

S.B. Hon'ble Shri Justice Shailendra Shukla

CRA. No.9930/2018

ANIL BHASKAR

v/s.

STATE OF M.P. (SPE) LOKAYUKT.

Shri Vivek Singh, Advocate for the appellant.

Shri Vaibhav Jain, Advocate for respondent – Lokayukt.

ORDER

(Indore dt. 07.2.2020)

This appeal under Section 374 of Cr.P.C, has been preferred against the judgment dated 26.12.2018, passed by the Special Judge (P.C. Act) Ujjain in Special Case No.16/2017, whereby the charges framed against the appellant under the provisions of Sections 7 of the Prevention of Corruption Act, 1988 (herein after referred as 'the P.C. Act') has been found to be proved and the appellant has been sentenced to undergo 4 years of RI with fine of Rs.2000/-, in default of payment of fine 2 months additional RI and in respect of the charges framed under Section 13(1)(d) read with Section 13(2) of the P.C. Act the appellant has been sentenced to undergo 4 years RI with fine of Rs.2000/-, in default of payment of fine 2 months additional RI. Both sentences would run concurrently.

2. The prosecution story in short was that on 19.5.2014, complainant namely Jitendra Kothar has lodged a complaint

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with Lokayukt police alleging that appellant working as was asked bribe of Rs.2000/- for releasing the funds to the mother of the complainant under National Family Benefit Scheme. On receiving such complaint, Inspector Special Police Lokayukt formed a team who would act as witnesses in respect of the demand of acceptance of bribe by the appellant. As per the instructions, the complaint pertaining to the demand of bribe was verified by the team and this was done by providing the complainant a voice recorder and he was again send to the office of the appellant along with one constable namely Ashish Chandel. The complainant went inside the office of the appellant alone and recorded the conversation. This voice recorder was then handed over to Basant Shrivastava, the I.O. A panchnama was prepared and crime No.0/34/2014 under Section 7 of the P.C. Act was registered. Thereafter FIR was also lodged. The complainant was asked to provide Rs.1500/-. The complainant provided two notes of Rs.500/- denomination each and 5 notes of Rs.100/- denomination each. A slip was prepared containing particulars of each currency note by panch witness Manoj Hinge. TLO Shri Basant Shrivastava then arranged for smearing phenolphthalein powder on these notes. These notes were kept in the right pocket of trouser worn by complainant. His hands were washed in sodium carbonate solution which did not turn pink. Subsequently, on 19.5.2014 by around 4.30 PM the team constituted by Lokayukt Police left

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for Jila Panchayat Damdama, Ujjain, On reaching the spot, the complainant went to the Social Justice Department and after sometime complainant alerted the team as per pre-determined signal showing that he has given the bribe. On receiving such signal raiding party constituted by the police went inside the office and trapped the appellant. His hands were held from above wrist by team members namely Ashish Chandel and Rakesh Bihari. His hands were dipped in sodium carbonate solution resulting in solution turning pink. This showed that he had received the money. Further search by Panch witness Manoj Kumar Hinge led to recovery of currency notes from the pocket of the appellant. These were pre-marked currency notes and thus, it was verified that bribe amount had been received. The trouser worn by the appellant was also seized and its right pocket was dipped in sodium carbonate solution which again turned pink. The appellant was charge-sheeted under Section 7 and 13(1)(d) read with Section 13(2) of the P.C. Act. Charges under aforesaid sections were read over to the appellant who abjured his guilt. The trial court thereafter proceeded to examine the witnesses. Prosecution examined 8 witnesses in all. The defence taken by the appellant was that he had no work relating to the appellant's mother pending with him and all the bills pertaining to Social Justice Department were already deposited by him on 26.3.2014, ie., much before the incident of bribe taking has shown to have taken place. The appellant examined

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one witness in his support. The trial court as already stated went on to convict and sentence the appellant in the manner described earlier.

3. In the appeal filed under Section 374 of Cr.P.C, it has been submitted that the finding arrived at by the trial court are not in-consonance with the evidence available on record, which is not cogent, clinching and reliable evidence. The complainant himself has admitted that two constables had caught the appellant at the gate outside of the office and searched him but no money has been recovered from his pocket and thereafter, he was taken back to the office and subsequently after 5 to 10 minutes, the constables came out and said that they have recovered the money from the appellant. Such evidence creates doubt on prosecution story. The constables have clearly failed to find out any money on the person of appellant and thereafter the appellant was taken inside the office and evidence was tampered with and money was shown to be seized from him. The complainant himself has stated that the constables have done a preliminary search of the appellant and had found nothing. In view of such averment, it was not possible to recover the money afterwards. Money which was recovered was of different denomination in the sense that the complainant states in his deposition that 3 currency notes of Rs.500/- denomination each were quoted with powder whereas the prosecution story is that there were 2 currency notes of Rs.500/- denomination each and

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5 notes of Rs.100/- denomination were quoted. that hands of Trap laying officer were not worked. One of the witnesses Manoj Kumar Hinge has stated that no documents were seized from the appellant and witness has further substantiated that documents were taken out of a locker which was under the possession of one Smt. Vimla Kaushal and, therefore, no question of recovery of documents from the appellant arises. It was further stated that sample voice of the appellant and complainant were not taken and hence, the recording regarding bribe cannot be verified. It has also been stated that the amount due towards the National Family Relief Scheme had already been paid to the complainant on 28.3.2014 and, therefore, no question arises with respect to the demand of bribe on a later dated ie., on 19.5.2014. It is also stated that on the date of the alleged offence the appellant was not relieved from his posting from Janpad Panchayat Tarana and therefore, he could not have asked for the money to work he was not incharge of, on the date of commission of the offence. Thus, the material discrepancies in the statements of the witnesses were not taken into account and the learned lower court was wrong in drawing unwarranted inferences. Thus, the judgment pronounced by the trial court was erroneous on both facts and law and was based on surmises and conjunctures. Hence, it has been submitted that the appeal be allowed and the judgment pronounced on 26.12.2018 be set aside and appellant be acquitted from the alleged offence.

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4. The question before this court is whether in view of the grounds contained in the appeal memo, the appellant Anil Bhaskar can be stated to have been wrongly convicted and whether he deserves to be acquitted ?.

5. The prosecution has examined 8 witnesses in all. These are Jitendra Kothar (PW1), who is complainant, Manoj Kumar Hinge (PW2), Ashok Kumar Chouhan (PW3), who is a witness regarding sanction to prosecute the appellant, Dr. Ram Pratap Singh Pawar (PW4) who is witness of Janpad Panchayat, Tarana and has exhibited the appointment order of Anil Bhaskar the appellant, Basant Shrivastava (PW5) is the inspector in Lokayukt Police before whom the written complaint was put up which was further process by him. He is also the witness who has managed the process of recording of conversation in digital voice recorder. This witness has also treated the currency notes with phenolphthalein powder, has constituted the trap team and has also taken part in the trap proceedings. Rakesh Bihari (PW6) is the head constable before whom the complainant Jitendra Kothar (PW1), lodged the complaint. Dinesh Chand Patel (PW7) is the inspector who had sought to know the duties of appellant - Anil Bhaskar. Mukesh Sharma (PW8) is the reader to the upper Collector who had arranged the availability of the gazetted officer as witnesses.

(i) That the prosecution story involves demand of money by the appellant for release of Rs.20000/- due to his

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mother pursuant to death of his father in the form of family relief. This amount was to be released from Municipal Corporation.

(ii) That such demand was recorded in digital voice recorder and a plan was made to apprehend the appellant raid-handed while accepting currency notes.

(iii) That the currency notes were treated with phenolphthalein powder and given to the appellant who accepted the same and kept the same in right hand pocket of the trouser and was instantaneously apprehended.

(iv) That the hands of the appellant when dipped in sodium bicarbonate has turned pink and the right pocket of the trouser worn by him also turned pink when dipped in sodium bicarbonate solution.

(v) That the particulars of the currency notes matched with the already recorded particulars of the currency notes in a Panchnama.

6. As already stated, while prosecution has adduced evidence showing demand of money by appellant and acceptance of money by him thereafter from the complainant so that Rs.20000/- due to mother of complainant may be released, the presumption which was raised against the appellant was sought to be dispelled by him by claiming that there was no demand made by him, that the money had already been

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deposited two months back and there was nothing more to be done on his part so that the money could be deposited in the name of the mother of the complainant, that on the date of the incident accused was posted in Janpad Panchayat, Tarana and he not even be relieved to join at Ujjain where the incident took place, that the concerned file regarding the claim of the mother of the complainant was not in his possession, but was in possession of another public servant namely Vimla Kaushal and that no money was retrieved from the trouser of the appellant.

7. These aspects would be considered successively.

8. The first aspect is regarding demand of money by the appellant.

9. Jitendra Kothar (PW1) states that he had gone to Nagar Nigam Office at Ujjain for releasing Rs.20000/- due to his mother as family relief accruable to her due to death of his father. In Nagar Nigam he was told to go to Forest Department Office. He then went to the Forest Department Office and he was told that the relevant person for his work is the accused, ie., Anil Bhaskar. Complainant states that he met Anil Bhaskar who told him that he would be needing Rs.2000/- for doing his work then the witness went to the Lokayukt Office on 19.5.2014 and filed an application Exhibit P/1. He then states that he was given a digital voice recorder and was sent along with two other persons to the Forest Department and it was there that he gave

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the money to the accused who thereafter caught raid-handed. This witness misses one link of the prosecution story which is that after giving application Exhibit P/1 he was given a digital recorder and the conversation was again recorded in the digital voice recorder. Due to such discrepancy, the complainant has been declared hostile by prosecution. The complainant, after being declared hostile supports the prosecution story fully and it was then that he was cross examined by the appellant.

10. The main question involved here is whether the voice recorded in the digital voice recorder is that of the appellant or not. The appellant has denied that he had demanded any such amount from the appellant.

11. Basant Shrivastava (PW5) who is the inspector in the Lokayukt Office at Ujjain had stated that the complainant was sent with the digital voice recorder along with the constable Ashish Chandel. Ashish Chandel has not been examined by the prosecution. Hence, there is no other witness apart from the complainant to affirm that the voice recorded is that of the appellant. In the case of *Ram Singh & Ors. Vs. Col. Ram Singh*, *AIR 1986 SC Pg.3* it has been held that the prosecution must prove that the voice contained in the voice recorder is that of the accused. In this matter the prosecution has not been able to prove that the voice of the appellant has been recorded in the digital voice recorder. The sample of the voice of the appellant has also not been taken and therefore there is no voice in the

form of sample voice available to compare it with the voice contained in the voice recorded. Thus, the aspect of demand through tape recorder has not been proved appropriately and beyond reasonable doubt of the prosecution.

12. With the evidence regarding voice recording not being found reliable, it is a deposition of complainant only which is available as direct evidence pertaining to demand of bribe. The complainant is declared hostile but he supports the prosecution story regarding demand of bribe by the appellant. In the case of *Panalal Damodar Rathi v/s. State of Maharashtra, 1980 SCC (Cri) 121*, it has been held that the testimony of the complainant cannot be on a better footing than that of an accomplice. Further, in *State of Kerala & Anr. V/s. C.P. Rao, 2011 (6) SCC 456*, it has been held that a complainant is accomplice and when there is no corroboration of testimony of complainant regarding demand of bribe by accused, it has to be accepted that complainant's version remaining uncorroborated, his evidence cannot be relied upon.

13. Thus, there is need for corroboration of the evidence of the complainant. The prosecution has sought to corroborate the evidence of complainant with trap proceedings.

14. Now the evidence pertaining to trap proceedings shall be considered.

15. Basant Shrivastava (PW5) states that after lodging of FIR

Exhibit P/28, he proceeded to lay out a plan to trap the appellant. As per this plan, the complainant gave him two notes of Rs.500/- denomination each and five notes of Rs.100/- denomination each, totaling Rs.1500/- and numbers of these currency notes were typed and a computer print was drawn out which was signed by the witness and two panch witnesses Manoj Kumar Hinge (PW2) and Dr. R.L. Bhamra whose evidence has not been recorded. Basant Shrivastava (PW5) states that this computer print was given to Dr. R.L. Bhamra for safe custody. Basant Shrivastava (PW5) also states that such computer print was prepared which carry the numbers of the currency notes.

16. Witness Manoj Kumar Hinge has stated that Shri Basant Shrivastava asked him to speak out the numbers of the currency notes and the same were noted by Dr. Bhamra. The numbers were taken out in a computer and a print out was prepared. This witness in para 37 admits that the slip in which the numbers were printed is Article L/2. However, he states that Dr. Bhamra was directed to keep the slip.

17. Thus whereas, both Basant Shrivastava (PW5) and Manoj Kumar Hinge (PW2) have stated that currency notes which were provided by the complainant Jitendra Kothar were such that two currency notes were of Rs.500/- denomination each and 5 other currency notes were Rs.100/- denomination each, the evidence of Jitendra Kothar (PW1) differs on this aspect.

18. Complainant Jitendra Kothar (PW1) states in para 7 that he had given the money to the appellant and Rs.1500/- were given and all these notes were Rs.500/- denomination. This money was kept by Anil Bhaskar in his right hand pocket. Thus, as per this witness only 3 notes were given to appellant Anil Bhaskar. He has been declared hostile as he does not narrate the various steps adopted by the prosecution in conducting the proceedings. However, after declaring hostile, he agrees to each and every suggestion given by the prosecutors. However, in para 84 of his cross examination he again admits that only Rs.500/- denomination notes were given to Anil Bhaskar to him.

19. It has been seen that complainant has been declared hostile, but thereafter he supports the prosecution story, but his deposition pertaining to number of currency notes again suffers from uncertainties. However, there are no as such uncertainties in the evidence of Basant Shrivastava (PW5) and Manoj Hinge (PW2). It has also been found that after receipt of the currency notes, Basant Kumar Shrivastava (PW5) got the numbers of currency notes printed in slip which is Article L/2. In view of such consistent testimonies of these two testimonies, the uncertainties in the evidence of Jitendra Kothar (PW1) fails to create suspicion as to the number and denomination of currency notes involved in the trap proceedings.

20. Now the procedure adopted by Basant Shrivastava (PW5) pertaining to steps after treatment of currency notes shall be

discussed.

21. Basant Shrivastava (PW5) thereafter says that the currency notes were treated with phenolphthalein powder. Such procedure was conducted by Ghanshyam Mishra and Shiv Kumar Sharma. These currency notes were then put inside the right pocket of the complainant. The hands of the complainant were then dipped in sodium bicarbonate solution, but the color did not change. The hands of Ghanshyam Mishra were dipped in sodium bicarbonate which turned pink. This solution was preserved and sealed. The sample of phenolphthalein powder was also preserved and four such samples were taken and preserved.

22. How the events unfolded after the trap team reached the venue shall be discussed.

23. As per Basant Shrivastava (PW5) the trap team reached District Panchayat Office on 19.5.2014 at 4.30 PM. Along with the complainant, constables Ashish Singh Chandel and Rakesh Bihari (PW6) also proceeded towards the office but it was only the complainant who was made to enter the Department of Social Justice. After sometime, the complainant came out and gave an indication by running his left hand over his head. On receiving such indication both the constables immediately entered the Social Justice Department and each of them held one hand of accused who was sitting in a chair. Ashish Chandel

held left hand and Rakesh Bihari (PW6) held the right hand near the wrist.

24. Basant Shrivastava (PW5) states that at this point of time, he also entered the hall where the accused had been trapped.

25. Rakesh Bihari (PW6) corroborates the statements of Basant Shrivastava (PW5) who states that he entered the building as soon as he got indication and caught the accused who was sitting in his office at that time.

26. However, complainant Jitendra Kothar (PW1) in para 7 states that he handed over the money to the appellant in his office. However, in para 82, he states that when he went inside the office, the accused asked him to go out of the building and after he came out, the appellant followed him 5 minutes later. The appellant then told him that people were standing and hence, it does not look nice and took him to the side of the building where there was no one and it was there that the money changed hands. In para 83 he states that the accused was nabbed near the gate of the building and it was here that money was taken out of his pocket.

27. Thus, there is variance regarding the place where the appellant took money and this variance can be seen in the statement of the complainant on the one hand and statements of the members of the trap team on the other hand.

28. It has already been seen that complainant Jitendra Kothar

(PW1) has turned hostile and even in cross-examination by the appellant, he repeatedly accepts the suggestions of the appellant.

29. In the case of *Koli Lakhman Bhai Chandan Bhai v/s. State of Gujrat, AIR 2000 SC 210*, it has been held as under :-

“It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the person version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence.

Therefore, merely because the complainant and the Panch witness have turned hostile to a certain extent, the accused cannot claim that their testimonies have to be disregarded altogether as it would required a deeper scrutiny of the entire evidence to examine whether despite the said witness turning partially hostile, the said witnesses are creditworthy qua their testimony relied upon by the prosecution.”

30. Thus, the Court while evaluating the evidence of a hostile witness, can rely upon the part which supports the prosecution case. It has to be seen that the complainant did not have any animosity or an axe to grind against the appellant. Hence, to say that he deliberately wanted to inculcate the appellant would not be correct. Such witness, however, is interested with his position akin to that of accomplice, hence his evidence needs to be evaluated with caution.

31. As against Jitendra Kothar (PW1) all other members of the trap team have stated that the appellant was trapped inside his office. Such a evidence has not been contradicted in cross-

examination. Thus, it is proved that appellant was caught in his office only.

32. The complainant Jitendra Kothar (PW1) states in examination-in-chief that he was asked by appellant to sit out and then he met Anil Bhaskar, the appellant, shook hands with him and gave him the money. He gave money since appellant was demanding the same. He further states in para 8 that Anil Bhaskar after taking money, kept the same in the right pocket of his trouser.

33. Rakesh Bihari (PW6) states that he and Ashish Chandel had held the hands of the appellant from his wrists.

34. Now the manner and method in which the procedure was followed by the trap team would be considered.

35. Basant Shrivastava (PW5) states that the solution of sodium carbonate was prepared in presence of Anil Bhaskar and his hands were dipped in the solution and the solution turned pink. His statements have again been corroborated by Rakesh Bihari (PW6).

36. Manoj Kumar Hinge (PW2) in para 16 also corroborates such statements. The complainant Jitendra Kothar (PW1) in para 8 further corroborates the statement of Basant Shrivastava (PW5). As per Basant Shrivastava (PW5), solution so kept in a glass bottle was secured and the bottle was seized and sealed. The bottle is Article D, as per Basant Shrivastava (PW5) on

which a slip was pasted which carries the signatures of witness Basant Shrivastava (PW5). The signatures of accused / appellant is on D to D part in this slip which also carries the signatures of both panchas and also of complainant Jitendra Kothar (PW1) who in para 29 admits his signatures on this slip at A to A part.

37. Basant Shrivastava (PW5) also states in para 19 that the hands of complainant Jitendra Kothar were also got washed separately in sodium carbonate solution and the solution turned pink. This solution was also secured in a glass bottle and a paper slip was pasted on the same on which complainant, accused, panchas and the witness himself appended their signatures and this bottle is Article E. Jitendra Kothar (PW1) in para 29 admits his signature on slip pasted on Article E.

38. Learned counsel for the appellant has submitted that the hands of Ashish Chandel and Rakesh Bihari (PW6) were not washed in solution prior to the time when they caught hold of the wrist of the appellant. Rakesh Bihari (PW6), in para 18 and Basant Shrivastava (PW5) in para 48 admit this suggestion.

39. Learned counsel has submitted that it cannot be denied that the hands of these panchas were already containing traces of phenolphthelin powder and the same got transferred to the hands of accused when his hands were held by these panchas.

40. On consideration, such possibility is apparently far fetched. Rakesh Bihari (PW6) and Basant Shrivastava (PW5)

have stated that the hands of accused were held from his wrist. No suggestion has been given to these witnesses that the palms of accused were held by witnesses. No such suggestion has also been given that powder got transferred from the hands of witnesses to the palms of appellant.

41. Witness Dinesh Chand Patel (PW7) has exhibited the FSL report as Exhibit P/36. In this report bottles articalised as D and E are found to contain phenolphthelin and sodium carbonate.

42. Basant Shrivastava (PW5) states that thereafter he got prepared sodium carbonate powder in a steel bowl and asked witness Manoj Kumar Hinge to dip both his hands in it. Manoj dipped his hands and solution did not change its color. This exercise was carried out to ensure that there was no traces of powder in his hands. Manoj Kumar Hinge (PW2), in para 18 corroborates these statements. He states that this solution was thereafter transferred to a glass bottle which was sealed and a paper slip was pasted on the same on which complainant, accused and Basant Shrivastava (PW5) also appended their signatures. His statements have been corroborated by Basant Shrivastava (PW5) in para 20. This bottle has been articalised as Article F, as per PW5 in para 31. These statements have also been corroborated by Jitendra Kothar (PW1) in para 54.

43. Basant Shrivastava (PW5) states that thereafter he told panch witness Manoj Kumar Hinge (PW2) that he should ask

the accused as to where the money has been kept. Manoj Kumar Hinge (PW2) then asked the accused who told him that the money has been kept in the right pocket and his trouser then Manoj Hinge (PW2) took out the currency from the right pocket of the trouser worn by the accused. Manoj Hinge (PW2) in para 19 of his examination corroborates such statements.

44. Manoj Kumar Hinge (PW2) states that the numbers of the currency notes seized from the pocket of the accused got matched with the numbers printed in computer sheet. The numbers of currency notes were recorded in initial panchnama which was drawn which is Exhibit P/6. Manoj Kumar Hinge (PW2) and Basant Shrivatava (PW5) both state that there were two notes of Rs.500/- denomination and 5 notes of Rs.100/- denomination recovered from the pocket of accused. As per PW5, these notes were kept in a envelope along with computer slip which was prepared earlier containing the particulars of these notes and which was earlier kept in possession with Dr. Bhamra and signatures of accused, complainant, panchas and that of the witness taken on this envelope. These statements have been corroborated by Shri Manoj Kumar Hinge (PW2) and Jitendra Kothar PW1 in para 56. The envelope is Article L/1 and the same was sealed.

45. Basant Shrivastava (PW5), Manoj Kumar Hinge (PW2) and Jitendra Kothar (PW1) state that thereafter fresh solution was got prepared and Shri Hinge dipped his hands in this

solution and the solution turned pink. This was again transferred in a glass bottle with a paper slip got pasted on it and same was articalised as Article G.

46. The FSL report Exhibit P/35 shows that in Article F, there is only sodium carbonate solution whereas in Article G there is presence of phenolphthalein powder. This affirms the oral statements of witnesses.

47. Basant Shrivastava (PW5), Manoj Kumar Hinge (PW2) and Jitendra Kothar (PW1) again state that the accused was made to call for another trouser and thereafter the trouser worn by him was recovered and its right hand pocket was drawn out and the same was dipped in freshly prepared sodium bi carbonate which turned pink. The bottle was seized. This bottle was articalised as H. As per FSL report Exhibit P/35, Article H contained sodium bi carbonate and phenolphthalein powder.

48. Manoj Kumar Hinge (PW2) has been shown bottles of Article E, D, H, G and A and has been asked questions as to the color of the solution. Articles A, D, E, G and H have been found to contain phenolphthalein and their color as per prosecution story was pink. Witness on seeing solution D which was the solution containing hand wash of accused has stated that this solution is neither pink nor colorless. Witness states that Articles H and G are slightly pink. Article G is the hand wash of Manoj Kumar Hinge and Article H is the pocket wash of the trouser.

Learned counsel submits that Article D which is the hand wash of the accused is not pink in color and therefore it cannot be stated that accused had taken the notes in his hand. This submission was considered. Even though from naked eyes the solution may not appear to be pink. However, the chemical analysis report which is Exhibit P/35 this solution has been found to contain traces of phenolphthalein powder and therefore more reliance has to be placed on such report. The complainant Jitendra Kothar (PW1) himself states that notes were taken by appellant and kept in his pocket. In such short duration of contact, the quantity of phenolphthalein powder may not have been adequate to make an effective change in the color of solution. However, FSL report has nevertheless detected the same. It may also be considered that witness (PW2) does not states that Article D is completely color less. He states that the solution is not colorless. Hence, the statements of Manoj Kumar Hinge (PW2) do not go in favour of appellant.

49. Basant Shrivastava (PW5) states in para 25 that the trouser was put inside the cloth bag and the mouth of the cloth back was stitched and signatures of accused, complainant, panchas and witness were taken on the same and thereafter this bag was sealed. Same witness further states that the trap proceedings and seizure memo were thereafter typed on the spot on a laptop and the print was thereafter taken out from a printer brought on the spot which was given to the accused who read

the same and thereafter his signatures, along with the signatures of witness, panchas and complainant were taken. This memo is Exhibit P/7 which runs into three pages, on each of which the aforesaid persons have appended their signatures.

50. Manoj Hinge (PW2) admits in para 58 that his own search and search of others were not given to the appellant. This has been admitted by Basant Shrivastava (PW5) in para 48. Learned counsel submits that in order to obviate the chances of false implication, the accused should have been given an opportunity to search these witnesses.

51. A perusal of deposition of witnesses shows that no such suggestion has been given to these witnesses that currency was inserted inside the pocket of accused. In absence of such suggestion, the aforesaid lapse of prosecution is of no consequence.

52. Learned counsel for the appellant has drawn the attention of this court towards the statements of Jitendra Kothar (PW1) who admits in para 83 that when the accused was caught near the gate of the building, he was searched but no money came out of his pocket and then the officer took the accused inside the office and he came out after 5 – 10 minutes and announced that the currency notes have been recovered.

53. The learned counsel for the appellant submits that these statements have been made by the complainant and there is no

re-examination of the complainant by the prosecution. This creates grave doubt in the procedure adopted and if complainant were to be believed then the whole search process becomes shrouded in suspicion.

54. Basant Shrivastava (PW5) has been given a suggestion in para 50 that the accused was taken to another room before recovery of money from him. This suggestion has been denied by him and he states that accused was taken to another room when his trouser was required to be taken out.

55. It can be seen that no such suggestion has been given to Basant Shrivastava (PW5) that currency notes were put in his pocket by member of trap team. Manoj Kumar Hinge (PW2) has not even been given a suggestion that he or any other person had inserted currency notes in the pocket of accused. In his accused statements also no such defence has been taken. Hence, the statements of complainant in para 83 failed to create any suspicion on the prosecution story.

56. It may be seen that complainant has been declared hostile. He makes frequent statements tending to create a dent on prosecution story in his cross-examination. It may be seen that his evidence was recorded in the year 2018 whereas the incident occurred in the year 2014. The Apex court in the case of N. Narsinga Rao v/s. State of Andhra Pradesh, AIR 2001 SC 318 was seized with a matter in which evidence had been recorded 4

years after the incident of trapping. The complainant and panch witnesses had turned bolt – face in the trial court and had denied having paid any bribery to the appellant and had also denied that the appellant demanded the bribe amount. Both were declared hostile and were cross examined. The trial court and the High Court went on to convict the appellant despite the witnesses turning hostile. The Supreme Court considered the submissions of the appellant and observed that there was evidence to the effect that the accused had accepted the amount which gives rise to the presumption under Section 20 of the P.C. Act that he accepted the same as illegal gratification, particularly so when the defence theory put forth is not accepted.

57. Thus, in the aforesaid judgment despite the fact that complainant and witnesses have turned hostile, conviction was still was affirmed on the basis of evidence available and in arriving at such conclusion, it was also found that defence version of appellant was not trustworthy.

58. The present case, stands at still better footing than that narrated in the case of N. Narsinga Rao v/s. State of Andhra Pradesh (supra). Since in the present case, the complainant has although turned hostile but for major part, he supports the prosecution story including that of demand and acceptance of bribe. Secondly, other panch witnesses have not turned hostile and also supports the prosecution story. Now it remains to be

seen as to whether the defence version of the appellant is reliable or not. The defence is two fold. First is that the appellant who was working at Tarana and was ordered to join his new posting at Ujjain where the incident occurred had not joined at Ujjain on the date of incident and secondly that the file of the mother of the complainant had already been process and amount was also disbursed in the month of March 2014 whereas the incident occurred in May 2014.

59. Regarding the first defence Dr. Rampratap Singh Pawar (PW4) is the relevant witness who was posted in Janpad Panchayat at Tarana on the post of Chief Municipal Officer. He states that he was asked to provide the service conditions of accused vide letter dated Exhibit P/20. The information was provided by this witness as per Exhibit P/21 vide letter dated 28.5.2014. He further submits that vide Exhibit P/24, Anil Bhaskar was assigned all the account work pertaining to National Family Relief and other related schemes. This order is dated 17.12.2013. In this letter it was stated CMO Janpad Panchayat Tarana should ensure to relieve Anil Bhaskar with immediate effect. In cross – examination he admits that even after receiving the order Exhibit P/24, the accused was not relieved. He admits that thereafter on 19.3.2014, a letter Exhibit D/3 was received which was written by CMO District Panchayat Ujjain directing immediate release of Anil Bhaskar. The witness was thereafter confronted with Exhibit D/4 which

is document obtained under Right to Information Act. This document is dated 28.8.2018. In Exhibit D/4 at B to B part it has been mentioned that CMO Janpad Panchayat Tarana had not relieved Mr. Anil Bhaskar. In re-examination, this witness states that since there is no document regarding the appellant being relieved from Janpad Panchayat Tarana, he is submitting that he had not been relieved.

60. Thus, there is no document to show that appellant had been relieved from his posting at Janpad Panchayat Tarana. However, it has been found proved that accused was trapped in Social Welfare Department situated in Ujjain which is near District Panchayat Office at Ujjain and from the same office the file pertaining to the mother of the complainant was seized at the behest of appellant. Although in para 39 Basant Shrivastava (PW5) admits that the almirah from where the file was taken out is in charge of one Smt. Vimla Kaushal but it was the appellant who took out the file from that almirah which shows that appellant had controlled over that almirah and he knew the whereabouts of this file. If appellant was in-charge of Janpad Panchayat at Tarana, he should have been present at Tarana only. Appellant has not been able to show as to how and why he was performing his duty at Ujjain in an office where the concerned file was also available. An attempt has been made to show that the file was in fact brought from treasury office. Such suggestion has been given to Basant Shrivastava (PW5) who

denies the suggestion. The same suggestion has been given to the complainant who admits it. However, as already seen, the evidence of complainant is not reliable because he after being declared hostile, although reasserts the prosecution story, but again, on being cross examined by the appellant condescends to the suggestions and appears to be a malleable witness.

61. Now coming to the second defence of the appellant is that the file of mother of the appellant was processed way back in March 2014 and the cash amount was electronically transferred to her account from treasury itself. However, no such document has been shown that the amount stands transmitted to the aforesaid account.

62. Defence witness Hari Narayan Singh (DW1) has stated that this bill was received in the treasury from the office of the CMO, District Panchayat, Ujjain on 25.03.2014. The bill was dated 24.03.2014. Along with the bill, names of beneficiaries, drawal disbursal permission order, computerized documents etc. were also received. As per the list, Savitribai was to be given Rs.20,000/-. The witness states that whatever list comes to him, online e-payment to such listed person is made directly to the account of such persons. He states that the amount was uploaded on the computer on 28.03.2014. The witness states that on uploading the amount, the same gets transferred to the account of beneficiary on the same day or the next day. The witness further states that Rs.20,000/- was disbursed to the

saving bank account of Savitribai in her bank account No.812610110001750 vide e-cheque No.CN2166693500896 and on payment, such bill is sent to the Accountant General at Gwalior. In para-7 of the cross-examination, he states that the bill (Exhibit-D/6) is the photocopy because the original has been sent to the Accountant General, Gwalior. He states that very rarely it happens that even after uploading in computer, amount has not been transferred to the account of the beneficiary and it only happens when there is some discrepancy in the account number.

63. Thus, as per defence witness Hari Narayan Singh (DW1), the payment is electronically transferred through e-cheque payment. However, complainant Jitendra Kothar (PW1) in para 75 states that he received the payment later on through cheque and he has received a telephone call from Municipal Corporation that the cheque is ready and he should receive a cheque and then he went and received the cheque and deposited the same in his mother's account. The same witness has been given a suggestion in para 91 that cheque was prepared in treasury office and was sent straight to office of Municipal Corporation. This suggestion has been denied by the witness.

64. Thus, as against the statement of defence witness that cheque was electronically prepared and amount was deposited directly to the account of beneficiary is contrary to the suggestion given to the complainant in para 91. In this para

there is admission on the part of the appellant that the cheque is prepared in treasury office and the same is sent to the office of Municipal Corporation. Thus, as the appellant admits that the cheque which is prepared in manual cheque as against the evidence of defence witness. The statement of complainant in para 75 therefore appears to be correct that he received the cheque much later from Municipal Corporation. Hari Narayan Singh (PW4) states that he had deposited the e-cheque in the account of Savitribai but he has not supported his statement with any document. The only document he has exhibited is certified copy of the bill which is Exhibit D/6. He admits in cross-examination that there is no document with him to show that Rs.20,000/- had been deposited into the account of Savitribai.

65. Thus, the second defence of appellant is also not proven adequately.

66. From the prosecution evidence it is proved that the appellant was involved in processing of file pertaining to Family Relief Scheme of which Savitribai, mother of the complainant was beneficiary. It is also proved that tainted currency was recovered from his pocket and the particulars of the currency notes were same as written down earlier on computer slip which is Article L/1 which was prepared during pre-trap stage. It is also proved that he had received the amount as his hands when dipped in solution, the later had turned pink.

The Apex court in the case of N. Narsinga Rao (supra) has discussed the scope and ambit of Section 20(1) of P.C. Act and has held that this sub-section deals with a legal presumption which is in the nature of command. The following excerpt of the judgment is relevant :-

“When the sub-section deals with legal presumption it is to be understood as in terrorum i.e. in 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 trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the Evidence Act. What is required is 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. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. [1911 (1) K.B. 988] observed like this: Proof does not mean proof to rigid

mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.

The said observation has stood the test of time can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in [Section 114](#) of the Evidence Act. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof.”

67. The Apex court however cautioned that other evidence be also considered in order to obviate the possibility that money was inserted into the pocket of accused stealthily. The following excerpt is indicative of such observation :-

However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary

presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani vs. State of Maharashtra [1998 (7) SCC 337]. A presumption can be drawn only from facts - and not from other presumptions by a process of probable and logical reasoning. Illustration

(a) to Section 114 of the Evidence Act says that the court may presume that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellants pocket contained phenolphthalein smeared currency notes for Rs.500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes.

68. In the case in hand, the appellant has not taken any such defence that the money was stealthily inserted into his pocket. This could have been vehemently stated in accused statement and such defence should have been raised with witnesses in their cross-examination. However, only fleeting suggestion has been made as a passing suggestion with little heart in it.

69. The Supreme Court in N. Narsinga Rao (supra) observed as under :-

“In fact, the story that such currency notes were stuffed into his pocket was concocted by the appellant only after lapse of a period of 4 years and that too when appellant faced the trial in the court. From those proved facts the court can legitimately draw a presumption that appellant received or accepted the said currency notes on his own volition. Of course, 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. But if the appellant fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that appellant received the said amount.”

70. In the present case, the situation emerges in the same manner as in the aforementioned Apex court case. Further observations made by the Apex court in the same case are also very relevant which are as under :-

*“[In Raghbir Singh vs. State of Haryana](#) [1974 (4) SCC 560] V.R. Krishna Iyer, J, speaking for a three Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is *res ipsa loquitur*. In this context the decision of a two Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ) in [Hazari Lal vs. Delhi \(Delhi Administration\)](#) [1980 (2) SCC 390] can usefully be referred to. A police constable was convicted under [Section 5\(2\)](#) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs.60/- from one Sriram who was examined as PW-3 in that case. In the trial court PW-3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version. The court found that phenolphthalein smeared currency notes were recovered from the pocket of the police constable. A contention*

was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption under [Section 4](#) of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two Judge Bench) observed as follows: It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. Under [Section 114](#) of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to [Section 114](#) of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption under [Section 4\(1\)](#) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below. The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two Judge Bench that the legal principle on this aspect has been correctly propounded therein.”

71. In view of the above, propounding of principle

encapsulated in Section 20 (1) of P.C. Act, it is proved that the amount was received as motive or reward by the accused.

Section 20 (1) of P.C. Act is reproduced as under :-

20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

72. It is clear that money was accepted as gratification. The Supreme court in the same case of N. Narsinga Rao (supra) observes :-

“The word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it. In such a situation, the court is under legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing public duty.”

73. The acceptance of gratification implies that there was demand. The evidence of complainant to the extent that appellant demanded Rs.2000/- from him is found to be reliable. Thus, the legal presumption under Section 20 (1) of P.C. Act is drawn against the appellant. The onus was upon him to rebut it.

It has already been found that his two fold defence is not acceptable for the reasons already assigned earlier.

74. The citations which the appellant had referred to before the trial court were perused. The trial court has dealt with the citations appropriately and there is nothing which can be added to the same.

75. Consequently, the appellant has been rightly found to be guilty for committing offence under Section 7 and 13(1)(b) of the P.C. Act by the Special Court in its impugned judgment. The conviction under aforesaid sections is affirmed. The sentence imposed is also appropriate and there is no reason to deviate from the same. This appeal consequently stands dismissed.

76. A copy of this judgment along with the original record of the case be sent back to the concerned trial court for perusal and necessary action.

(SHAIENDRA SHUKLA)
JUDGE

SS/-

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
CRA. No.9930/2018

THE HIGH COURT OF MADHYA PRADESH : BENCH
AT INDORE
BEFORE SINGLE BENCH: JUSTICE SHRI
SHAIENDRA SHUKLA

Case No.	:	CRA. No.9930/2018
Parties name	:	Anil Bhaskar vs. State of M.P.
Date of Judgement	:	07/02/20
Bench constituted of	:	Single Bench - Hon'ble Justice Shri Shailendra Shukla
Judgement delivered by	:	Hon'ble Justice Shailendra Shukla
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Shri V. Singh, Advocate for appellant. Shri Vaibhav Jain, Advocate for respondent – Lokayukt.
Law laid down	:	Appeal against conviction under provisions of P.C. Act. Held – Even though evidence regarding voice recording not found reliable and complainant also had turned hostile, recovery of tainted money from trouser pocket of accused and also the fact that hands of accused when dipped in sodium carbonate solution, the solution had turned pink raised presumption under Section 114 of Evidence Act and Section 20(1) of P.C. Act. Accused could not discharge his onus. Appeal dismissed. Conviction maintained. Three Judges Bench citation of N. Narsingha Rao vs. State of Andhra Pradesh AIR 2001 SC 318 relied upon.
Significant paragraph numbers	:	56, 58, 66, 67, 68, 69, 70, 71, 73.

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
CRA. No.9930/2018

HIGH COURT OF MADHYA PRADESH BENCH AT
INDORE

S.B. Hon'ble Shri Justice Shailendra Shukla

CRA. No.9930/2018

ANIL BHASKAR

V/s.

STATE OF M.P. (SPE) LOKAYUKT.

POST FOR 07.2.2020

(SHAIENDRA SHUKLA)

JUDGE

CRA. No.9930/2018

Indore dt.18.12.2019.

Shri Vivek Singh, Advocate for the appellant.

Shri Vaibhav Jain, Advocate for respondent – Lokayukt.

Heard finally.

Reserved for judgment.

(SHAIENDRA SHUKLA)

JUDGE

07.2.2020

Judgment delivered, signed and dated.

(SHAIENDRA SHUKLA)

JUDGE