



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 10.03.2026

Judgment pronounced on: 16.03.2026

+ **CRL.A. 733/2003**

RAJINDER KUMAR

.....Appellant

Through: Mr. Yudhishtar Kahol with Mr. Nikhil Singh, Mr. Kunal Kahol, Advocates along with appellant in person.

versus

C.B.I.

.....Respondent

Through: Ms. Rajni Gupta, SPP for CBI with Mr. Shivender Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the first accused (A1) in C.C.No. 49/1994 on the file of the Court of Special Judge, Delhi challenging the conviction entered and sentence passed against him for the offences punishable under Sections 7 and 13(2)



of the Prevention of Corruption Act, 1988(the PC Act)read with Section 120-B of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 08.08.1994, A1, while working as a Junior Clerk in the District Office of Delhi Electric Supply Undertaking (DESU) at Radhu Palace, Delhi, entered into a criminal conspiracy with the second accused (A2), who was running a pan shop outside the DESU office, to obtain illegal gratification from PW1 for showing favour in adjusting the previous credit relating to an electricity connection installed at the PW1's residence. Pursuant to the said conspiracy, on 08.08.1994 at about 01.45 p.m., A1 demanded ₹500/- from PW1 and directed him to hand over the amount to A2. PW1 accordingly handed over the amount to A2, who accepted it and passed it to A1, who accepted the same as illegal gratification by abusing his official position.

3. On 08.08.1994, PW1 lodged a complaint, that is, Ext. PW1/B, with the Anti-Corruption Branch, New Delhi, based on



which, RC No. 51(A)/94/CBI/ACB/N.D.,FIR was registered alleging commission of the offence punishable under Section 7 of the PC Act.

4. PW9, Deputy Superintendent of Police, Anti-Corruption Branch, New Delhi, conducted investigation into the crime and on completion of the same, submitted the charge-sheet/ final report alleging commission of the offences punishable under the Section 120-B IPC read with 13(2) read with 13(1)(d) of the PC Act.

5. Ext. PW2/A Sanction Order for prosecuting A1 was accorded by PW2, Additional General Manager (A), DESU.

6. On receipt of summons when the accused persons appeared before the trial court, the Court after complying with the formality contemplated under Section 207 Cr.P.C, on 18.04.1995, framed a Charge under Section 120-B IPC read with Sections 7 and 13(2) r/w 13(1)(d) of the PC Act against both the accused persons and Section 7 and 13(2) r/w (13)(1)(d) of PC Act against A1, which



was read over and explained to them to which they pleaded not guilty.

7. On behalf of the prosecution, PW1 to PW9 were examined and Ext. PW1/A - F, Ext. PW2/A, Ext. PW3/A - B, Ext. PW4/A - C, Ext. PW6/A - B, Ext. PW8/A, Ext. PW10/A - I and Ext. CW1/A - C were marked in support of the case.

8. After the closure of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence. A1 submitted that he has been falsely implicated in the present case by PW6 on account of personal enmity with his maternal uncle (PW8) and himself, in connivance with certain CBI officials.

9. No oral or documentary evidence was adduced by the accused persons. Subsequently, A2 absconded during the pendency of the trial and was therefore declared a proclaimed offender.



10. On consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 21.10.2003, held A1 guilty of the offences punishable under Section 120B IPC read with Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act, as well as under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. Accordingly, A1 has been sentenced to undergo rigorous imprisonment for one year with fine of ₹2,500/- under Section 120B IPC and in default of payment of fine to further undergo imprisonment for one month; rigorous imprisonment for one year with fine of ₹2,500/- under Section 7 of the PC Act and in default of payment of fine to further undergo imprisonment for one month; and rigorous imprisonment for one year and six months with a fine of ₹5,000/- under Section 13(2) read with Section 13(1)(d) of the PC Act and in default of payment of fine to further undergo imprisonment for two months. The sentences have been directed to run concurrently. Aggrieved, A1 has preferred the present appeal.



11. The learned counsel appearing for the appellant/A1 submitted that PW1 had completely turned hostile and has not supported the prosecution version. PW1, in his cross examination, categorically stated that the bribe amount was demanded by one Raj Kumar, who had directed that the money be handed over to the pan vendor, namely, A2, and that the demand was not made by A1. The presence and apprehension of Raj Kumar during the trap proceedings was also duly admitted by one of the independent witnesses, namely, PW5. It was therefore submitted that such a material inconsistency with regard to the person who had demanded and accepted the bribe strikes at the root of the prosecution case.

11.1. It was further submitted that the trial court failed to consider the fact that there existed prior enmity between PW6 and PW8, officers of DESU, which fact was admitted by both of them in their respective testimonies. It was also contended that the trial



court failed to appreciate the testimony of these witnesses in the proper perspective.

12. *Per Contra*, it was submitted by the Special Public Prosecutor appearing for the CBI that the impugned judgment does not suffer from any infirmity warranting interference by this court as the trial court has duly considered each and every ground raised in the present appeal and, upon an overall appreciation of the materials on record, adjudicated the matter on merits.

12.1. It was submitted that, except PW5, no other witness has deposed anything with regard to the apprehension of the third person, namely, Raj Kumar during the trap proceeding. Notwithstanding the same, the evidence on record otherwise validly proves the essential ingredients of demand and acceptance of the bribe amount by the accused persons, and therefore the prosecution case cannot be discredited on that ground. The minor inconsistencies in the testimony of the witnesses would not erode the prosecution case.



12.2. It was further submitted that no clarification was sought from PW9, the Trap Laying Officer (the TLO), during his examination before the court, with regard to the apprehension of the third person since the burden lay upon the accused to elicit such clarification in order to render the defence version probable. Reliance was placed on the dictum in **M. Narsinga Rao v. State of A.P.**, (2001) 1 SCC 691 to canvass the point that even the uncorroborated evidence of the TLO, can be relied upon to arrive at the guilt of the accused so long as his testimony is found to be reliable and inspires confidence of the court.

12.3. It was also submitted that the prosecution case cannot be discarded merely because some of the witnesses have turned hostile and that even if a witness resiles from his earlier statement, the court is not bound to reject his testimony in toto and may rely upon such other part of his testimony which is found to be credible and consistent with the prosecution case as held in **Vinod Kumar v. State of Punjab**, (2015) 3 SCC 220.



13. Heard both sides and perused the records.

14. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

15. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. The initial demand in this case is alleged to have taken place on 01.08.1994 and the trap laid on 08.08.1994. PW1 submitted a written complaint, that is, Exhibit PW1/B on 08.08.1994 in the office of the Anti-Corruption Branch in which he has stated thus:- “...an electricity meter, number 6051021, is installed at my house, 6/363 Khichripur, Delhi-91. The meter reading for our electricity consumption up to September 1993 was 4040 units, and its payment was made on 04-10-1993. After this, another bill came, which we also paid. Then after this, one more bill came which we also paid, but due to the payment receipt being lost somewhere, I am unable to provide its full details. After this, a consumption bill of 4449 units for ₹8834/-



was received for the electricity consumed up to April 1994. This bill is completely incorrect. Therefore, we submitted a written complaint for the correction of the bill at the Radhu Palace office of DESU on the 25th of last month (25-07-94). I made several visits to the Radhu Palace office for the correction of the bill, but the bill could not be corrected. On 01.08.1994, I met Mr. Rajendra Kumar, Dealing Clerk, at the DESU office. He told me that if the bill needs to be corrected, then I have to give ₹800/- for it. I pleaded with him that I would not be able to give that much money. Then Mr. Rajendra Kumar said that I would have to give at least ₹500/-. He has called me to the DESU office on Monday with ₹500/- and has asked me to come before lunch. I do not want to give a bribe to Mr. Rajendra Kumar. Therefore, it is requested that legal action be taken against him.”

16. PW1, in his examination-in-chief before the trial court on 06.08.1997 fully supported the prosecution case. On the said day, the cross examination of PW1 was adjourned at the request of



the defence counsel on the ground that he was not feeling well. However, when PW1 was recalled and cross examined on 08.12.1999, he turned hostile and deposed against the prosecution case.

16.1. PW1 in his cross examination, deposed that initially he had met PW6 to protest regarding the excessive electricity bill. PW6 assured him that the bill would be corrected. Thereafter, PW6 took him to the residence of a CBI officer whom the former addressed as “Ram Saheb”. On the next day, PW6 accompanied him to the office of DESU at Nehru Place and introduced him to H.K. Rathore (PW8) and one Aggarwal. The said officials made endorsements on his Ext. 1/A protest application. When he went to the office of the CBI to lodge Ext. PW1/B complaint, he was accompanied by PW6 and it was PW6 who took him to the room of the SP, CBI. He had already prepared a written complaint against one Raj Kumar. PW6 gave him ₹500/- to be used in the trap. The CBI officials after treating the said note with



Phenolphthalein powder, gave it to him. On the day of the trap after reaching the office of DESU, he first shook hands with A1 and thereafter with Raj Kumar. A1 corrected the bill and handed it over to him for getting the signature of PW6 and the Superintendent. After correction of the bill, Raj Kumar asked him whether he had brought the money to which he replied in the affirmative. According to him, A1 did not demand any bribe from him. When he came out of the office, Raj Kumar told him “*Chotupaankhila de*”, upon which he went to A2, the paan vendor, and handed over the tainted ₹ 500/- to him at the instance of Raj Kumar and not at the instance of A1. PW1 further deposed that on said day the CBI had arrested three persons, namely, A1, A2 and Raj Kumar. PW6 also followed them to the office of the CBI. In the office of the CBI, at the instance of PW6, his original complaint was replaced and he was made to write Ex. PW1/B complaint against A1. He also deposed that both A1 and Raj Kumar were beaten in the office of the CBI and thereafter in his



presence Raj Kumar was released. He was instructed by the CBI officers to depose in accordance with his statement under Section 161 Cr.P.C. and not to mention anything against Raj Kumar or PW6. As PW1 did not support the prosecution case in the cross examination, the prosecutor sought the permission of the trial court to “cross-examine” PW1. The request was allowed by the trial court.

16.2. On further examination by the prosecutor, PW1 reiterated his case in the cross examination. When he reached the office of DESU Office near Radhu Place, Raj Kumar was already sitting near the seat of A1. He first spoke to A1 and thereafter to Raj Kumar who told him that the bill would be corrected by A1. PW1 denied that A1 had asked him whether he had brought the money and maintained that it was Raj Kumar who had spoken to him regarding the money. PW1 also denied that he had handed over the tainted money to A2 at the instance of A1 and maintained that the money was given at the instance of Raj Kumar. PW1 also



deposed that the hand wash of A1 did not change colour, whereas the hand wash of accused A2 turned pink. Finally, PW1 also deposed that he was coming out with the truth as the CBI was trying to get an innocent person convicted.

17. PW4, the recovery witness, deposed that on 08.08.1994, on the directions of his Chief Manager he went to the office of the CBI at about 8.00 A.M. PW5, Deputy Manager, also accompanied him. PW4 deposed about the pre-trap proceedings. After completion of the pre trap proceedings at the office of the CBI, the party left at about 10.00 A.M. in official vehicles and reached near the office of DESU at Radhu Cinema. The members of the raiding party took positions at different places within the boundary of the office of DESU. PW1 and PW5, the shadow witness, were directed to go inside the office and contact A1. PW4 deposed that he took position near the gate of the room of A1 from where he could see the interior of the room where A1 was sitting. PW1 and PW5 remained in the office of A1 for about two hours while the bill was



being corrected. At about 1.00 or 1.30 P.M., during lunch hours, A1 came downstairs along with PW1 and PW5 and he followed them. He noticed PW1 handing over money to A2, the paan vendor, sitting on the pavement. However, PW4 was unable to identify the said paan vendor in the Court. He further deposed that before the signal was given by PW5, A2, after accepting the money, had passed it on to A1. The members of the raiding party rushed to the spot and apprehended A1 and A2. According to PW4, both A1 and A2 protested and asked the reason for their apprehension, whereupon PW10, the TLO disclosed his identity and confronted them for having accepted the bribe. A1 denied having taken any bribe and tried to free himself and called for his colleagues. PW10 then searched A1 and recovered the tainted currency notes from the shirt pocket of A1. At this juncture, the prosecutor sought the permission of the trial court to “cross-examine” PW4 on the ground that he was suppressing the truth and



had resiled from his previous statement. The request was allowed by the trial court.

17.1. On further examination by the prosecutor, PW4 deposed that he could not recollect the face of the paanwala and therefore could not admit or deny whether A2 in the Court was the same person who had received the money from PW1 and passed it on to A1. He also deposed that he could not recall whether A1 had thrown the tainted money on the ground in his presence or whether he himself had picked up the tainted currency notes on the directions of PW10. PW4 admitted that the right hand wash of A1 was taken at the spot and that it turned pink. PW4 further deposed that the left hand wash of A1 was also taken, though he could not recollect whether it was plain water or sodium carbonate solution, or whether the colour of the solution had changed.

18. PW5, the shadow witness, deposed that he was directed by his Chief Manager to attend the office of the CBI in the morning of 08.08.1994. Therefore, on 08.08.1994 he reported at



the said Office at about 8.00 AM. along with PW4. He deposed about the pre-trap proceedings. PW5 deposed that after completion of the pre-raid proceedings, the raiding party left for the office of DESU near Radhu Cinema in two jeeps and reached there at about 10.00 A.M. The vehicles were parked opposite Radhu Palace at a distance of about one furlong. Thereafter, he along with PW1 went inside the office to the room of A1, while the other members of the raiding party remained outside in the surrounding area. When they entered the office, PW1 told A1, “*Merakaamkardijye,*” to which A1 replied that the former should wait as it would take some time. After some time, A1 said that it was about lunch time and asked them to go downstairs, saying that there was a paan vendor there and that he would join them shortly. So he and PW1 left the room and A1 followed them. The office of A1 is on the first floor and so all of them came downstairs and proceeded towards the paan counter near Radhu Palace Cinema. He did not hear A1 asking PW1 to give the money to the paan vendor. However, on the way



PW1 told him that the money was to be given to the paan vendor. According to PW5, on reaching the paan counter, PW1 handed over the tainted currency note of ₹500/- to A2, the paan vendor, whom PW5 identified in the Court. In the meantime, A1 also reached there and took a paan from A2, and while giving the paan, A2 passed on the tainted currency of ₹ 500/- to A1. At this juncture, the prosecutor sought the permission of the trial court to “cross-examine” PW5 on the ground that he was resiling from his previous statement and suppressing the truth. The request was allowed by the trial court.

18.1. During further examination by the prosecutor, PW5 supported the prosecution version.

18.2. In the cross examination, PW5 admitted that three persons had been arrested by the CBI and taken to the office of the CBI. Two of them were accused A1 and A2. PW5 was unable to recollect whether the third person was Raj Kumar. He further deposed that he had accompanied the team from the spot to the



office of the CBI and remained there for about one hour, during which time the third person was also present. PW5 further deposed that he could not recollect whether PW6 had come to the office of the CBI requesting the release of Raj Kumar.

19. PW6 K.L. Mewal, Recovery Officer, District Office, DESU, Mayur Vihar, also officiating as Assistant Finance Officer, deposed that in August 1994, A1 was working as Junior Clerk cum Typist in the office and was responsible for issuing bills, maintaining DESU ledgers, and carrying out bill rectifications. He deposed that Ext. PW1/C electricity bill was initially issued for ₹ 8,834/-. The bill was later rectified to ₹ 132/-. PW6 in his cross examination admitted that PW8, R.C. Rathore, Finance Officer, was his immediate superior and that A1 was the nephew of the latter. According to PW6, his relations with PW8 was not “*very cordial nor even bad*”. PW6 admitted that Ex. PW6/D1 to D4memos had been issued to him by PW8.



20. PW8, R.L. Rathore, deposed that, in 1994 he was posted as Finance Officer, DESU, Karkardooma. He had seen Ext. PW8/A application of PW1, which he had marked to PW6, the Assistant Finance Officer. A1 at the relevant time was working as Billing Assistant in DESU. PW8, in his cross examination, deposed that at the relevant time he did not have cordial relations with PW6. According to PW8, PW6 was the Officer in-charge of A1. As he and PW6 were not on cordial terms, there was considerable correspondence between them condemning each other. PW8 admitted that he had called for about 150 to 200 explanations from PW6. PW8 further deposed that on 08.08.1994 at about 3.30 PM, PW6 telephoned and told him that although the latter could not harm him, he had managed to harm his sister's son (bhanja). According to PW8, A1 is his sister's son.

21. PW10, the Trap Laying Officer, (the TLO) when examined fully supported the prosecution case.



22. The testimony of the aforesaid witnesses is mainly relied on by the prosecution to prove the demand and acceptance of the bribe by A1/the appellant herein. Now the primary question to be addressed is whether the prosecution has succeeded in establishing its case against A1 that he had sought illegal gratification to perform a specific act while discharging his official duty, thereby attracting the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the PC Act. It is a well settled position of law that the offer by the bribe giver and the demand by the public servant have to be proved by the prosecution as a fact in issue for conviction under Sections 7 and 13(1)(d) of the PC Act. Mere acceptance of illegal gratification without proof of offer by the bribe giver and demand by the public servant would not constitute an offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act, as held by the Hon'ble Apex Court in **Neeraj Dutta v. State (Government of NCT of Delhi)(2023) 4 SCC 731**.



23. The learned prosecutor is certainly right in arguing that merely because a witness turns hostile, that would not mean that his entire evidence is liable to be discarded. The Court certainly can accept that part of his testimony which is reliable and inspires confidence in the mind of the court to arrive at a conclusion regarding the guilt of the accused.

24. In the case on hand, as stated earlier, PW-1 fully supported the prosecution case while he was examined in chief. However, he turned completely hostile when he was cross-examined before the trial court after a gap of more than 02 years. As noticed earlier, the cross-examination was adjourned at the request of the defence counsel on the ground of his illness. Even if the reason cited for adjournment was true and the matter adjourned, the trial court should have taken up the case for cross-examination immediately on the next day or on the earliest possible date. Because of the long gap in the cross-examination, as



rightly submitted by the learned prosecutor, there was every possibility / chances of PW1 being won over by the accused.

25. Here I refer to the dictum in **M. Narsinga Rao** (*supra*) relied on by the learned prosecutor to substantiate the argument that despite PW1 turning hostile, the Court can rely on the remaining evidence on record and conclude regarding the guilt of the accused. In **M. Narsinga Rao** (*supra*) the appellant, therein, Manager of a Milk Chilling Centre attached to Andhra Pradesh Dairy Development Corporation Federation was alleged to have received bribe from a milk transporting contractor for recommending the payment of an amount due to the latter. Pursuant to a complaint being made, the trap was laid and the appellant was caught red-handed and the tainted currency notes were recovered from his pocket. The trial commenced after four long years. During the trial, the main prosecution witnesses turned hostile and did not support the prosecution case. The appellant took up a defence that one “K” had orchestrated a false trap against



him by employing PW1 and PW2 therein and that the tainted currency notes had been forcibly stuffed into his pocket. The trial court convicted the appellant under Sections 7 and 13(2) read with section 13(1)(d) of the PC Act, which was upheld by the High Court. The High Court held that even in the absence of direct evidence, the rest of the evidence and circumstances were sufficient to establish that the accused had accepted the amount and that it gave rise to a presumption under Section 20 of the PC Act that he had accepted the same as illegal gratification. When the matter came up before the Hon'ble Supreme Court, the appellant contended that the presumption under Section 20 of the PC Act could be drawn only when acceptance or obtaining of gratification was established by direct evidence and not on the basis of an inference to that effect. It was contended that unless the prosecution proved that what was paid amounted to gratification, the mere handing over of some currency notes to the public servant



would not be sufficient to make the same as an acceptance of gratification.

25.1. Rejecting the above said contention, it was held by the Apex Court that when Section 20(1) of the PC Act deals with legal presumption, it is to be understood as in terrorem, i.e. in the tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the Section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during the trial, it should be proved that the accused had accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. The word “proof”, needs to be understood in the sense in which it is defined in the Evidence Act. What is required by the definition of the word “proof” is the production of such materials on which the Court can reasonably act to reach the supposition that a fact exists. Proof of



the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

25.2. After referring to the law on the point, the Apex Court observed that from the materials on record, it was clear that when the appellant was caught red handed with the currency notes, he never demurred to the trap laying officer that those notes had not been received by him. The story that the currency notes were stuffed into his pocket was found to have been concocted by the appellant only after lapse of about 4 years and that too when the appellant faced trial in the Court. Though the silence of the accused/appellant by itself may not or need not necessarily lead to the presumption that he accepted the amount from somebody else, the other circumstances which were proved in the case and those preceding and succeeding the searching out of the tainted currency notes were found to be relevant and useful to help the Court to draw a factual presumption that the appellant therein had willingly



received the currency notes. From the proved facts of the said case, it was held that the Court could legitimately draw a presumption that the appellant received or accepted the said currency notes on his own volition. It was also held that the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence.

26. Coming to the case on hand, unlike in **M. Narsinga Rao** (*supra*), the appellant/A1 herein did protest when he was apprehended by the TLO and claimed to be innocent. This is spoken to by PW4, the shadow witness. Further, the appellant/A1 in his defence has taken up a plea of false implication at the instance of PW6. This defence is probalised by the testimony of PW8, a loyal prosecution witness to whose testimony, I have already referred to. According to PW8, PW6 (K.L. Mewal) was the officer-in-charge of A1. PW8 also deposed that his relation with PW6 was



not cordial and that it was quite strained. PW8 further deposed thus:-

“.....On 08.08.1994 K.L. Mewal talked with me on telephone. His telephone call came at around 03:30 p.m. He informed me that though he could not harm me, but he has managed to harm my sister's son (Bhanja). My said Bhanja is accused Rajinder Kumar, present in Court.....”

26.1. This testimony of PW8 was never clarified by the prosecutor in the re-examination. Therefore, the defence plea that there was enmity between PW8 and PW6 and that PW6 due to this enmity had harmed A1, his junior officer and close relative of PW8 stands probalised by the testimony of PW8, a loyal prosecution witness.

27. This testimony of PW8 coupled with the testimony of PW5, does raise doubts in the mind of the Court. PW5 admitted that three persons had been arrested on the day by the CBI. It is true that PW5 did not specifically say that it was Raj Kumar who had been arrested by the CBI. On the other hand, he deposed that three persons had been arrested by the CBI, two of them being A1



and A2. PW5 in the cross examination did not deny the fact that the third person was Raj Kumar. On the other hand, he only feigned ignorance/ lack of memory. It was pointed out by the learned counsel for the appellant/A1 that the said Raj Kumar is one of the witnesses in the final report, but the prosecution deliberately did not examine the said witness before the Court.

28. On a perusal of the final report/charge sheet, I find that charge witness No.5 is described as "*Raj Kumar Pal, S/o Sh. Kalu Ram, Junior Clerk cum Compotist, DESU, Radha Place, New Delhi-92.*" The materials on record do not show as to why this witness was not examined by the prosecutor. It is true that it is the prerogative of the prosecutor to decide who among the persons in the list of witnesses needs to be examined. But here is a case where one of the prosecution witnesses himself admit regarding the arrest of a third person in addition to A1 and A2. PW1 says that the third person arrested was Raj Kumar (CW5). Though CW5 has been



arrayed as a witness in the chargesheet, for reasons best known to the prosecution has not been examined.

29. The learned prosecutor then submitted that when the Investigating Officer was cross examined, he was never asked regarding the arrest of a third person. If actually a third person had been arrested as argued on behalf of the defence, it was pointed out then it was their duty to have brought out necessary clarification through the testimony of the Investigating Officer. I am unable to agree to this argument. The defence was able to get certain incriminating answers from PW5, which version is supported by PW1, their own star witness. In such circumstances, the defence would never question the Investigating Officer to get any clarification of the point. The burden was always on the prosecution to prove the case beyond reasonable doubt. On the other hand, the burden of the accused is only to put forward a preponderance of probabilities regarding the defence version,



which they have succeeded in doing by bringing in answers through the testimony of the prosecution witnesses itself.

30. I also specifically refer to the statement made by PW1 towards the end of his deposition which reads thus:-

“.....It is incorrect to suggest that on 6-5-97, I gave correct version pertaining to this case. Because CBI is trying to get an innocent person convicted, today I have come out with the truth. It is wrong to suggest that I have been deposed falsely as I have been won over by the accused.”

(Emphasis supplied)

31. If the CBI was deliberately trying to implicate an innocent person, question certainly arises as to why PW1 spoke in support of the prosecution case in the examination-in-chief. “Wisdom” seems to have dawned on him quite late. Be that as it may, the defence version that A1 has been falsely implicated at the behest of PW6 has been probalised by the version of PW8, a loyal prosecution witness. The testimony of PW8 when read along with the testimony of PW1 and PW5 raise doubts in the mind of the court regarding the prosecution case. That being the position,



this Court is unable to find that the evidence on record is satisfactory to prove the prosecution case beyond reasonable doubt. Had it been only PW1 who had turned hostile and if the remaining evidence had inspired confidence in the mind of the Court, this court could have certainly arrived at a conclusion regarding the guilt of the accused. The materials on record do raise a grave suspicion of the appellant/A1 having committed the offence charged against him. But suspicion, however strong, cannot take the place of proof. That being the position, it can only be found that the prosecution has failed to prove the case against the accused beyond reasonable doubt. Therefore, I find that the appellant/A1 is entitled to the benefit of doubt.

32. In the result, the appeal is allowed. The impugned judgment is set aside and the appellant/A1 acquitted under Section 235(1) Cr.P.C. for the offences charged against him. He shall be set at liberty and his bail bond shall stand cancelled.



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33. Applications, if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MARCH 16, 2026

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