

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 310 OF 2020

- | | | |
|--|---|-----------------|
| 1. Asaram Mohanrao Chandanshiv |] | |
| Age: 48 years, Occupation: Service, |] | |
| Resident of : Shivshankar Society, |] | |
| Flat No. 114, building No.3, |] | |
| Shivtirthnagar Poud Road, Kothrud, Pune |] | |
| | | |
| 2. Sanjay Tanaji Pharande (Deceased) |] | |
| Through Legal heirs: |] | |
| | | |
| 2A. Snehal Sanjay Pharande |] | |
| Age: 49 years, Occ: Housewife, |] | |
| | | |
| 2B. Swapnil Sanjay Pharande |] | |
| Age: 27 years, Occ: Service, |] | |
| | | |
| 2C. Soniya Sanjay Pharande |] | |
| Age: 22 years. |] | |
| | | |
| All R/at: Swapnashil Apartment, 474/21/1 |] | |
| Ganesh Colony, Sadar Bazar, Satara 415001. |] | Appellants |

Versus

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|---|---|------------|
| The State of Maharashtra |] | |
| Through Satara Police Station and |] | |
| investigated by Anti-Corruption Bureau, Satara. |] | Respondent |

WITH
CRIMINAL APPEAL NO. 311 OF 2020

- | | | |
|--------------------------------------|---|---------------|
| Rahul Hanmant Bhokare |] | |
| Age: 34 years, Occupation: Business, |] | Appellant |
| Resident of : 52, Guruwar Peth, |] | (Original |
| Kamani Houd, Satara |] | Accused No.3) |
| | | |

Versus

- | | | |
|---|---|-----------------|
| The State of Maharashtra |] | |
| Through Satara Police Station and |] | |
| investigated by Anti-Corruption Bureau, Satara. |] | Respondent |

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Mr. Subodh Desai, Senior Counsel along with Mr. Kartik Garg, Advocate for the Appellant in Criminal Appeal No.310 of 2020.

Mr. Pawan Mali, Advocate for the Appellant in Criminal Appeal No. 311 of 2020.

Mr. P. P. Deokar, APP for the Respondent – State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 05th MAY 2025

JUDGMENT:

1) These Appeals are preferred by the Appellants/original accused against the judgment and order passed by the learned Special Judge, Satara. As both these Appeals are against same judgment and order, hence, I am deciding these Appeals by this common judgment.

2) The Appellants (for short, “Appellant Nos.1 and 2”) in Appeal No.310 of 2020 have been convicted for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, “PC Act”) and sentenced to suffer rigorous imprisonment (for short, “RI”) for four years each and to pay a fine of Rs.10,000/- each in both offences, in default to suffer RI for six months. Both the sentences shall run concurrently. The Appellant No.2 died during pendency of the Appeal, hence his legal representatives are taken on record.

3) The Appellant in Appeal No.311 of 2020 (for short, “the Appellant No.3) has been convicted for the offence punishable under Section 12 of

PC Act and sentenced to suffer RI for four years and to pay a fine of Rs.10,000/-, in default to suffer RI for six months.

4) It is prosecution's case that the Appellant No. 1 was working as Town Planner and the Appellant No. 2 was Assistant Town Planner in Town Planning Office at Satara. The Appellant No. 3 was a Private Architect. It is alleged that the Appellant No. 1 and 2 had demanded bribe of Rs.5,00,000/- from the Complainant for granting technical sanction in respect of Non-Agriculture (For short, "NA") permission for the land of the Mahatma Phule Scheduled Caste Housing Development Co-operative Society, Godawali, Panchgani (for short, "the said society") and accepted Rs.4,00,000/- through the Appellant No.3.

5) To prove its case, the prosecution has examined Complainant – Mr. Prakash More (PW-1), Secretary of said society – Mr. Sunil Kharat (PW-2), Sanctioning Authority – Mr. Siddharam Salimath (PW-3), Panch witness – Mr. Somnath Shinde (PW-4) and Investigating Officer – Mr. Shrihari Patil (PW-5).

6) The appellants have examined two defense witnesses viz. Mr. Yogesh Bhagwat, DW-1, Sub-Divisional Engineer (Vigilance) in Bharat Sanchar Nigam Limited (For short, "BSNL"), Satara and Mr. Nitin Kulkarni, DW-2, Nodal Officer of BSNL, Pune, to prove their defense.

7) It is contention of learned senior counsel for the Appellant Nos.1 and 2 that, no work of the Complainant was pending with the Appellants, when the alleged demand of bribe was made and trap was executed. The learned senior counsel further submitted that, the PW-1 in his evidence has

admitted that, the spot inspection was carried in his presence on 22.09.2013 by the Appellant Nos.1 and 2. The PW-3 in his evidence has stated that, as per Exhibit-38, the Appellant No.2 had submitted the scrutiny report on 27.09.2013. On 03.10.2013, the Appellant No.1 had signed and verified the said report. The work of Appellant Nos.1 and 2 was completed on 27.09.2013 and 03.10.2013 respectively. The PW-5, Investigating Officer (For short, "IO") in his cross-examination has stated that, he had recorded the statement of the Assistant Director of Town Planning Mr. Sadamate. In the said statement, Mr. Sadamate had stated that, on 27.09.2013, the Appellant No.2 had done scrutiny of the proposal of the said society and prepared scrutiny note and it was placed before the Appellant No.1. Then, the Appellant No.1 made his endorsement on said scrutiny note on 03.10.2013 and thereafter, Mr. Sadamate approved scrutiny office report on 14.10.2013. He has further stated that, on 17.10.2013, Mr. Sadamate was on leave and proposal was placed before him and signed by him on 18.10.2013. Ld. Counsel further submitted that no work was pending with the Appellants for which they could have demanded bribe amount.

8) The learned senior counsel further submitted that, the learned Special Judge erred in holding that, the proposal of the PW-1, was pending with the Appellant Nos. 1 and 2. The PW-1 in his cross-examination admitted that, the proposal for layout and N.A. was submitted to the Collector Office for sanction. The said proposal was directly sent to the Town Planning Department and if there were any corrections required to be

done in the proposal, then the Town Planning Department, had to communicate the same to the Collector Office. The Collector Office then sends proposal to the concerned persons. He admitted that, the Town Planning Department only give technical opinion. The communication with respect of the sanctioning of the layout plan was to be made by the Collector Office directly. The Town Planning Office had no occasion to contact or interact with the concerned party.

9) The learned senior counsel further submitted that, PW-1 in his cross-examination admitted that in Supplementary Statement, he had stated before the ACB Office that, the Appellant No.1 had informed him that, the proposal was placed before his Superior Officer. It has come in the evidence of PW-4 that, on 14.10.2013, when PW-1 called the Appellant No. 1 on his phone, it was informed to him that the proposal was already sent to his Superior. Also, PW-5 admitted in his cross-examination that, on 14.10.2013, during telephonic conversation, the Appellant No.1 had informed the PW-1 that, he had already kept the file before his Superior. It shows that, the proposal of the PW-1 was not pending with the Appellants and it was already sent to their Superior Officer and PW-1 also had the knowledge about the same. Therefore, there is no occasion for the PW-1 to pay bribe to get any work done from the Appellants. Therefore, there is no question of Appellants accepting bribe for doing any official work which was not pending with them.

10) The learned senior counsel further submitted that, evidence of PW-1 is doubtful and unreliable as in cross-examination, PW-1 has admitted that,

he has not disclosed in his Complaint or Supplementary Statement that, he had prior financial transactions with the Appellant No.3. He further admitted that, he had given two cheques to the Appellant No.3 in respect of separate transactions and one Cheque was dishonored. He has admitted that, the layout plan with respect to the present matter was prepared by the Appellant No.3. The PW-2 in his cross-examination has stated that, the said Society had invited tender for work of conversion of land for N.A. purpose and for preparation of the layout plan. For the said work, the PW-1 and the Appellant No.3, both had given proposal. The tender of Appellant No.3 was not accepted. However, the tender submitted by the PW-1 was accepted by the said Society. The PW-2 has further stated that, he was not aware whether PW-1 had obtained services from the Appellant No.3 for preparing layout plan. It is thus clear that, the PW-1 without knowledge of the Society had obtained the services of the Appellant No.3 for preparing layout plan of the said society. As there were financial transactions between the PW-1 and the Appellant No.3 as well in respect of the present transaction, the PW-1 was to pay consideration to the Appellant No.3. But these facts are not considered by the learned Special Court. The judgment and order passed by the learned Special Court is erroneous. Hence, requested to allow the Appeal.

11) It is contention of learned counsel for the Appellant No.3 that, there is nothing on record to show, as to for what purpose the alleged bribe amount was demanded by the Appellant No.3. The PW-1 in his Complaint has mentioned that, the bribe was demanded by the Appellant Nos.1 and 2 for

approving the proposal. However, on 14.10.2013, the Appellant No.1 telephonically informed the PW-1 that the proposal had already been sent to his Superior. A Supplementary Statement of PW-1 was recorded on 17.10.2013, wherein it is mentioned that, the money was allegedly demanded for forwarding the proposal. The PW-1 altogether chooses his story, this clearly shows the falsity of the allegations.

12) The learned counsel further submitted that, the PW-1 had obtained services of the Appellant No.3 for preparation of a layout plan of the said society. PW-1 in his cross-examination has admitted of having financial relations with the Appellant No.3. He has further admitted that, the Appellant No.3 does not conduct such work for free. The Appellant No.3 had accepted the said amount as his professional fees, but this fact is not considered by the learned Special Court. Hence, requested to allow the Appeal.

13) It is contention of learned APP that, initially the Appellant Nos.1 and 2 demanded bribe of Rs.7,00,000/- from the PW-1. The said demand was verified in the presence of Panch Witness. The transcription of the conversation between PW-1 and Appellant No.1 and 2 shows demand of bribe. The Appellant Nos.1 and 2 had told to give the said amount to the Appellant No.3. After negotiation, the bribe amount was fixed to Rs. 5,00,000/-. Thereafter, bribe of Rs.4,00,000/- was given to the Appellant No.3. He accepted the bribe amount on behalf of the Appellant Nos.1 and 2. The work of said society was pending with the Appellant Nos.1 and 2. The prosecution has proved the case beyond reasonable doubt. The

learned Special Judge has passed well-reasoned order. No interference is required in it and requested to dismiss the Appeals.

14) I have heard all learned counsel, perused impugned Judgment and Order passed by the Special Court.

15) To prove its case, the prosecution has examined Complainant - Mr. Prakash Mane (PW-1). He has stated that he does the Contractorship and Liasoning work. The Government had acquired four and half acres land situated at Godawali, Panchgani, belonging to the said society. The said Society made proposal to the Collector, Satara to grant N.A. permission of 28,000 sq. meters land out of 14 acres land. The said Society had assigned the work of taking N.A. permission to this witness through Vice Chairman of the Society - Mr. Kharat (PW-2). This witness came to know from the Collector's Office, Satara, that proposal for making N.A. land was sent to the Assistant Director of Town Planning (for short, "ADTP"), Satara. The Appellant No.1 was a Town Planner. The Appellant No.1 had sent the proposal to the Appellant No.2 for doing scrutiny of the proposal. The Appellant No.1 and 2 were required to do the local inspection. The Appellant No.3 is a private Architect. He was to prepare the layout plan of the place. The said Society had appointed the Appellant No.3 to do the work of Architect.

16) On 26.09.2013, this witness and PW-2 again visited Town Planning Office and met the Appellant No.2. He asked them to meet the Appellant No.1, when they met the Appellant No.1, he called the Appellant No.2 in his cabin for doing scrutiny of the documents. Thereafter, they both demanded

Rs.7,00,000/- from this witness and PW-2 for sanctioning layout proposal of the society. This witness and PW-2 agreed for it. Then both the Appellants decided to do the site visit.

17) On 11.10.2013, the Appellant No.3 contacted this witness over phone and informed him that the Appellant Nos.1 and 2 are demanding money and the Appellant No.1 would come in Office on 14.10.2013. He, therefore, asked this witness to bring Rs.7.00,000/- on 14.10.2013. This witness then contacted PW-2 through Chairman of society - Mr. Shinde, and told them to make arrangement of the money. Accordingly, they collected Rs.2,00,000/-. On 14.10.2013, this witness, Mr.Shinde and PW-2 visited ACB Office and lodged Complaint against the Appellant Nos.1 and 2. The Complaint is at Exhibit-20.

18) After lodging Complaint on same day, ACB Officials decided to verify the demand of bribe. The ACB Officer called two panchas. Panch No.1 - Somnath Shinde and Panch No.2 - Surendra Bhutkar read the Complaint. Thereafter, this witness contacted the Appellant No.1 on phone. The Appellant No.1 told this witness to discuss with the Appellant No.2 and also told that he had already discussed with the Appellant No.2. Their conversation was recorded in voice recorder. Thereafter, this witness, PW-2 and PW-4 came to Town Planning Office to meet the Appellant No.2. The voice recorder was kept in left pocket of his shirt. When they met the Appellant No.2, he told this witness to call the Appellant No.3 and after arrival of the Appellant No.3, the Appellant Nos. 2 and 3 discussed with this witness about Rs.5,00,000/-. The Appellant No.2 demanded Rs.5,00,000/-

to sanction the N.A. layout plan. This witness had brought Rs.2,00,000/- for giving the amount as a token. The Appellant Nos. 2 and 3 did not accept the token amount from this witness. The Appellant Nos.2 and 3 told him to come on 17.10.2013 along with entire amount. Thereafter, they returned to ACB Office and gave voice recorder to ACB Officer. The ACB Officer then told this witness to come on 17.10.2013 along with Rs.5,00,000/-.

19) On 17.10.2013, this witness came to ACB office along with PW-2 and Mr. Shinde at about 12 noon. At about 1.30 p.m., PW-4 and other Panch-Bhutkar came there. Mr. Shinde had brought Rs.2,00,000/-. This witness was having Rs.2,00,000/-, so total Rs.4,00,000/- were available. Then this witness, Mr.Shinde, ACB Officer, panch witnesses and PW-2 went to hotel Ambassador by Government vehicle. Thereafter, ACB Officer again sent this witness, PW-2 and PW-4 to Town Planning Office to ascertain demand of bribe. Then, this witness, PW-2 and PW-4 went to Town Planning Office and met the Appellant No.2. The Appellant No.2 told them to call the Appellant No.3. After arrival of the Appellant No.3, all went to meet the Appellant No.1 in his cabin. This witness told the Appellant No.1 that Rs.4,00,000/- were available with him and Rs.45,000/- is less to complete Rs.5,00,000/-. The Appellant No.1 agreed to the amount available with this witness and told to give it to the Appellant No.2. Then, they again met the Appellant No.2 and asked him whom should they deliver the amount. The Appellant No.2 told them that he is in office and amount be given to the Appellant No.3. Thereafter, they all came out of Town Planning office. This witness sent PW-2 along with the Appellant No.3 to his Office and this

witness, PW-4, Mr. Shinde returned to Hotel Ambassador and met ACB Officer. Anthracene Powder was applied on Rs.4,00,000/- currency notes. There were 800 currency notes of Rs.500/- denomination. This witness further stated that, his supplementary statement was recorded on 17.10.2013, panchas also signed on it. Bribe amount was kept in black cloth bag. Thereafter, this witness, Chairman – Mr. Shinde and PW-4 sat in the rickshaw and went to the office of the Appellant No.3. PW-2 and the Appellant No.3 were present in office. This witness told the Appellant No.3 that he had brought bribe amount as per instructions of the Appellant No.2. Then, he gave bribe amount by his right hand to the Appellant No.3. The Appellant No.3 accepted it and kept it in a plastic bag inside a sack under the table. This witness asked the Appellant No.3 as to when he would do his work. Then, he told that after returning, he will do his job. This witness came out in balcony of the office and gave predetermined signal, a voice recorder was kept in his shirt's pocket. The ACB team came in office and took out voice recorder from him. They apprehended the Appellant No.3 and recovered bribe amount.

20) In cross-examination, this witness has stated that his mobile number is “9422608034” and he used this mobile number during the trap period, from 14.10.2013 to 17.10.2013. He admitted that, the Appellants had made demand of alleged bribe amount for doing N.A. and layout of land of said society at Godawali. He further admitted that, there were financial transactions between him and the Appellant No.3 pertaining to layout plan of Phaltan and he had given two cheques to the Appellant No.3 for separate

transactions pertaining to the layout. One cheque given by him was encashed and one cheque was not encashed. He further admitted that, he had obtained the license from Nagar Palika, Phaltan for doing Contractorship. He has not received the degree of Bachelor of Engineering. He further admitted that, in order to get license from Nagar Palika, one has to submit the required documents of qualification and he had submitted documents of his BE degree and the stamp of same degree in Nagar Palika, Phaltan. He has obtained the license and he has mentioned qualification as 'BE' in the form for obtaining license. He was doing the work as Civil Engineer for 10 years. While submitting the Applications in the Government Office, he used to put stamp of BE Civil Engineer. He further admitted that, he has not cleared BE final year. He admits that Rs.13,00,000/- fee was fixed for work of N.A. and building permission of the said Society. He had received Rs.11,13,000/- as a part payment for the said work. He further admitted that, the important work of layout was to be done and the Appellant No.3 prepared layout of the said land. He further admitted that, the proposal for layout and N.A. requires to be submitted to the Collector Office. The proposal was submitted to the Collector office for sanction and the said proposal was sent to the Town Planning Office by the Collector Office directly. He further admitted that, if there are some corrections required to be done in the proposal, then the Town Planning Office communicates it to the Collector Office. The Collector Office then sends to the concerned party. He admits that, Town Planning Departments gives technical recommendation and the Collector Office

informs whether the layout plan is sanctioned or not. He admits that, the Town Planning Authority or Collector Office did not make any correspondence with this witness, regarding the proposal of the said society. He thought that in future, the Appellant Nos. 1 and 2 would demand money from him for permission to be given for the construction of layout plan and the construction of the society. Till today, no building plan and proposal was submitted to the Collector Office. He further admits that his Complaint was against Appellant Nos.1 and 2, that unless money is given to the Appellants, they will not do the scrutiny of his proposal for submitting to the Superiors. He further admitted that, the Appellant Nos.1 and 2 carried inspection of the spot on 22.09.2013, at that time, he was present. He has stated that, he does not know that the Appellant No.1 was posted at Wai and he was having additional charge of the office at Satara.

21) On 26.09.2013, there was talk between him and Appellant No.1 on phone. He further admitted that, he had stated before ACB Officer in his statement that the Appellant No.2 told him to meet the Appellant No.1. The said fact is not mentioned in his statement, for that, he cannot assign any reason. He further stated that, the Appellant Nos.1 and 2 demanded Rs.7,00,000/- from him and PW-2 for sanction of layout proposal of the Society. The said fact is not mentioned in his statement and he cannot assign any reason for it. He admits that, he contacted the Appellant No.3 on 11.10.2013, the CDR is at Exhibit-38. He admits that, Investigating Officer Mr.Shrihari Patil contacted this witness twice on his mobile on 11.10.2013. As per the say of the Investigating Officer, he contacted the

Appellant No.3. On 14.10.2013, he received a phone call from Investigating Officer at about 1.27 p.m. On 15.10.2013, Investigating Officer contacted this witness twice. He admits that, on 17.10.2013, the Investigating Officer contacted him 7 times. On the same day, PW-2 also contacted him. He admits that, on 14.10.2013, he did not meet the Appellant No.1. He further admitted that in the present case, two verification panchnamas were prepared. On 14.10.2013, demand was not verified, therefore on 17.10.2013, again verification was taken. This witness admitted that, the layout scrutiny report which is at Exhibit-39 shows the signature of the Appellant No.2 dated 27.09.2013, the Appellant No.1 signature dated 03.10.2013 and Assistant Director Signature dated 14.10.2013. He has stated that the Collector Office rejected the proposal on the ground that there were 21 trees found on the place on which the layout was sought. He admits that, the Appellant No.2 had put a condition that not a single tree should be cut down on the place for which the layout was sought. He admits that, on 17.10.2013, his Supplementary Statement was recorded and he was not aware whether on 14.10.2013 draft proposal was sanctioned. Final blue print at Exhibit-30 bears his signature and he signed it on 17.10.2013. He admits that, after finalizing, the draft prints are given. Portion marked 'A' of his Supplementary Statement was confronted to this witness. He has stated that portion marked 'A' is not recorded correctly and he has stated that, he cannot assign any reason as to why portion marked 'A' was not recorded correctly in his statement. He admits that, the Appellant No.1 had told him on 14.10.2013, that his proposal was kept

before Superior Officer, his Supplementary Statement was recorded on 17.10.2013, in said Statement he has stated that in order to send the proposal from Town Planning Office to the Collector Office, the Appellants had demanded bribe from him. He has stated that, on 11.10.2013, the Appellant No.3 contacted him and told that the Appellant Nos.1 and 2 demanded money. The said fact is not mentioned in his statement and he cannot assign any reason for it. He further stated that in his statement, i.e. the Appellant No.3 told him that the Appellant No.1 would come in office of the Town Planning on 14.10.2013 and asked him to bring Rs.7,00,000/- while coming to the office. The said fact is not mentioned in his statement and for that he cannot assign any reason. He further stated that the Appellant No.2 told him to call the Appellant No.3. The said fact is not mentioned in his statement and he cannot assign any reason for it. He has stated that, the Appellant No.2 and Appellant No.3 made discussion with him about Rs.5,00,000/-, but the said fact is not mentioned in his statement and he cannot assign any reason for it. He admits that the Anthracene powder was not applied on currency notes of Rs.2,00,000/-. He did not hear the conversation recorded in the voice recorder at the time of verification panchnama. He has stated, in his statement before ACB Officer that, the Appellant Nos.2 and 3 told him to come on 17.10.2013 along with entire amount. The said fact is not mentioned in the statement and he cannot assign any reason for it. He admits that he and Chairman – Mr. Shinde were present in the office of the Appellant No.3 for 20 minutes and after 20 minutes, he came out and gave predetermined signal to ACB

Office. He admits that, prior to incident, he had friendly as well as financial relations with the Appellant No.3 and the Appellant No.3 had made drawing plans in the present case. The said Society had agreed to give him Rs.13,00,000/- for N.A. Permission, drawing and layout. He admits that the Appellant No.3 did not perform the work of the drawing and layout plan on charity basis. This witness denied the suggestions that Rs.5,27,000/- fees was fixed for layout of 13.175 R land and it was decided to do get the work done by Appellant No.3 for Rs.5,00,000/- lump-sum amount. This witness denied the suggestion that amount of Rs.4,00,000/- was given to the Appellant No.3 as his fees for work done by him. He admits that, he had taken the Chairman and Vice Chairman of the Society with him to the Appellant No.3 at the time of the trap. He admits that for first time, he was telling that the Appellant No.3 was to prepare plans and layouts and the said Society had appointed him to do the work of the Architect/Civil Engineer. The said fact is neither mentioned in his Complaint nor in his statement before the ACB and for that he cannot assign any reason.

22) From the evidence of this witness, it reveals that he has suppressed the fact that he had financial transactions with the Appellant No.3 and work to prepare layout plan of the said society was given to him. He has stated that on 26.10.2013, the Appellant Nos.1 and 2 demanded bribe of Rs.7,00,000/- for sanctioning layout proposal of society, and it is contradictory to the Complaint. It has come on record that power of sanctioning layout was with collector. Moreover, he admits that on 14.10.2013, the Appellant No.1 had told him that his proposal was sent to

his superior. However, in his supplementary statement recorded by ACB Officer on 17.10.2013, he has stated that bribe was demanded for sending proposal to superior. When this witness was aware that his proposal was already sent to superior of the Appellant No.1, then why did he mentioned in supplementary statement that bribe was demanded for sending proposal to superior officer, it creates doubt about demand of bribe. This witness has given crucial admissions in cross examination. He has admitted that on 17.10.2013, the Appellant Nos.1 and 2 did not demand money from him when he had gone for verification. He admits that the raiding party called him and panch witness and told him to contact the Appellant No.3. He admits that after applying Anthracene powder, the currency notes were counted by him and found to be correct. He admits that on 17.10.2013, it was decided to verify the demand of bribe from the Appellant Nos.1 and 2. It was also decided to make an attempt of giving Rs.2,00,000/- to the Appellant Nos.1 and 2 and if they accept the amount, the trap to be executed on them. He admits that on 17.10.2013, the attempt was not successful and he contacted the Appellant No.3 four times in between 3.30 p.m. to 5.20 p.m. He admits that on 17.10.2013, the Appellant No.1 was not with them. Therefore, he contacted him on phone. He further admits that

as the trap was unsuccessful, it was decided to visit the office of the Appellant No.3 and to meet him. He admits that during talk between the Appellant Nos.1 and 2, there was no call from the Appellant No.3 or any other person in his presence. These admissions along with the omissions brought on record, are crucial and raises doubt about the prosecution's case.

23) The prosecution has examined PW-2, Mr. Kharat - Vice Chairman of the Mahatma Phule Backward Class Co-Operative Society. He has stated land of their society was acquired by the Government. The said society had decided to construct the houses for the members of the society. The society had submitted proposal for doing N.A. of 28,000 square meters area out of 14 acres land to the Collector, Satara. The said society had given work of doing N.A. to PW-1.

24) In September 2013, this witness and PW-1 visited ADTP office, Satara to ascertain whether the said Department had received the proposal or not. They came to know that the said Office had received the proposal.

25) On 26.09.2013, this witness and PW-1 met the Appellant No.2, he told them to meet the Appellant No.1. The Appellant No.1 called the Appellant No.2. The Appellant No.2 had shown the documents to him. The Appellant No.1 had shown some corrections in the said documents. Then, the Appellant No.1 told this witness and PW-1 that, after compliance of corrections, they will visit the site and then the Appellant No.1 demanded bribe of Rs.7,00,000/- from them. This witness and PW-1 told the Appellant No.1 that the houses are being constructed for poor people, therefore, not to demand such huge money. Then, the Appellant No.1 told to meet the Appellant No.2 and the Appellant No.3 for negotiation.

26) On 11.10.2013, the Appellant No.3 contacted PW-1 over phone and told him that if he wants to complete his work then, he should visit Town Planning Office on 14.10.2013. PW-1 informed this witness about the

phone call by the Appellant No.3 and asked to make arrangement of Rs.7,00,000/-. The society had arranged Rs.2,00,000/-.

27) On 14.10.2013, this witness and PW-1 had visited the Town Planning Office with Rs.2,00,000/-. The Appellant No.2 told them that Rs.2,00,000/- is a meagre amount and work will not be done, and told them to negotiate with the Appellant No.3. The Appellant No.3 told this witness and PW-1 that if they pay the entire amount, then their work will be done. The Appellant No.3 told them that the Appellant No.1 had reduced demand from Rs.7,00,000/- to Rs.5,00,000/-. On 14.10.2013, the Appellant No.3 contacted PW-1 and informed him that Rs.5,00,000/- was the final amount fixed for doing the work. This witness and PW-1 became annoyed about the demand made by the Appellant Nos. 1 and 2. Then he and PW-1 lodged compliant with ACB at about 12:30 P.M..

28) The ACB Officer called two panch witnesses at ACB Office. They were informed about the Complaint lodged by PW-1. Thereafter, they and ACB team proceeded to the Rest House of M.S.E.D.C. at Krishnanagar, Satara. The PW-1 contacted the Appellant No.1 on his mobile. He came to know that the Appellant No.1 was not present in his Office, and he told to contact the Appellant No.2. The telephonic conversation between PW-1 and the Appellant No.1 was recorded in voice recorder. Thereafter, ACB Officer sent PW-1 and PW-4 to meet the Appellant No.2, they went to Town Planning Office and met the Appellant No.2. They told him that they had brought Rs.1,00,000/-. The Appellant No.2 told them to meet the Appellant No.3, then they met the Appellant No.3, he told them to come on

17.10.2013 with Rs.5,00,000/-. Then PW-1 and PW-4 returned to ACB Office and told ACB Officer about demand of Rs.5,00,000/-. The ACB Officer told them to arrange the amount of Rs.5,00,000/-.

29) On 17.10.2013, this witness PW-1, PW-4, Panch-Bhutkar and Chairman Mr. Shinde came to ACB Office. They told ACB Officer that they could manage amount of Rs.4,00,000/-. At about 1:30 p.m., they all sat in the vehicle and went to Hotel Ambassador. Voice recorder was kept in left-side shirt pocket of PW-1.

30) At about 3:00 p.m., they reached near Town Planning Office and vehicle was parked in the premises of Zilla Parishad. The PW-1 contacted the Appellant No.3 on mobile and called him in Town Planning Office. The Appellant No.3 came there. Then, they took the Appellant No.3 to meet the Appellant No.2. They told the Appellant No.3 before entering in the Office that they had arranged the money and inform the Appellant No.2 accordingly. The Appellant No.3 told the Appellant No.2 about it. He told them to meet the Appellant No.1. Accordingly, this witness, PW-1 and PW-4 met the Appellant No.1.

31) The PW-1 told the Appellant No.1 that initially Rs.7,00,000/- was demanded and thereafter, Rs.5,00,000/- was fixed and they have brought the said amount which is less by Rs.40,000/- to 45,000/- and this witness will bring the less amount and told the Appellant No.1 to complete the work. The Appellant No.1 told them to meet the Appellant No.2. Then, they met the Appellant No.2 and told him about less amount of Rs.40,000/- to Rs.45,000/-. The Appellant No.2 told them to give whatever money they had

to the Appellant No.3. The Appellant No.3 told them to accompany him to his Office. Then, they went to the Office of the Appellant No.3. They gave the amount to the Appellant No.3 in his Office. He accepted the said amount and kept in black colour sack. Then, this witness, PW-1 and PW-4 asked the Appellant No.3, when will the Appellant No.1 and the Appellant No.2 come. He replied that they will contact him. Then, PW-1 went outside and ACB team entered in the Office of the Appellant No.3 and caught hold hands of the Appellant No.3, and removed tainted currency notes from black colour sack.

32) The Dy.S.P., Shrihari Patil, asked the Appellant No.3 to whom the money belongs. The Appellant No.3 told him that it does not belong to him and he had accepted the said money on behalf of the Appellant Nos.1 and 2 for sanctioning the proposal of doing N. A. of the land of the said society. He further told that he had accepted the said money at the behest of Appellant Nos.1 and 2. The hands of the Appellant No.3 were checked under UV Lamp, a bluish colour was found on it.

33) In cross-examination, this witness admits that there was no talk about the money between him and the Appellant Nos.1 and 2. He admits that in the cabin of the Appellant No.1, five to six officers used to sit, and on 26.09.2013, this witness and PW-1 proceeded to the ACB Office from the Office of the Appellant No.1. He admits that the amount quoted in the tender of the Appellant No.3 was more than the amount quoted in the tender of PW-1. He admits that on 14.10.2013, when PW-1 contacted the Appellant No.1 on mobile, there was no talk about money between them.

He admits that when they met the Appellant No.2, no one was present in his cabin, thereafter, they went to Office of the Appellant No.3, and 45 minutes were required to reach the Office of the Appellant No.3. They waited for half an hour in his Office. He admits that there was no talk about the money after immediate visit of the Appellant No.3 in his Office. He admits that after three days of receiving phone call from the Appellant No.3, they went to ACB Office with Rs.4,00,000/-. He admits that when they went to Office of the Appellant No.3, there was talk between Chairman - Mr. Shinde, Appellant No.3 and PW-1 for five minutes. He admits that they had obtained six NOC's, except the NOC required from Town Planning. Due to said reason, the society work was obstructed and they were fed up for want of permission from Town Planning Office.

34) He admits that on 26.09.2013, when they visited the Office of Town Planning Authority, they decided to lodge Complaint in the ACB Office, and after 26.09.2013 till trap, PW-1 and Dy.S.P. ACB Shrihari Patil were in contact. He admits that there was condition of Town Planning Authority, not to cut trees. This witness admits that he does not know whether PW-1 had obtained services from the Appellant No.3, and he came to know later on that the Appellant No.3 had developed the layout plan of the society for PW-1. He does not know whether PW-1 had paid charges to the Appellant No.3 towards the work done by him.

35) He admits that on 14.10.2013, when they had gone for verification to Town Planning Office, at that time, the Appellant No.3 was not present in Office. He admits that he had gone to the Office of Appellant No.3 on the

instructions of PW-1 and when he went there, there was no talk regarding the Appellant Nos.1 & 2. Neither the Appellant No.3 nor this witness or PW-1 tried to contact the Appellant Nos.1 and 2 from his Office. He admits that the Appellant No.3 had no concern whatsoever with any work of the society. He denied the suggestion that the amount of Rs.4,00,000/- was given to the Appellant No.3 as part consideration for preparing the layout plan. From the evidence of this witness, it has revealed that the PW-1 and this witness had gone to ACB Office on 26.09.2013 for lodging Complaint, and since then, PW-1 and PW-5, I.O., were in contact. This contradicts the prosecution's case about filing Complaint on 14.10.2013 and meeting with the PW-5 on same day.

36) The prosecution has examined PW-3, Siddharam Salimath, Sanctioning Authority, he has stated that he had gone through the record produced before him and accorded sanction against the Appellant no. 1 and 2, which is at Exhibit – 49. He has stated that after going through the documents, it appears that, as per noting at Exhibit – 39, the Appellant No.2 had submitted a scrutiny report on 27.09.2013. On 03.10.2013, the Appellant No.1 had put his signature and verified the said noting.

37) In cross-examination, he admitted that the work of the Appellant Nos.1 & 2 was to scrutinize and submit the proposal to the Assistant Deputy Director of the Town Planning, and as per Exhibit – 39 work of Appellant Nos.1 & 2 was completed on 27.09.2013 and 03.10.2013. He admits that Assistant Deputy Director, Town Planning, then approved the proposal and forwarded to the Collector for sanctioning the plan for further action.

38) The prosecution has examined PW-4, Mr. Somanth Shinde, panch witness. He has stated that on 14.10.2013, he received telephonic call from his Superior and he was directed to go to the ACB Office. Accordingly, he went to the ACB Office along with Mr. Surendra Bhutkar, Assistant Engineer. After reaching the ACB Office, they met Dy.S.P. Shrihari Patil. At that time, two persons viz. PW-1 and PW-2 were present in ACB Office. Mr. Patil told them that they have been called there to act as panch witnesses. PW-1 disclosed them about his grievance and told them about demand of bribe by the Appellant Nos.1 & 2. The Complaint is at Exhibit – 20.

39) The PW-1 told them that the Appellant No.3 had asked him to bring amount on 14.10.2013. The Dy.S.P. Shrihari Patil instructed this witness and other panch and showed the demonstration of voice recorder. The Dy.S.P. Patil then decided to verify the demand of bribe. Dy.S.P. Patil asked the PW-1 to make phone call to the Appellant No.1 to check whether he is available in Office. Then, PW-1 made a phone call by putting his cellphone on speaker mode. The voice recorder was put on, and they all heard the conversation on phone. The Appellant No.1 told the PW-1 that he was not available in Office, he further disclosed that the proposal was kept before Saheb and told him to talk with the Appellant No.2. Then, Mr. Patil decided to talk with the Appellant No.2. Mr. Patil told this witness, PW-1 and PW-2 to go to the Office of the Appellant No.2. Accordingly, they went in the Office of Assistant Town Planning, but the Appellant No.2 was not present in Office, after sometime, he came there.

40) The PW-1 told to the Appellant No.2 that the Appellant No.1 had told him to meet him and he had brought Rs.1,00,000/-. The Appellant No.2 told the PW-1 that why he had brought Rs.1,00,000/- only, he should have brought entire amount. At that time, the Appellant No.3 had come to meet the Appellant No.2. The Appellant No.2 further told to the PW-1 that he should bring entire amount, and he can discuss with the Appellant No.3. He further told that entire amount of the Saheb should be given to the Appellant No.3. Then, they all went with the Appellant No.3 on the ground floor to discuss with him. After discussion between the PW-1, PW-2 and the Appellant No.3, the Appellant No.3 told the PW-1 that as per say of Appellant No.1, they should give Rs.5,00,000/-. PW-1 then informed Appellant No. 3 that he had brought Rs. 2,00,000/- and asked whether he should hand it over. Appellant No. 3 questioned why only Rs. 2,00,000/- was brought and instructed that the entire amount be brought on Thursday, so that they could discuss the matter with Saheb and the work would be completed. Thereafter, they all returned to the MSEDG Rest House. The panchanama of entire episode was drawn; it is at Exhibit – 53.

41) He has further stated that on 17.10.2013, again they went to ACB Office, at that time, the PW-1 was present. The PW-1 made phone call to Chairman - Mr. Shinde and asked him to bring the amount of Rs.3,00,000/- as he was possessing Rs.2,00,000/-. After sometime, Chairman-Mr.Shinde and PW-2 came to ACB Office along with Rs.2,00,000/-, the total amount was of Rs.4,00,000/-. Dy.S.P. Mr. Patil recorded the supplementary statement of PW-1. Thereafter, Dy.S.P. Patil decided to verify the demand of

bribe. Then, they all with ACB staff went to Hotel Ambassador in the Government Vehicle.

42) Demonstration of voice recorder was given and it was put in the right side pant pocket of the PW-1. Then, they all went to the Office of the Appellant No.1. The Appellant No.1 was present in Office, he told the PW-1 to bring the Appellant No.3. Then, they all went to the Office of the Appellant No.3 at Powai Naka. They met the Appellant No.3 and took him with them and came to Town Planning Office and waited near the Cabin of the Appellant No.1. They all went in the cabin of the Appellant No.1. The PW-1 told to the Appellant No.1 that instead of Rs.7,00,000/-, he should do his work for Rs.5,00,000/-. PW-1 informed Appellant No. 1 that "Saheb, the amount is somewhat less." Appellant No. 1 replied, "No problem, give amount to Appellant No.2". Thereafter, this witness, along with PW-1, came outside the cabin of Appellant No. 1.

43) Thereafter, they all went to meet the Appellant No.2. The PW-1 told the Appellant No.2 that Saheb had asked to give money to him. The Appellant No.2 told the PW-1 that he will not speak in Office and there should be no discussion. The PW-1 told the Appellant No.2 that there is less amount of Rs.40,000/- to Rs.50,000/-. The Appellant No.2 by pointing out his finger towards the Appellant No.3 told the PW-1 that he should give money to him. Then, they all along with the Appellant No.3 came outside the Office of Appellant No.1 and 2. The PW-1 then disclosed to the Appellant No.3 that Society Chairman-Mr. Shinde is bringing money and he should go to his Office along with PW-2 and he along with this witness will

bring the money from Mr. Shinde. They left the Town Planning Office at 5:15 p.m. and went to Hotel Ambassador. The PW-1 switched off the voice recorder. The voice recorder was then attached to Laptop and conversation was saved and then script was also prepared. This witness and other panch signed on it, it is at Exhibit – 54.

44) Dy.S.P. Patil then asked the PW-1 to bring the money. The PW-1 produced cash of Rs.4,00,000/- before him, those currency notes were 800 in numbers of Rs.500/- denomination. The serial numbers of those currency notes were typed in laptop. Then, Dy.S.P. Patil showed them the demonstration of Anthracene powder under ultraviolet lamp. The Anthracene powder was applied on currency notes of Rs.4,00,000/-. After applying Anthracene powder on currency notes, it was inspected under ultraviolet lamp on which bluish shining was noticed on it. Then, Dy.S.P. Patil instructed to the PW-1, this witness and other pancha to go and discuss about the work with the Appellant No.3. He also instructed that unless the demand of money is made, money should not be given. The PW-1 was instructed after accepting bribe money, he should remove the handkerchief by his left hand and touch his forehead and the said signal should be visible and seen by the members of the raiding party. This witness was instructed to keep close watch about who would accept the money and where it would be kept. Then, the PW-1 made phone call to the Appellant No.3. The Appellant No.3 told them to come within ten minutes to his Office. Thereafter, pre-trap panchanama was prepared, it is at Exhibit – 55.

45) At 8:00 p.m., this witness along with PW-1 and Chairman-Mr. Shinde went to Office of the Appellant No.3. ACB team followed them. At that time, PW-2 was with them. The PW-1 discussed with the Appellant No.3 about his work and told the Appellant No.3 that he has brought Rs.4,00,000/- and whether he should give it to him. Then, the Appellant No.3 told him to give him. Then, the PW-1 gave Rs.4,00,000/- to the Appellant No.3. He accepted the amount and kept it in carry bag and the said carry bag was kept in black colour sack. The PW-1 told the Appellant No.3 that he would give remaining Rs.1,00,000/- latter on. Thereafter, the PW-1 went out of the Office and gave predetermined signal. The ACB team came in the Office of the Appellant No.3 and apprehended him. The Appellant No.3 told the Dy.S.P. Patil that he had accepted the said amount on say of the Appellant No.2, and on behalf of the Appellant No.1. Darkness was created in Office of the Appellant No.3, and hands of the Appellant No.3 were checked under UV light. The bluish glow was found on the hands of the Appellant No.3 and plastic bag. The numbers of the currency notes found in the bag of the Appellant No.3 were tallied with pre-trap panchanama.

46) In cross-examination, he admitted that on 11.10.2013, he along with Panch No.2– Bhutekar, had been to ACB Office. This witness was confronted with the request letter dated 11.10.2013 signed by the Executive Engineer, MSECD. He admits that he had visited the ACB Office on 11.10.2013. He further admits that on 11.10.2012, the ACB Officer had disclosed them about the complaint

of PW-1. He admits that PW-1 narrated his grievance orally and his complaint was recorded and was given to them to read. The said process was going on till evening. He has further stated that on 14.10.2013, the ACB office again issued second request letter. Accordingly, he reached ACB between 11.00 am and 11.30 am. He admits that they were present in ACB Office till 1.30 pm. He admits that on 14.10.2013, PW-1 had come in ACB Office from Mahableshwar. He admits that the Appellant No.1 had not met them on 14.10.2013, therefore, it was decided to verify the demand later. He admits that they had not gone on ground floor or second floor of the Town Planning Office. He admits that he had heard the telephonic conversation between PW-1 and the Appellant No.1. In the said conversation, the Appellant No.1 had told PW-1 that his work is already kept before Saheb for signature. He admits that the Appellant No.2 never initiated the topic of money in his presence and PW-1 had initiated the topic of money to the Appellant No.2. He admits that the Appellant No.2 told the PW-1 that he should not discuss anything about the money with him. He has stated that while returning at 6.00 pm from the Town Planning Office to MSECD Rest House. He admits that it was decided in MSECD Rest House that there was no demand and acceptance of bribe, therefore, later on verification and trap can be laid. He admits that on 14.10.2013, PW-1 was carrying cash of

Rs.1,00,000/- with an intent to give bribe to any of the appellants/accused. He admits that on 17.10.2013, PW-1 on his own brought up the topic of money and neither the Appellant No.1 or the Appellant No.2 made demand of Rs.4,00,000/- from PW-1 nor they told PW-1 that he should pay Rs.4,00,000/- to the Appellant No.3. He admits that on 14.10.2013, the Appellant No.3 was not present in Town Planning Office from 3.15 pm to 6.00 pm. He admits that verification of demand was done on 17.10.2013 from 3.30 pm to 5.30 pm. He admits that he does not recall whether during the said period, PW-1 had made 3 to 4 phone calls to Appellant No.3. He admits that two staff members in Town Planning Office were present when there was conversation between PW-1 and Appellant No.3. He admits that the Appellant No.3 never demanded money nor he initiated the topic of money. He admits that PW-1 told the Appellant No.3 that he had brought Rs.4,00,000/- and will give balance Rs.1,00,000/- subsequently. He admits that PW-1 never made any phone call to the Appellant Nos.1 and 2 informing them that he is giving money to the Appellant No.3 nor the Appellant No.3 made phone call to the Appellant Nos.1 and 2 after acceptance of bribe amount.

47) PW-5 Shrihari Patil, Dy.S.P. attached to ACB, Satara, deposed that he verified the Complaint on 14.10.2013. According to the Complainant, he received a phone call from Appellant No. 3, who called him to the Town

Planning Office on 14.10.2013 with Rs.7,00,000/-. Initially, the ACB officer decided to verify the Complaint by making a mobile phone call to Appellant No.1. From the said telephonic conversation, it was revealed that the Appellant No.1 was not present in office due to some official work. Further, it was revealed from the conversation that the Appellant No.1 asked the PW-1 to go to the Town Planning Office and meet his assistant, Appellant No. 2. When the PW-1 requested to reduce the bribe amount, the Appellant No.1 assured him that the Appellant No. 2 would “adjust a little bit.” The transcript of the conversation was prepared, and the voice recording was saved. Accordingly, the Complaint was verified on 14.10.2013. Again, on 17.10.2013, this witness decided to verify the demand of bribe.

48) On 17.10.2013, the demand of bribe was verified and it revealed that the Appellant Nos.1 and 2 demanded bribe of Rs.4,00,000/- and told the PW-1 to give it to the Appellant No.3. The said amount was given to the Appellant No.3 in his office and he was arrested after acceptance of the bribe. In the enquiry, the Appellant No.3 has stated that the said amount was accepted at the behest of Appellant Nos.1 and 2. This witness had prepared pre-trap and post-trap panchanamas. The conversation of the Appellant Nos.1, 2, 3 and PW-1 was recorded in CD. The voice samples of the Appellant Nos.1, 2 and 3 were taken. The pre-trap panchanama is at Exhibit-55.

49) In cross-examination, he admitted that the PW-1 came in his contact on the very day when he filed the Complaint i.e. on 14.10.2023. Before that day, he was not in his contact. He admitted that the CDR – Exhibit-38

shows that he made two phone calls to PW-1 on 11th October 2013. He further admits that as per letter –at Exhibit-63, employees of the MSEDCL were called by his office by letter dated 11.10.2013. He admitted that on 11.10.2013, two panch witnesses were relieved by their office by relieving letter at Exhibit-83. He admits that there was a Complaint against the Appellant Nos.1 and 2 that if the PW-1 did not satisfy their demand, they would not place the proposal of the PW-1 before their superior for further approval. He admits that on 14.10.2013, in the conversation, the Appellant No.1 had told the PW-1 that he has already kept the file before his superior. He admits that he had recorded the statement of ADTP-Mr. Sadamate and he has stated that on 27.09.2013, the Appellant No.2 had done scrutiny of the proposal, prepared scrutiny office note and by endorsing signature, the scrutiny office note was placed before the Appellant No.1. The Appellant No.1 then made his endorsement on scrutiny office note on 03.10.2013 and thereafter ADTP - Mr. Sadamate approved the said scrutiny office note on 14.10.2013. The scrutiny office note is at Exhibit-39. He further admits that the final proposal was seized from the office of Mr.Sadamate and it bears signatures of the Appellant Nos.1 and 2. He admits that during investigation, it revealed that on 26.09.2013, the Appellant No.1 was attached to Wai Office and he was holding additional charge of Satara Office. He admits that he has not obtained a single document to show that the Appellant No.1 was present in Satara Office on 26.09.2013. He admits that none of the Appellants made demand of Rs.4,00,000/- as bribe money. He admits that in verification panchanama at Exhibit-54, it is recorded that

first verification is on 14th October 2013. There was no clarification about demand of bribe money by the Appellant No.1 and others. He admits that the PW-1 has not complained that the Appellant Nos.1 and 2 have made demand of bribe for favourable recommendation by the ADTP. He admits that after hearing conversation of the PW-1 and PW-2, he came to know that the PW-1 himself opened the topic of bribe money. He admits that he has not issued certificate under Section 65-B of the Indian Evidence Act, 1872 in the present case and he has not produced original voice recorder and original conversation before the trial Court. He admits that the PW-1 had not stated before him in the Complaint that the Appellant No.2 made demand of Rs.7,00,000/- from him. He admits that the PW-1, in his complaint, had not said specifically that the PW-1 had discussion with the Appellant Nos.2 and 3 about Rs.5,00,000/- and at the time of demand of verification on 17.10.2013, the Appellant Nos.1 and 2 asked him to come with entire amount. He admits that he has not verified the financial transactions between the Appellant Nos.3 and PW-1. He admits that the Appellant No.3 had prepared plans for the PW-1 and he has not investigated about the quantum of fees decided between the Appellant No.3 and the PW-1 for preparation of the plans. He admits that he has collected the call detail records of mobile phones of the PW-1 and the Appellants and from the CDR, it was confirmed that there was no mobile conversation between the Appellant No.3 and the PW-1 on 11.10.2013. He did not seek explanation from the PW-1 about the non-display of telephonic conversation in CDR report dated 11.10.2013 as alleged by the PW-1 in his

initial Complaint at Exhibit-20 and it was possible for him to seek explanation from the PW-1 in this regard. He admits that the PW-1 was directed to switch on or switch off voice recorder as per the requirement and when voice call recorder was on, he had received 12 mobile calls but conversation of these 12 mobile calls were not recorded in the said voice recorder and he did not make investigation about these 12 calls. He admits that at about 16.56 hours, the Appellant No.3 called PW-1 over phone during aforesaid period. He has stated that the time mentioned in the verification panchanama dated 17th October 2013 is correct. At about 15.35 hours, the PW-1 and PW-4 had departed and returned at about 17.20 hours after verification panchanama. During this period, the voice recorder was switched on throughout this duration. He admits that in this duration, the PW-1 had attended five mobile calls. The details of these mobile calls are not recorded in verification panchnama and script. Out of these 5 phone calls, 3 phone calls were of the Appellant No.3 and PW-1. During this period, there was conversation between the PW-1 and the Appellant No.3. He admits that he referred the telephonic conversation between the Appellant No.3 and PW-1 during this period in verification panchanama and script. He admits that at the time of trap, the Appellant No.3 did not make demand of bribe of Rs.5,00,000/- but the PW-1 himself offered him Rs.4,00,000/- and told that he will arrange for Rs.1,00,000/- later.

50) To prove that on the day of verification of demand and lodging of complaint, PW-1 was not present in Satara, there was continuous

conversation between the PW-1 and PW-5. The Appellants have examined two defense witnesses viz. Yogesh Bhagwat, DW-1, Sub-Divisional Engineer (Vigilance) in BSNL, Satara and Nitin Kulkarni, DW-2, Nodal Officer of BSNL, Pune, to prove their defense.

51) Considering the evidence of prosecution witnesses and defence witnesses, it will have to be seen if the guilt of the Appellants is proved or not.

Complaint:

It is prosecution's case that the Appellant Nos.1 and 2 demanded bribe for forwarding N.A. Proposal to ADTP. The Complaint is at Exhibit-20. The Complaint was filed on 14.10.2013. As per the complaint, bribe was demanded by the Appellant No.1 on 26.09.2013, when PW-1 and PW-2 had gone to the Office of the Appellant No.1. It is further mentioned in the Complaint that on 11.10.2013, PW-1 received phone call from the Appellant No.3 and he told him that the Appellant No.1 called him in his office with bribe of Rs.7,00,000/- on 14.10.2013. Thereafter, on 14.10.2013, Complaint was lodged against the Appellant Nos.1, 2 and 3 mentioning that as per say of the Appellant Nos.1 and 2, they are going to give bribe amount of Rs.2,00,000/- as a token to the Appellant No.3. In the complaint, it is specifically mentioned that the bribe amount was to be given to the Appellant No.3 on say of the Appellant Nos.1 and 2. It is significant to note that in complaint, it is nowhere mentioned that the Appellant Nos.1 and 2 told the PW-1 to give the bribe amount to the Appellant No.3. It is mentioned in Complaint that the PW-1 was in firm belief that the Appellant

Nos.1 and 2 would accept the bribe through the Appellant No.3 and without taking bribe, they would not send proposal of society to the higher authority. Moreover, in the complaint, there are no allegations against the Appellant No.2 about demand of bribe. In complaint, it is mentioned that when PW-1 and PW-2 met the Appellant No.1, he demanded bribe of Rs.7,00,000/- and told them to meet the Appellant Nos.2 and 3 for negotiation of bribe amount but it appears that on that day, PW-1 and PW-2 did not meet the Appellant Nos. 2 and 3. Therefore, the question arises as to why the names of Appellant Nos. 2 and 3 were mentioned in the Complaint, even though there is no evidence to show that they had met the Complainant on 26.09.2013. In Complaint, it is specifically mentioned that PW-1 had no financial transactions with the Appellant Nos.1 and 2 but there is no mention about the Appellant No.3. From the Complaint at Exhibit-20, it reveals that allegations of demand of bribe against appellant Nos.2 and 3 are vague. PW-1, in his oral evidence before the Trial Court, has stated that the Appellant No.2 had also demanded the bribe but there is no reference about it in complaint. As per evidence of PW-1, the bribe was demanded by both the Appellants but it has come in evidence of PW-2 that demand of bribe was by the Appellant No.1 only. There are contradictions in the statements of these witnesses about demand of bribe by Appellant No.2.

Demand of bribe:

52) As per prosecution's case, first demand of bribe was made on 26.09.2013 by the Appellant No.1 to PW-1 and PW-2 of Rs.7,00,000/-. At

that time, the Appellant No.1 told the PW-1 and PW-2 to discuss with the Appellant Nos.2 and 3 about negotiation of bribe amount. It appears from the Complaint at Exhibit-20, on that day, PW-1 and PW-2 did not meet the Appellant Nos.2 and 3. So it is not proved that there was demand of bribe by the Appellant Nos. 2 and 3 on 26.09.2013. It is significant to note that PW-1 in cross-examination has admitted that on 26.09.2013, there was talk between him and the Appellant No.1 over phone but there is no reference about it in complaint. It creates doubt about meeting of PW-1 and PW-2 on 26.09.2013 with the Appellant No.1, as it is the defense of the Appellant No.1 that on that day, he was not present in office. PW-5, Investigating Officer, has admitted in his cross-examination that on 26.09.2013, the Appellant No.1 was attached to Wai Office and was holding additional charge of Satara Office.

53) As per prosecution's case, second demand of bribe was made on 11.10.2013 by the Appellant No.3 on behalf of Appellant Nos. 1 and 2. As per oral evidence of PW-1, the Appellant No.3 made a phone call him on 11.10.2013 and told him that the Appellant Nos.1 and 2 had demanded bribe of Rs.7,00,000/- and told him to bring Rs.7,00,000/- on 14.10.2013 to the office of Appellant No.1. In Complaint at Exhibit -20, there is no reference of the Appellant No.2 in the said conversation by the Appellant No.3. Moreover, it has come in the evidence of PW-2 that there was demand of Rs.5,00,000/- by the Appellant No.3 on the say of the Appellant No.1. There is discrepancy about demand of bribe amount, the PW-1 states that it was Rs.7,00,000/- whereas PW-2 states it was Rs.5,00,000/-.

It is significant to note that the genesis of the prosecution's case is the phone call allegedly made by the Appellant No. 3 to PW-1 on 11.10.2013. In cross examination, PW-5 has admitted that he has collected call details of PW-1 and Appellant No. 3. From CDR, it does not reveal that the Appellant No. 3 called the PW-1 on 11.10.2013. This admission questions prosecution's case about demand of bribe.

54) It is alleged that third demand of bribe was made on 14.10.2013. It has come in evidence of PW-1 that on that day, he contacted the Appellant No.1 over phone and he told him to discuss with the Appellant Nos.2 and 3. PW-2, in his cross-examination, admitted that there was no demand of bribe by the Appellant No.1 while speaking on phone with the PW-1. Then the PW-1 and PW-2 went to meet the Appellant No.2 in his office but the Appellant No.2 told them to do as per say of the Appellant No.1 and discuss with the Appellant No.3. When PW-1 and PW-2 met the Appellant No.3, then he told them to bring Rs.5,00,000/-. When PW-1 and PW-2 told him that they had brought Rs.2,00,000/- and to accept the same amount, at that time, he told them to give Rs.5,00,000/- in one installment on day after tomorrow i.e. on 17.10.2013. It has come in cross examination of PW-4 that on 14.10.2013, the Appellant No.2 did not initiate the topic of money. He admits that the Appellant No.2 told the PW-1 that he should not discuss about money with him. He admits that on 14.10.2013, the Appellant No.3 was not present in Town Planning Office in between 3pm to 6pm. This admission raises doubt about the evidence of PW-1 and PW-2 about demand of bribe of Rs.5,00,000/- by the Appellant No.3. It has come on

record that there was no verification of demand of bribe on 14.10.2013, hence, it was decided to lay trap on 17.10.2013.

55) As per oral evidence of PW-1, on 17.10.2013, when he along with PW-2 and PW-4 met the Appellant Nos.2, he told them to call the Appellant No.3. After arrival of the Appellant No.3, they all went to meet the Appellant No.1 in his Cabin. PW-1 told the Appellant No.1 that Rs.4,00,000/- is available with him and told that Rs.45000/- is less to complete Rs.5,00,000/-. The Appellant No.1 agreed for the said amount and told him to give it to the Appellant No.2. When they met the Appellant No.2, he told them to give it to the Appellant No.3. It has come in the evidence of the PW-2 that on 17.10.2013, PW-1 made a phone call to the Appellant No.3 and called him to town planning office. Accordingly, the Appellant No.3 came there, they took the Appellant No.3 to the Appellant No.2.

56) It has come in the evidence of PW-4 that on 17.10.2013, they met the Appellant No.2, he told the PW-1 to bring the Appellant No.3, then they all came out of Town Planning Office, and went to Powai Naka at Office of the Appellant No.3 in car of the PW-1. They took the Appellant No.3 in their car and came to the Town Planning Office. There are contradictions in the statements of these witnesses about presence of the Appellant No.3. PW-1 has stated that he called the Appellant No.3 on say of the Appellant No.2. Whereas, the PW-2 has stated that before entering the Town Planning Office, the PW-1 had made phone call and accordingly Appellant No.3 came there. Whereas, PW-4 has stated that they met the Appellant No.2, he asked them to call the Appellant No.3, hence, they went

to his office in car of the PW-1 and brought him to Town Planning Office. Moreover, PW-1 in cross-examination has admitted that on 17.10.2013 Appellant Nos.1 and 2 did not demand money from him, when he had gone for verification. PW-4 in his cross-examination admitted that on 17.10.2013, PW-1 on his own brought up the subject of money. He further admitted that neither the Appellant No.1 nor the Appellant No.2 made demand of Rs.4,00,000/- from the PW-1 nor did they told the PW-1 that he should pay Rs.4,00,000/- to the Appellant no.3. The admission given by this witness who is panch witness casts doubt on prosecution case. Prosecution is relying on transcription of conversation between PW-1 and the Appellant nos. 1, 2 and 3 to prove the demand of bribe which is at Exhibit-54. It has

come in the cross examination of PW-5 that the PW-1 was switching on voice recorder as per requirement. He further admitted that PW-1 had received phone calls when the voice recorder was on. But, conversations of said calls were not recorded in it. It shows that the transcription of conversation is not done of what was recorded in it. Moreover, original voice recorder and CD were not produced before the trial court. There are discrepancies and contradictions in the statements of PW-1, PW-2 and PW-4 and a mere transcription cannot be considered as cogent evidence. From the discrepancies in the evidence of these witnesses and admission given by the PW-4, it does not prove beyond doubt that there was demand of bribe by the Appellant Nos.1 and 2 on 17.10.2013

Acceptance of bribe amount

57) It has come in the evidence of PW-1 that on 17.10.2013, he took Rs.4,00,000/- with him and went to Town Planning Office and met the

Appellant No.1 and told him that Rs.4,00,000/- is available and Rs.45,000/- is less to complete Rs.5,00,000/-. The Appellant No.1 told him to give it to the Appellant No.2. Then PW-1 met the Appellant No.2 and asked him to whom should the bribe amount be given. The Appellant No.2 told him that he is in office and bribe amount be given to the Appellant No.3. Then PW-1, PW-2, PW-4 and the Appellant No.3 came out of Town Planning Office. PW-1 told the Appellant No.3 that amount will be brought by Chairman of the Society and he should go to his office. Then, PW-1 sent PW-2 with the Appellant No.3 to his Office and PW-1 and PW-4 returned to Hotel Ambassador, thereafter, he along with ACB team went to the Office of the Appellant No.3 and delivered bribe amount of Rs.4,00,000/- to him. The said amount was recovered from him.

58) It has come in the evidence of PW-2 that on 17.10.2013, they along with Rs.4,00,000/- met the Appellant No.1 and PW-1 told him about less amount of Rs.45,000/-. The Appellant No.1 told him to meet the Appellant No.2. Then, they met the Appellant No.2. He told to give the amount to the Appellant No.3. The Appellant No.3 told them to accompany him to his office. This witness went with him. At 8.30pm, PW-1, PW-4 and Panch - Mr. Bhutekar and Chairman - Mr. Shinde, came at his office and Rs.4,00,000/- was given to the Appellant No. 3. ACB team apprehended him after acceptance of bribe amount.

59) It has come in evidence of PW-4 that on 17.10.2013, PW-1 had taken Rs.4,00,000/- with him. They met the Appellant No.1, he told them to handover the money to the Appellant No.2. They met the Appellant No.2.

He told them, he will not speak in the office and there should be no discussion. Thereafter, the Appellant No.2 pointed out finger to the Appellant No.3 and told the PW-1 to give money to him. Thereafter, they all came out of the office. The PW-1 disclosed to the Appellant No.3 that Chairman – Mr. Shinde is bringing money, he should go to his office along with PW-2, he will bring money there.

60) The transcription of above conversation is at Exhibit-54. From this transcription, it does not reveal that the Appellant No.2 told the PW-1 to give bribe amount to the Appellant No.3. It creates doubt about prosecution case. Moreover, when the Appellant No.3 was present in Town Planning Office, the PW-1 was carrying Rs.4,00,000/- and PW2 and PW3 were present. Conversation was recorded in voice recorder, then, question remains why bribe amount of Rs.4,00,000/- was not given to the Appellant No.3 at that time and why the PW-1 told him that it will be given in his office stating that Chairman -Shri Shinde was bringing the said amount. It raises strong doubt about prosecution's case. It is significant to note that in cross examination, PW-4 has admitted that the Appellant No.3 never demanded money nor initiated the topic of money. He admits that the PW-1 told him that he had brought Rs.4,00,000/- and will give remaining Rs.1,00,000/- later on. The admission given by this witness shows that at the time of acceptance of bribe amount, there was no demand of bribe by the Appellant No.3. It supports the defense of the Appellant No.3. It is prosecution's case that the Appellant No.3 accepted bribe amount in his office. It is defense of the Appellant No.3 that the said amount was his professional fees for

services given to the PW-1. It has come on record that the Appellant No.3 and PW-1 had financial transactions. The said society had invited tender for work of conversion of land to N.A. purpose and for preparation of layout plan, and for the said work the PW1 and the Appellant No.3 had given proposal. The tender of the Appellant No.3 was not accepted but tender of PW-1 was accepted. However, the PW-1 had hired services of the Appellant No.3 for preparation of layout plan of the said society. The members of the said society were not aware about it. In complaint, the PW-1 has specifically mentioned that he had no financial transactions with the Appellant Nos.1 and 2, but he has not mentioned anything about the Appellant No.3. Not giving the bribe amount to the Appellant No.3 in the Town Planning Office, without any reason and giving it to the Appellant No.3 in his office, suppressing the fact about financial relations with the appellant no.3, the Appellant No.3 had prepared layout plan of said society. It shows substance in the defense of the Appellant No.3 that Rs. 4,00,000/- was given to him as his professional fees. As observed above, the acceptance of Rs.4,00,000/- by the Appellant No.3 from PW-1 has not been proved that it was accepted on behalf of Appellant Nos. 1 and 2.

Doubt about prosecution's case.

61) It is prosecution's case that after receiving phone call from Appellant No. 3 to the PW-1 on 11.10.2013 about demand of bribe by the Appellant No. 1, PW-1 lodged Complaint with ACB on 14.10.2013. The PW-1 and PW-2 have categorically stated that on 14.10.2013 they lodged Complaint with ACB Office, but PW-4 in cross-examination has admitted that on

11.10.2013, he along with panch - Shri Bhutekar had been to ACB Office. This witness was confronted with the letter dated 11.10.2013 signed by the Executive Engineer, MSEDCL. He admits that he had visited ACB Office on 11.10.2013. He has further stated that on that day, ACB Officer had disclosed them about the Complaint of PW-1. He admits that PW-1 narrated his grievance orally and then his Complaint was recorded, which was given to them to read. The said process was going on till evening of 11.10.2013. Then he, other panch and PW-1 left the ACB Office together. The PW-5 admits in cross examination about lodging of Complaint by PW-1 on 11.10.2013. The admissions given by these witnesses raises serious doubts about prosecution case as PW-1 and PW-2 have stated that for the first time, they approached the ACB Office on 14.10.2013. Even PW-4 and PW-5 in examination in chief have stated that PW-1 lodged Complaint on 14.10.2013 but PW-4 and PW-5 in cross examination have admitted that PW-1 and PW-2 had been to ACB Office on 11.10.2013 and lodged complaint. Then, question remains why the prosecution has suppressed the Complaint dated 11.10.2013 and why the fact of giving Complaint by the PW-1 on 11.10.2013 has been hidden or suppressed. Moreover, it has come in evidence of PW-5 that as per CDR, the Appellant No.3 had not called the PW-1 on 11.10.2013. It proves that the prosecution has not brought some important facts on record. In cross examination, PW-2 has admitted that on 26.09.2013, he and PW-1 proceeded to the ACB Office from the Office of the Appellant No.1 and after 26.09.2013 till the day of trap, PW-1 and Dy.S.P. ACB Shrihari Patil (PW-5) were in continuous

contact. He admits that on 14.10.2013, when they had gone for verification to Town Planning Office, at that time, the Appellant No.3 was not present in Office. He admits that that on the day of trap i.e. 17.10.2013, he had gone to the Office of Appellant No.3 on the instructions of PW-1 and when he went there, there was no talk regarding the Appellant Nos.1 & 2. Neither the Appellant No.3 nor this witness or PW-1 tried to contact the Appellant Nos.1 and 2 from his Office. He admits that at the time of trap, the Appellant No.3 did not make demand of bribe of Rs.5,00,000/- but the PW-1 himself offered him Rs.4,00,000/- and told that he will arrange for Rs.1,00,000/- later. As per evidence of PW-2, they approached ACB office on 26.09.2013 and after 26.09.2013, PW-1 and PW-5 were in continuous contact till trap. There is no reference about it in prosecution's case. The above evidence came on record raises serious doubt about the prosecution's case

Pendency of work:

62) As per prosecution's case, bribe was demanded for forwarding N.A. proposal of the said society to ADTP. It has come on record that the said proposal was signed by the Appellant No.2 on 27.10.2013, whereas the Appellant No.1 had put remark on it on 03.10.2013 and it was send to the superior of the Appellant No.1 on 14.10.2013 and he signed on it on 18.10.2013. PW-3, Sanctioning Authority, has stated the same fact. PW-5 IO has admitted in cross-examination that the documents of the proposal of said society were seized from the Office of Assistant Director - Shri Sadamate. It has come in the cross examination of PW-1, PW-2 and PW-3

that when the PW-1 called the Appellant No.1 on phone on 14.10.2013, at that time, he told him that his proposal was placed before the superior. It supports the defence case that the proposal of said society was already forwarded to superior officer, so no question of demand of bribe arises. Moreover, it has come on record that the said society had filed their proposal to Collector, Satara. The Collector, Satara forwarded proposal to Town Planning Office for technical sanction. There was no reason to the PW-1 to approach the Town Planning Office, as Town Planning office had to give their opinion to the Collector, Satara and collector had power to sanction N.A. The Appellant No.1 and 2 had carried inspection of said spot on 22.09.2013, at that time, PW-1 was present. Thereafter, scrutiny note was prepared and forwarded to the superior. It proves that on the day of alleged demand of bribe or trap, no work of said society was pending with the Appellant Nos.1 and 2 for which the alleged bribe was demanded and accepted.

Repeated verification of demand of bribe:

63) It has come on record that on 14.10.2013, the demand of bribe was not verified in respect of the Appellant No.1 and 2. On that day, the Appellant No.3 had demanded bribe of Rs.5,00,000/- on behalf of the Appellant No.1 and 2, it was decided to lay trap on 17.10.2013. On 17.10.2013, Rs.4,00,000/- was brought by PW-1 and PW-2, but PW-5 decided to verify demand of bribe. In my view, when it was specific case of the prosecution that, on 14.10.2013, there was demand of Rs. 5,00,000/- by Appellant No. 3 on behalf of Appellant Nos. 1 and 2, the question remains

as to why, after verification of that demand, the demand of bribe was again verified on 17.10.2013 without laying direct trap on Appellant Nos. 1 and 2. This raises doubt about the prosecution's case.

64) Considering the evidence produced on record, in my view, the prosecution has failed to prove that the Appellant Nos.1 and 2 demanded bribe from the PW-1 for forwarding N.A. proposal and accepted it through the Appellant No.3. The prosecution has suppressed the fact that the PW-1 and PW-2 had approached the ACB Office on 26.09.2013 and suppressed the Complaint given by the PW-1 on 11.10.2013. The evidence of prosecution witnesses are not reliable and trustworthy as there are contradictions in it. It appears from record that only to show involvements of the Appellant Nos.1 and 2, the documents are prepared in a manner favourable to the prosecution.

65) In view of above, I pass following order :

ORDER

- i. The Appeals are allowed.
- ii. The Appellants in Criminal Appeal No.310 of 2020 are hereby acquitted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
- iii. The Appellant in Criminal Appeal No.311 of 2020 is hereby acquitted for the offence punishable under Section 12 of the Prevention of Corruption of Act, 1988.

- iv. The bail bonds of the Appellants stands cancelled.
- v. Record and Proceedings be sent back to the learned trial Court.

The Appeals stand disposed of.

60) All pending applications, if any, stand also disposed of.

(SHIVKUMAR DIGE, J.)