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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.602 OF 2002

Salim s/o Karim Shaikh,
Age 49 years, Occu. Junior Clerk,
Maharashtra State Electricity Board,
(Urban) Division, Dhule,
R/o Galli No.5, Deopur,
Near Madhli Masjid, Dhule

Died, through his L.Rs.

1A) Raziya wd/o Shaikh Salim,
Age 52 years, Occu. Household

1B) Shaikh Shakil s/o Shaikh Salim,
Age 35 years, Occu. Nil

1C) Shaikh Jamil s/o Shaikh Salim,
Age 32 years, Occu. Labour

1D) Shaikh Kafil s/o Shaikh Salim,
Age 30 years, Occu. Labour,

Nos.1-A to 1-D R/o Deopur,
Dhule, Tal. & Dist. Dhule

1E) Raziya w/o Iqbal Khan,
Age 31 years, Occu. Household,
R/o Saptshrungi Mata Nagar,
Tal. & Dist. Dhule

1F) Sultanbi w/o Gulab Shaikh,
Age 27 years, Occu. Household,
R/o Azad Nagar, Dhule,
Tal. & Dist. Dhule

... APPELLANTS
(L.Rs. of deceased Appellant)

VERSUS

The State of Maharashtra
Through Shri Bhanudas Baburao Patil,
Age 42 years, Police Inspector,

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Anti Corruption Bureau, Dhule
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad) ... RESPONDENT

.....
Shri N.E. Deshmukh, Advocate for appellants
Shri S.D. Ghayal, A.P.P. for State
.....

CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 1st July, 2019

Date of pronouncing judgment : 11th July, 2019

J U D G M E N T :

The challenge in this appeal is to the judgment and order dated 3.10.2002, passed by the Special Judge (appointed for trial of offences under the Prevention of Corruption Act), Dhule in Special Case No.68/1997. By the impugned judgment and order, the original appellant (deceased) was convicted for offences punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, the P.C. Act) and sentenced to suffer rigorous imprisonment for one year and two years with a direction to pay fine of Rs.1000/- and Rs.2000/-, in default to suffer R.I. for three months respectively. Both the sentences have been directed to run concurrently. Pending the appeal, the original accused passed away. His legal representatives have come on record to pursue the appeal.

2. The facts leading to the appeal are as follows :-

Dr. Abhay Kulkarni (P.W.1 - complainant) was a medical practitioner. He would run his hospital in a bungalow taken on rent. The bungalow belonged to Vatsala D. Ahire (landlady). The landlady was staying in Mumbai. As per the rent agreement, P.W.1 - complainant would pay Rs.3000/- per month towards rent. Charges for electricity consumption for the hospital were agreed to be paid by P.W.1. The electricity bill used to be issued in the name of the landlady since the electric meter stood in her name.

3. P.W.1 - complainant had received the electricity bill amounting to Rs.21,000/- for the month of September - October 1996. It was an estimated bill, since the electricity meter was not working. P.W.1 had, therefore, made a complaint to the Maharashtra State Electricity Board (M.S.E.B. for short). The bill was, therefore, reduced to Rs.3111/-. The M.S.E.B. replaced the faulty meter. On 5.2.1997, P.W.1 received the electricity bill of Rs.20,691/-. It was for the month of November - December 1996. This bill too was issued on the basis of estimated consumption. P.W.1, therefore, went to the M.S.E.B. Office, Sakri Road, Dhule on 13.2.1997 at 5.00 p.m. He met Shri Shaikh (deceased accused), who asked the P.W.1 to give him the bill. Shri Shaikh assured

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P.W.1 of getting the bill amount reduced substantially. Shri Shaikh, however, asked the P.W.1 to cough up Rs.2500/- therefor. Since the P.W.1 did not have that much amount with him, Shri Shaikh told him that he would come to the P.W.1's hospital the next day afternoon with the reduced bill amount and to receive the amount of Rs.2500/-. Since P.W.1 did not want to pay the amount demanded by Shri Shaikh, he approached the Anti Corruption Bureau (A.C.B.), Dhule and lodged complaint against Shri Shaikh. P.W.4 Bhanudas Patil, Police Inspector attached to A.C.B., Dhule, recorded the complaint (Exh.16). He then secured presence of two persons serving as Clerk with the office of Environmental Engineering, at Dhule to act as panch witnesses. P.W.1 - complainant had with him Rs.2500/- (25 notes of Rs.100/- denomination). At the A.C.B., P.W.3 gave certain instructions to P.W.1 complainant and panch witnesses. One of the panch witnesses (P.W.2 Chandrashekhar Dashputre) was instructed to act as a shadow witness. Pre-trap panchanama was drawn at the A.C.B. The amount to be paid was applied with anthracene powder. P.W.1 - complainant and P.W.2 Chandrashekhar then went to P.W.1's hospital. The raiding party headed by P.W.3 remained around the hospital.

4. The appellant - accused came to the hospital. It was about 5.00 p.m. P.W.1 - complainant and P.W.2 - Chandrashekhar

were in the consulting room. The appellant Shri Shaikh (original accused) told to have substantially reduced the electricity bill amount. The appellant handed over the bill to P.W.1 and asked him to pay him the amount of Rs.2500/-. P.W.1 complainant enquired with the appellant - accused whether he would have to pay the amount. The appellant - accused insisted P.W.1 to pay him that much amount. P.W.1, in turn, paid the appellant - accused the bribe money and came out of the hospital to give the a determined signal. In response to the signal, the raiding party entered the room in the hospital consulting room. Appellant was overpowered there. The bribe amount came to be recovered from his watch pocket. The scene of offence panchanama (Exh.25) was drawn then and there. The raiding party then returned to the A.C.B. P.W.3 Vijay Khandewale lodged report (F.I.R.) at City Police Station Dhule against the appellant - accused, alleging him to have committed offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. P.W.4 himself took up the investigation. He recorded statements of the persons acquainted with the facts and circumstances of the case. All the papers of investigation were submitted to the P.W.3 Vijay Khandelwale for obtaining his sanction for prosecution of the appellant - accused. The P.W.3 accorded his sanction. Thereafter, the appellant - accused was proceeded against by filing the charge sheet before the Special

Court, at Dhule. The Special Judge, Dhule framed the charge (Exh.4). The appellant – accused pleaded not guilty. His defence was of false implication, as P.W.1 suspected him to be behind issuance of inflated electricity bills. It was also the defence of the appellant – accused that the amount was paid towards the electricity bill and not as a bribe.

5. For establishing the charge, the prosecution examined four witnesses and tender in evidence some documents. On appreciating the evidence in the case, the Special Judge, Dhule convicted and sentenced the appellant – original accused as stated above.

6. Heard Mr. N.E. Deshmukh, learned counsel for the appellants. Closely scrutinized the evidence in the case. Mr. Deshmukh, would submit that it was for the landlady to have approached the M.S.E.B. authorities for reduction of the amount of the bill. There is no evidence to indicate that it was an agreement between the landlady and P.W.1 – complainant that, the tenant (P.W.1) shall pay the electricity charges. P.W.1 is a highly educated person. He too did not approach the higher ups of the M.S.E.B. P.W.1 – complainant was categorical to state that he suspected the appellant to be behind issuing exorbitant bills. According to learned counsel, the alleged demand of the bribe

has not been verified. No presumption under Section 20 of the P.C. Act could be raised in the facts and circumstances of the case. P.W.1 - complainant admitted that one Jaulkar, an official of the M.S.E.B. asked him to approach the appellant accused. Whereas, in examination-in-chief P.W.1 - complainant denied to have known any of the M.S.E.B. officials. There is also evidence to indicate, the P.W.1 - complainant would pay the appellant accused amount towards payment of electricity bill. P.W.2 - shadow witness did not state in his examination-in-chief as to when the demand was made by the appellant. Panchanamas Exhibits 24 and 25 are silent in this regard. According to learned counsel, P.W.4, investigating officer had examined not less than seventeen witnesses, only four of them, however, came to be examined. There is no independent witness in proof of the demand of bribe. The appellant was not the authority to reduce the bills or issue the same. According to learned counsel, P.W.3 has categorically admitted that the sanction order is silent in respect of demand by the appellant - accused and place of acceptance. According to learned counsel, the impugned judgment and order is incongruous with the evidence in the case. The learned counsel has placed reliance on the following authorities.

- (1) (2015) 10 SCC 152 (P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh & anr.)

- (2) (2015) 3 SCC 247 (M.R. Purushottam Vs. State of Karnataka)
- (3) (2014) 13 SCC 143 (Satvir Singh Vs. State of Delhi, through Central Bureau of Investigation)
- (4) 2018 SCC Online Bom. 1322 (Gulabdastagir Ramzan Inamdar & anr. Vs. The State of Maharashtra)
- (5) 2016 SCC Online Bom.2528 : (2016) 3 RCR (Cri.) 732 (Sanjay s/o Ishwar Bhanushali Vs. The State of Maharashtra)

7. Learned A.P.P. would, on the other hand, submit that the Special Judge has rightly convicted the appellant. He took me through the evidence in the case to ultimately submit that, no interference with the impugned judgment and order is warranted.

8. The appellant was admittedly working as a Clerk with M.S.E.B., at Dhule. P.W.1 – complainant is a medical practitioner. He is M.D. D.C.H. P.W.1 – complainant was running his hospital in a premises taken on rent. The premises belonged to one Vatsalabai Ahire. She would stay in Mumbai. It is in evidence of P.W.1 – complainant that as per the agreement between him and the landlady, the electricity charges were to be paid by him. It is further in his evidence that, the electricity metre of the premises was not in working condition. The electricity bills used to be issued on the basis of average consumption. For the month of July-August 1996, the electricity bill was raised for Rs.21,000/-. His Compounder, Shri Amrutkar had, therefore, been to the

M.S.E.B. Office. He met the appellant, who in turn, reduced the bill on accepting the amount as a consideration therefor. Since, Shri Amrutkar has not been examined, the evidence of P.W.1 - complainant in this regard is not accepted.

9. P.W.1 - complainant further testified that for the month of November - December 1996, he received the electricity bill amounting to Rs.20,690/-. Before that, the electricity metre had been replaced with a new one. Still, the bill was issued with an endorsement thereon, "Metre faulty". He had, therefore, been to the M.S.E.B. Office on 13.2.1997 by 5.00 p.m. He met the appellant there. The appellant undertook to see that the bill amount is reduced. The appellant, however, asked P.W.1 - complainant to cough up Rs.2500/- therefor. Since P.W.1 - complainant did not have that much amount with him that time, the appellant told him that he would come with the reduced bill to P.W.1's Clinic on the following day and he shall be paid Rs.2500/- there. It is further in evidence of P.W.1 that as he did not want to pay the amount, he approached the A.C.B. and lodged the report/ complaint (Exh.16).

10. The evidence of P.W.1 - complainant further indicates that, at the A.C.B., P.W.4 Bhanudas Patil recorded the report Exh.16. He then secured presence of two public servants to act

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as panch witnesses. One of them is P.W.2 Chandrashekhar Dashputre. It is further in the evidence of P.W.1 - complainant that at A.C.B., pre-trap panchanama (Exh.24) was drawn. P.W.1 - complainant had with him Rs.2500/- (25 currency notes of Rs.100/- denomination). Anthracene powder was applied to the currency notes. P.W.1 was instructed to pay the said amount to the appellant only on his demand and then come out of his Clinic to give a signal so that the raiding party could succeed in the trap. It is further in the evidence of P.W.1 - complainant that accordingly, he and P.W.2 came to his Hospital and took seats in his Consulting Room. The raiding party remained around the hospital premises. As agreed, the appellant came to the hospital by 4.05 p.m. In response to the query by P.W.1 - complainant, the appellant told him to have brought the electricity bill, reducing it substantially. The appellant handed over the bill to P.W.1 - complainant. The bill was reduced to Rs.3111/-. Thereafter the appellant demanded P.W.1 - complainant the amount agreed. P.W.1 - complainant thereupon questioned the appellant whether he would have to pay that much amount, to which the appellant replied that he would have to. P.W.1 - complainant, therefore, paid the appellant amount of Rs.2500/-. The appellant accepted the amount and kept it in his trouser pocket. P.W.1 - complainant thereafter came out of his Consulting Room and gave a predetermined signal, whereupon

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the raiding party entered the Consulting Room. P.W.4 – Bhanudas Patil (investigating officer) enquired with the appellant where the money was. The appellant kept mum. P.W.2 – shadow witness told that the amount is in the watch pocket of the appellant. Thereupon, the appellant took out the money. The same came to be seized under the panchanama (Exh.25) then and there.

11. The evidence of P.W.1 – complainant has been reinforced by the evidence of P.W.2 – shadow witness. I do not propose to reproduce P.W.2's evidence only with a view to avoid repetition. Suffice it to say that P.W.2 did not falter during his oral evidence. P.W.2 testified consistent with the evidence of P.W.1 – complainant. The evidence of P.W.2 is to the effect that the appellant came to the Consulting Room in the hospital at 4.05 p.m. The appellant told to have brought the bill with substantial reduction in the amount and then he asked P.W.1 to pay him the agreed amount. P.W.1 – complainant enquired with him whether he would have to pay the amount. The appellant thereupon told him, “You will have to pay that much amount.” P.W.1 – complainant thereupon took out the amount of Rs.2500/- from his pocket and gave it to the appellant. The appellant accepted the same and kept in his trouser pocket.

12. P.W.4 Bhanudas Patil gave his evidence very much consistent with the evidence of P.W.1 – complainant and P.W.2

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Chandrashekhar Dashputre. P.W.4's evidence indicates that he recorded the complaint (Exh.16) lodged by P.W.1 - complainant. He prepared pre-trap panchanama, gave necessary instructions to P.W.1 - complainant and the panch witnesses and then proceeded to the hospital of P.W.1 - complainant. His evidence would further indicate that, in response to a determined signal given by P.W.1 - complainant, he and other members of the raiding party entered the Consulting Room. He questioned the appellant where was the amount he received from P.W.1 - complainant. The appellant - accused kept mum. It was P.W.2 who told him that the money was in the appellant's trouser pocket. Thereupon, the appellant took out the money. P.W.4 seized it under the panchanama (Exh.25). It is further in his evidence that thereafter he lodged the F.I.R. at City Police Station, Dhule and took up the investigation.

13. P.W.1 - complainant, P.W.2 Chandrashekhar Dashputre and P.W.4 Bhanudas Patil were subjected to searching cross-examination. However, nothing could be elicited which could render their evidence unbelievable. True, P.W.1 testified that he suspected the appellant to be a person behind issuing him exorbitant bill. He was, however, categorical to denied to have lodged a false report with a view to take revenge against the appellant. P.W.1 is a highly educated medical practitioner. His almost entire evidence has been admitted by the appellant in his

examination under Section 313 of the Code of Criminal Procedure. Same is the case about the evidence of rest of the witnesses. The evidence undoubtedly indicate P.W.1 - complainant to have reason to believe the appellant to have been involved in such activities. On arrest of the appellant, one electricity bill was found with him besides a few electricity bills were noticed in a dickey of his scooter. All these bills came to be seized under the panchanama. Be that as it may, the appellant, in no uncertain terms, admitted most of the prosecution evidence. As a ready reference, a few questions put to the appellant in his examination under Section 313 of the Code of Criminal Procedure and his answers thereto are reproduced below:

“Q.12: Further it has come in his evidence that, at about 3.35 to 3.40 p.m. he and Shri Dashputre went in his dispensary and both sat in his Consulting Room and that he was sitting on chair while Dashputre was sitting on his right hand and at about 4.05 p.m. you arrived in his Consulting Room. What have you to say about it ?

Ans.: It is correct.

Q.13: Further it has come in his evidence that, he asked you whether you have brought the electric bill by reducing the amount as agreed, on which you replied affirmatively and you told that, you have

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brought the bill by reducing substantial amount and you handed over the bill to him and the bill was for Rs.3111/-, and he kept the said bill in the drawer of his table. What have you to say about it ?

Ans.: It is correct.

Q.14:

Q.15: Further it has come in his evidence that thereafter he took out 25 currency notes of Rs.100/- from his pocket and gave the same to you and you accepted that amount by your right hand and kept the same in right side pocket of your pant. What have you to say about it ?

Ans.: It is correct.

14. At the cost of repetition, it is stated that, the appellant admitted the prosecution evidence to the effect that at about 4.05 p.m. of 14.2.1997, he went to the hospital of P.W.1 – complainant and told him in the presence of P.W.2 to have brought the bill by reducing it substantially. The bill was reduced to Rs.3111/- whereas the appellant received Rs.2500/- from P.W.1- complainant. It was the bill that was to be paid to the M.S.E.B. later on. It would not make a sense with the case of the appellant that P.W.1 – complainant paid him Rs.2500/- towards payment of electricity bill. It was even not the appellant's case

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that he either paid the bill amount or was to pay the same on receipt of the amount from P.W.1 – complainant. The appellant – accused categorically admitted that the amount seized from him tallied with their description in the pre-trap panchanama (Exh.24).

15. I have closely scrutinised the appellant's examination under Section 313 of the Code of Criminal Procedure to find that he replied all the questions consciously. The evidence of P.W.3 Vijay Khandewale, who has accorded the sanction to the prosecution to the appellant, which was also put to the appellant as below :

Q.31: Further it has come in his evidence that, in February 1997 his office received papers from Anti Corruption Bureau, Dhule for according sanction to your prosecution and that, he perused the letter and papers received from A.C.B. and he was satisfied that you were successfully trapped while accepting the bribe and he accorded the sanction for your prosecution. What have you to say about it ?

Ans.: It is correct.

The learned Advocate for the appellant, therefore, could not be heard to say that there was non application of mind

for grant of sanction (Exh.28) for prosecution.

16. The evidence of prosecution witnesses undoubtedly suggests that the P.W.1 – complainant had received an exorbitant electricity bill for the month of November – December 1996. He had, therefore, been to the M.S.E.B. Office. He met the appellant there. The appellant undertook to see that the bill is substantially reduced. He made a demand of rs.2500/- for reducing the bill substantially. P.W.1 – complainant did not have that much amount to pay him then and there. The appellant came to the hospital of P.W.1 – complainant on the following day with the electricity bill amount substantially reduced. He delivered the bill to the P.W.1 – complainant in the presence of P.W.2 and made a demand of Rs.2500/-. P.W.1 – complainant paid the same. The appellant accepted it. Immediately thereupon, the raid was effected. The amount paid by P.W.1 – complainant to the appellant was found on the appellant's person. The appellant admits this everything. As such, the factum of demand of the bribe and acceptance thereof was proved beyond reasonable doubt. The evidence also gave rise to raise a presumption under Section 20 of the Prevention of Corruption Act. The appellant could not rebut the said presumption. His explanation that P.W.1 – complainant lodged a false report could not be accepted. The appellant could not explain towards what else consideration he

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accepted the amount. The authorities relied upon by the learned counsel for appellant are of no assistance in view of the facts and circumstances of the present case being altogether different. The Special Judge rightly convicted the appellant - accused. No interference with the impugned judgment of conviction and sentence is warranted.

17. In the result, the Appeal fails. The Appeal is, therefore, dismissed.

(R.G. AVACHAT)
JUDGE

fmp/-