated that the complainant on 30.8.1988 had given a written report to the S.P. CBI that the appellant was demanding Rs.450/- as bribe for conducting operation though operation was free there. Thereafter allegation was verified by the Inspector Birdi (PW 5) and verification report was submitted and investigation was handed over to him. Ramjee Prasad (PW 3) and N.K.Gupta (PW 4) were requisitioned as independent witnesses and raiding party was constituted, on demonstration of pre-trap, pre-trap memorandum/preliminary memorandum were prepared and raiding party raided the hospital and his evidence disclosed that Dr. Jain was apprehended and Rs.450/- was recovered from beneath his brief case. According to him, Sri R.S. Yadav was caught hold right hand and Sri B.K.Birdi caught hold the left hand of the Dr.Jain and thereafter seizure memorandum was prepared. His evidence further disclosed that the solution was sent to the Central FSL, Calcutta and report was



obtained and sanction order was obtained in this case.

22. PW 9 was working in Speed Craft as Work Manager and according to him the complainant and his family members were entitled for free treatment and he has also stated that complainant was working as Fitter in his work shop and he is entitled for free treatment. PW 1 has proved the signature of R.C.Chaudhary on FIR.

23. On behalf of defence four witnesses have been examined and DW 1 was Grade A Nurse of E.S.I. Hospital, Phulwarisharif and according to her evidence on 29.8.1988 complainant came with his wife for treatment and Dr. Jain has treated her and told that she has to be operated upon for Appendicitis and she has also stated that there was no blood available in the hospital and so patient was to be shifted to PMCH and she has also stated that in PMCH there was strike, on which appellant was told that blood and anesthesia had to be arranged and for that complainant was said that Rs.450/- will be spent on that. Next day at 9.30 A.M. complainant came with medicine and operation was arranged and complainant told that he had to go for arrangement of money and till 9.30 when he did not come operation was cancelled.

24. DW 2 is the appellant himself and his evidence also disclosed that for arrangement for blood and technician the complainant was asked to pay the amount which will be reimbursed to him and in the morning he came with medicine and disclosed that he



will be coming after arranging the blood and till 12.30 to 1 P.M. they waited for him and when he did not come the operation was postponed. At 2.30 P.M. the complainant came and gave Rs.450/- which he kept beneath brief case and told him as it was delayed patient was to be administered anesthesia as such operation could not be arranged by that time and thereafter CBI raided and apprehended him. His evidence further disclosed that complainant got him implicated at the instance of Dr. Sahjanand Prasad, who was a Doctor in his rank.

25. DW 3 is Advocate Clerk and he has proved list of documents in which verification report has not been mentioned.

26. DW 4 has also stated that blood and anesthesia were not available in ESI Hospital and he had given the report after blood test but complainant has not brought blood nor arranged any person and requested Dr. Jain to arrange the transfusion technician and take money and that money for transfusion and technician was kept by Dr. Jain in beneath brief case.

27. Defence has also brought one affidavit sworn by one Ram Charitra Sharma, Godown keeper of Central Medical Store as Ext.A, disclosing the fact that on 30.8.1988 Triloki Mistry came and asked the Dr.Jain to operate upon his wife, on which Doctor Sahab informed that they are waiting since morning for blood, Anesthetist



and Transfusion Technician and time has also now gone as such operation cannot be held. The affidavit further shows that when Doctor Sahab went in ward Triloki Mistry was given some notes of Rs.50/- and asked him to keep that, in the meantime, some persons entered in his chamber and caught hold his hand.

28. On mere perusal of Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, the demand, acceptance and recovery are the ingredients for conviction under the above section and it is well settled that only recovery of tainted money is not sufficient for conviction, rather prosecution has to prove the demand, acceptance and illegal gratification. In this connection, learned counsel for the appellant has cited some decisions in support of his contention, in the case of **P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another : (2015) 10 SCC 152**, in the case of **Satvir Singh vs. State of Delhi : (2014) 13 SCC 143** and in the case of **V. Sejappa vs. State by Police Inspector Lokayukta, Chitradurga : (2016) 12 SCC 150**. Learned counsel for the appellant has also cited some more decisions but for the sake of repetition the same is not being mentioned here as it is well established principle that for conviction under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947, the prosecution has to prove the demand, acceptance and recovery of



gratification and moreover once the prosecution has been able to prove the ingredients of demand, acceptance and recovery there shall be presumption under Section 20 of the Prevention of Corruption Act, 1988 which is Section 4 of Prevention of Corruption Act, 1947. What appears from the evidence, as discussed above, is that the prosecution evidence disclosed that from the complainant (PW 2) Rs.450/- was demanded for operation of his wife and the aforesaid allegation was verified by PW 5 and according to his evidence the appellant demanded Rs.450/- for conducting operation. PW 3 is shadow witness and his evidence in paragraphs 11 to 13 disclosed that Doctor called Triloki (PW 2) in his chamber when he was behind the curtain on the gate from where he was watching and hearing and Doctor asked him as to whether he has brought the amount for operation and Triloki (PW 2) has given that amount and told that as per the talk he is giving Baksinama. The evidence of other independent witness (PW 4), and CBI officials PW 5, PW 7 and PW 8, I.O. also disclosed that on signal they went inside the chamber of appellant Dr. Jain, caught hold of his hand and money was recovered from beneath the briefcase and thereafter seizure memorandum was prepared. Their evidence further disclosed that the hand of the appellant was dipped in the solution which turned pink. Aforesaid evidence clearly disclosed that there was demand, acceptance and recovery. No doubt, argument has been made



by learned counsel for the appellant that there is contradiction in the evidence of the witnesses with regard to recovery is concerned. However, in this case so far acceptance and recovery are concerned, the defence has not challenged the same, rather defence has examined some witnesses and that evidence discloses that the aforesaid money was given for arrangement of blood as well as for Technician and Anesthetist and in that background the acceptance and recovery are well established.

So far demand is concerned, case of the defence is that money was demanded for arranging blood, Technician and Anesthetist and the same will appear from the evidence of defence witnesses, including the appellant.

29. Further argument of learned counsel for the appellant is that verification report was a manufactured document as the same was not enclosed with the list of documents and not even produced at the time of examination of PW 5 and when the evidence was closed the same was produced. However, it appears that learned trial court has not accepted the argument of defence on the ground that FIR itself shows that verification was made and hence non-production of aforesaid document at the time of examination of the witness or not enclosed with the list of documents cannot be brushed aside the prosecution evidence of verification by PW 5 of the allegation of



demand. On perusal of evidence of PW 5, who has verified the allegation made in the complaint, it appears that even at the time of examination he has stated about the verification made by him and his evidence disclosed that he has stated that he went for verification of the complaint to Phulwarisharif hospital and he saw the wife of the complainant as indoor patient in the hospital and during verification he found the allegation of demand of Rs.45/- true and FIR also disclosed that verification was done by PW 5 and in such a situation it appears that learned trial court has rightly not found force in the contention of appellant regarding the verification report that it is manufactured document.

30. Another contention of defence is that in this case defence has given an explanation for acceptance of Rs.450/- and according to defence witnesses the demand was made for the purpose of arrangement of blood, Technician for transfusion and Anesthetist. Further submission of learned counsel for the appellant is that aforesaid explanation was quite probable and in spite of that learned trial court has rejected the aforesaid defence case given by the appellant though it is well settled that defence does not have to prove his case beyond all reasonable doubts and it is sufficient for the defence to prove the case by standard of preponderance of probabilities and the standard of proof is not so strict as in the case of



prosecution. In support of his contention learned counsel for the appellant has cited decisions in the case of **Sri Rabindra Kumar Dey vs. State of Orissa : (1976) 4 SCC 233**, in the case of **Mohmoodkhan Mahboobkhan Pathan vs. State of Maharashtra : (1997) 10 SCC 600** and other decisions have also been cited but for the sake of brevity the same has not been mentioned here as this Court is aware of the well established principle that defence has to prove its defence story on preponderance of probability which creates doubt on the prosecution case. Hon'ble Apex Court in the Rabindra Kumar Dey's case (supra) in paragraph 6 has held as follows :

“Having regard to the stand taken by the parties, the matter lies within a very narrow compass. So far as the entrustment of Rs.10,000/- is concerned that is undoubtedly admitted by the appellant, and the only explanation given by him is that he had returned the money to the Nazir after his return from the village Balichandrapur and he had also directed the Nazir not to deposit the money in the treasury. If once the explanation of the accused is disbelieved, or proved to be absolutely false, then it is quite natural that he must be presumed to have retained the money with himself for a period of six months. Although the Onus lies on the prosecution to prove the charge against the accused, yet where the entrustment is proved or admitted it will be difficult for the prosecution to prove the actual mode or manner of misappropriation and in such a case the prosecution would have to rely largely on the truth or the falsity of the explanation given by the accused. [In Jaikrishnadas Manohar- das Desai and Anr. v. State of Bombay](#)(1) this Court observed as follows:

"The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof,



entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation on conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, of over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made."

The Courts below appear to have convicted the appellant on the basis of the decision referred to above and have held that since the explanation given by the appellant was false, an inference of misappropriation could reasonably be drawn against him. This proposition cannot be doubted. But the question is whether the explanation given by the appellant in this case can be said to be absolutely false ? Another question that arises is what are the standards to be employed in order to judge the truth or falsity of the version given by the defence ? Should the accused prove his case with the same amount of rigour and certainty, as the prosecution is required, to prove a criminal charge, or it is sufficient if the accused puts forward a probable or reason- able explanation which is sufficient to throw doubt on the prosecution case ? In our opinion three cardinal principles of criminal jurisprudence are well-settled, namely:

(1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;

(1) [1960] 3 S.C.R. 319, 324.

(2) that in a criminal trial the accused must be presumed to be innocent unless he is. proved to. be guilty; and (3) that the onus of the prosecution



never shifts. It is true that under [section 105](#) of the Evidence Act the onus of proving exceptions mentioned in [the Indian Penal Code](#) lies on the accused, but this section does not at all indicate the nature and standard of proof required. [The Evidence Act](#) does not contemplate that the accused should prove his case with the same strictness and rigour as the prosecution is required to prove a criminal charge. In fact, from the cardinal principles referred to above, it follows that, it is sufficient if the accused is able to prove his case by the standard of preponderance of probabilities as envisaged by [S. 5](#) of the Evidence Act as a result of which he succeeds not because he proves his case to the hilt but because probability of the version given by him throws doubt on the prosecution case and, therefore, the prosecution cannot be said to have established the charge beyond reasonable doubt. In other words, the mode of proof, by standard of benefit of doubt, is not applicable to the accused, where he is called upon to prove his case or to prove the exceptions [of the Indian Penal Code](#) on which he seeks to rely. It is sufficient for the defence to give a version which competes in probability with the prosecution version, for that would be sufficient to throw suspicion on the prosecution case entailing its rejection by the Court. This aspect of the matter is no longer res integra but is concluded by several authorities of this Court. In Harbhajan Singh v. State of Punjab (1) this Court observed as follows:

"But the question which often arises and has been frequently considered by judicial decisions is whether the nature and extent of the onus of proof placed on an accused person who claims the benefit of an Exception is exactly the same as the nature and extent of the onus placed on the prosecution in a criminal case; and there is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can



be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where an accused person is called upon to prove that his case falls under an Exception, law treats the onus as discharged if the accused person succeeds "in proving a preponderance of probability." As soon as the preponderance of probability is proved, the burden shifts to the prosecution which has still to discharge its original onus. It must be remembered that basically, the original onus (1) [1965] 3 S.C.R. 235, 241 never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a reasonable doubt."

The same view was taken in a later case in [State of U.P. v. Ram Swarup & Anr.](#)(1) where this Court observed as follows:

"That is to say, an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by him while discharging the burden under [Section](#) 105 of the Evidence Act may be enough to cast a reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal. The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, as in a civil case, that the preponderance of probabilities is in favour of his plea."

31. On the other hand, submission of learned counsel for the CBI is that plea of the accused is an after thought and he has not stated so at the time of arrest and learned counsel for the CBI has relied on a decision in the case of **Sultan Ahmed vs. State of Bihar : 1974 CRI. L. J. 895** and in the case of **Sat Pal vs. State of Punjab :**



AIR 2012 SC (Criminal) 486. From the case of Sultan Ahmed (supra) it appears that in that case plea of the accused is that he received the five rupees currency note from the complainant but his plea was that he had received it with a view to give to the complainant in exchange five one-rupee currency notes and Hon'ble Apex Court considering the same has held that in the circumstances, the plea of the accused must be held to be the result of an afterthought and there was no cogent ground to interfere with the concurrent findings of the Trial Court and the High Court which had been arrived at on due appraisal of the evidence adduced in the case. The accused had been rightly convicted. Similarly, in the case of Sat Pal (supra) the plea of the defence was that Investigating Officer had laid trap in order to involve the appellant in a false case as the recovered money from his pocket would bring his case within the ambit of Section 20 of the Act and defence plea was that money recovered from his pocket was given to him to purchase some medicine by complainant but no medicine was recovered at the time of raid and the Hon'ble Apex Court has dismissed the appeal finding no merit in it.

32. What I find in this case is that as per defence witnesses suggestion has been given to the witnesses that aforesaid amount was given for the purpose of arranging blood, technician and medicines which will appear from the evidence of PW 2, who is complainant and



his evidence in paragraph 27 disclosed that suggestion has been given to this witness that the Doctor informed that without blood there shall be no operation and the same articles for operation were also not available and PW 2 complainant insisted for operation in that hospital and PW 2 has denied the same. Further suggestion has been given that for arranging blood and medicines the money was demanded and it is also said that if he has not deposited he has to purchase the same and certificate to that effect will be given by the Doctor and the Doctor has also asked him for purchase of blood from PMCH but he has asked the Doctor to arrange the same and he will give the amount. He has also denied the above suggestion and suggestion has also been given that the money was for that purpose and story of bribe is false. The suggestion has also been denied by this witness. A suggestion has also been given to PW 3 in paragraph-21, PW 4 in paragraph-21, PW 5 in paragraph-18, PW 7 in paragraph-11 and PW 8 in paragraphs 27-30. It appears that a suggestion has been given to all the witnesses that the amount was taken for arrangement of blood, medicines as well as for arrangement of operation and suggestion has also been given to PW 7 that appellant told him that he has not taken bribe but he need not acceded to his request.

33. However, learned trial court has disbelieved the aforesaid defence version on the ground that DWs. 1 and 4 have not come



forward before the I.O. and DW 2 has come with another version that he has been implicated at the instance of Dr. Sahjanand Prasad, who wanted his posting in his place. DW 2 admits that the complainant has brought his wife for treatment and he also admits that she was admitted in Hospital. Learned trial court has also held that if complainant had gone to the accused on 29.8.1988 and was demanded money for arrangement of blood and other requirements, he should have arranged money on 29.8.1988 itself and till next morning money was not arranged and so it appears that accused is concealing something and the operation was delayed because he was not paid the bribe money till 12.30 to 1 P.M. It further appears that the evidence of complainant (PW 2) shows that when the appellant was caught by the CBI officials, Doctor Sahab did not tell anything and he was nervous and no suggestion has been given to any witness that the appellant at the time of his arrest has taken a plea that money was demanded for arranging blood and other requirements for operation, rather simple suggestion has been given that the aforesaid amount was for arranging blood, technician and anesthetist or medicines.

34. Learned counsel for the appellant has cited a decision in the case of **Duraisami vs. State of T.N. : (2005) 10 SCC 233** wherein appellant admitting to have received the amount but contending that the amount was received as balance payment for two



Indira Vikas Patras sold by him to the PW and he relying on communication sent by him to his immediate superior, wherein the numbers of the Indira Vikas Patras as well as the fact that he could collect only Rs.4500/- as against the total cost of Rs.5000/- was mentioned and trial court accepting the explanation of appellant and acquitting him of the charges framed against him and considering the above Hon'ble Apex Court has held that once the said communication is found to be true and genuine, case set up by the defence has to be accepted and therefore High Court erred in reversing the order of acquittal recorded by trial court. Similarly, in the case of **Punjabrao vs. State of Maharashtra : (2002) 10 SCC 371** Hon'ble Apex Court has held that it is well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established and it is of course true as observed by the High Court that when the investigating officer seized the amount from the accused he did not offer the explanation that it was in relation to a collection of loan but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 Cr.P.C. and accused appellant was acquitted of the charges leveled against him.

35. Learned counsel for the defence has submitted that in this



case plausible explanation has been given for the demand and acceptance of Rs.450/- for arranging blood and the cost of technician for transfusing blood and the same cannot be brushed aside on the ground that the explanation has not been given at the time of arrest.

36. In the present case, so far demand, acceptance and recovery are concerned, as I have discussed above, the appellant has also not denied the demand, acceptance and recovery. However, the defence story is that the money was demanded for arranging blood and transfusion technician and that was not the gratification as the blood was not available in the hospital. Even, according to DW 2, who is appellant in this case, he has also accepted the story of demand, acceptance and recovery. No doubt, he has stated that the demand was with respect to arrangement of blood and cost of technician. DWs 1 and 4 have also supported the defence story of the money being accepted for arranging blood and anesthetist and technician for transfusion of blood. In the statement under Section 313 Cr.P.C. the defence of the appellant is that the demand was made for arranging blood and suggestion has also been given to all the defence witnesses to that effect and as such the only question arises as to whether the demand was for arranging blood or it was a gratification. If it is for arranging the blood then there is plausible explanation by the defence for acceptance of Rs.450/- from the complainant.



37. Learned trial court has not considered the aforesaid explanation given by defence and simply stated that if money was demanded for arranging the blood and other requirements the complainant should have arranged money on 29.8.1988 itself and till next morning the money was not arranged, as such the appellant was concealing something. Learned trial court has failed to consider that defence has given a plausible explanation for the acceptance of Rs.450/-, which has to be considered on the preponderance of probability and does not have to be proved beyond all reasonable doubts. In the present case, the defence has given a plausible explanation which appears from the evidence of defence witnesses as well as suggestion given to the prosecution witnesses and even under Section 313 Cr.P.C. the appellant has stated so and in such a situation the explanation appears to be a genuine explanation as in such type of hospital generally there is no blood bank, which will appear from the evidence of DW 1 also and blood has to be arranged from outside and similarly technician has also to be made available from outside but learned trial court has not considered this aspect of the matter and the evidence of defence witnesses is consistent and there is nothing available on record to doubt the defence version, as such the same cannot be brushed aside.

38. Considering the entire discussions made above, it appears



that a plausible explanation has been given by the appellant for acceptance of Rs.450/- and the same can be accepted on the basis of preponderance of probability. As such, prosecution has failed to prove its case beyond all reasonable doubts and the appellant is entitled to the benefit of doubt.

39. In the result, the appeal is allowed. The impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bonds.

(Vinod Kumar Sinha, J)

spa/-

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