

(2002) CriLJ 4027

Madras High Court

Case No: Criminal Appeal No. 345 of 1993

State by CBI/ACB, by
Public Prosecutor,
Madras

APPELLANT

Vs

K.S. Subramanian

RESPONDENT

Date of Decision: Nov. 5, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161, 165
- Prevention of Corruption Act, 1947 - Section 5(1), 5(2)

Citation: (2002) CriLJ 4027

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Single Bench

Advocate: E. Jacob R. Daniel, Spl.P.P. for CBI Cases, for the Appellant; N. Ranganathan, for the Respondent

Judgement

M. Karpagavinayagam, J.

This is a State appeal assailing the acquittal of the respondent/accused Subramanian, who was working as the Divisional Commercial Superintendent in Southern Railway, Palghat, from the graft charge.

2. The respondent/accused was tried by the Special Court for the offences under Sections 161 and 165 I.P.C. and u/s 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947.

3. The gravamen of the charge is that the accused being a Senior Officer in Railway, demanded illegal gratification of Video Cassette Recorder from Jothimani (P.W.1), who was working as Catering Inspector at Coimbatore, on 24.11.1987 and 9.12.1987 for helping him to get lesser punishment without losing monetary benefit in the departmental enquiry initiated against him for his unauthorised absence from duty and in pursuance of

the said demand, he received the VCR along with the bill from P.W.1 on 10.12.1987.

4. The prosecution examined P.W.1 to P.W.15 and filed Exs.P1 to P23 and marked M.O.1 to M.O.7 to prove the above allegation. On the side of the defence, D.W.1 to D.W.7 were examined and Ex.D1 to D15 were filed. The trial Court ultimately accepted the defence and acquitted the accused in respect of the charges referred to above. Hence, this appeal by the State.

5. The factual details leading to the filing of this appeal are summarised as follows:-

"(a) P.W.1 Jothimani was working as a Catering Inspector at Coimbatore Railway Station. He applied for leave and availed of the same even without getting sanction. Therefore, a charge memo was issued by the respondent/accused, who was working as the Divisional Commercial Superintendent, Palghat. Then, the Railway Divisional Manager (D.R.M.) issued a fresh charge memo cancelling the earlier memo issued by the accused. On receipt of reply from P.W.1, an enquiry was ordered to be conducted by P.W.9 Cyril Raj. After finishing the enquiry, P.W.9 submitted his report Ex.P15 to the accused Officer for being forwarded to the Divisional Railway Manager (D.R.M.), who was the competent authority to take action on the enquiry report.

(b) One week later, P.W.1 Jothimani visited Palghat and met the accused at Ansari Lodge and informed him of the conclusion of the enquiry. The accused replied that he would recommend to the D.R.M. to see that no economic damage was done to him and for that help, he should be given a VCR. P.W.1 made arrangements for purchasing a VCR through his brother P.W.5 Santhalingam. Accordingly, M.O.1 VCR was purchased from Customs Retail Shop, Chennai on 7.12.1987 from P.W.11 Saravanan. Ex.P5 is the bill.

(c) On 9.12.1987 P.W.1 met the accused on the platform in Coimbatore Junction and on that date, he reminded P.W.1 for VCR and directed him to give the VCR next day.

(d) P.W.1, on 10.12.1987 at about 6.30 a.m., went to P.W.4 S.S.Nair, D.S.P. (Vigilance) and gave a complaint (Ex.P4). P.W.1 was directed to meet P.W.4 on the same day evening with the VCR and the bill. In the meantime, a case was registered. After getting permission from the higher officials, P.W.4 sought the assistance of P.W.2 Chakrapani and another Inspector of Central Excise, Coimbatore requesting them to be witnesses for laying a trap against the accused.

(e) On 10.12.1987 at about 7.00 P.M., P.W.1 came and produced VCR and bill. Then, phenolphthalein test was demonstrated to the witnesses and phenolphthalein powder was smeared on the bill and Ex.P6 entrustment mahazar was prepared. Then, P.W.1 was asked to hand over the VCR and bill to the accused only on demand. P.W.2 was instructed to accompany P.W.1 and watch the conversation.

(f) Accordingly, at about 7.45 P.M., P.W.1, P.W.2, P.W.4 and his team went and reached the Retired Room No.1 where the accused was staying on that day. When P.W.1 and

P.W.2 went to the room, the room was found locked. So, they waited. At about 8.00 P.M., the accused came to the room and opened the same. Then, the accused asked both P.Ws.1 and 2 to come inside the room. On seeing the VCR, the accused told P.W.1 that at last he had purchased VCR for him. As directed, VCR was placed on the cot put in the room by P.W.1. Then, P.W.1 took the bill from his shirt pocket and handed over the same to the accused. The accused had received it. P.W.2 was introduced to the accused as a friend of P.W.1's brother. Then, the accused assured P.W.2 that he would see that no economic damage was caused to P.W.1 in the departmental enquiry.

(g) In the meantime, P.W.1 came outside and gave the prearranged signal. P.W.4 with the police party went inside the room and revealed their identity to the accused. Then, the test was conducted on his fingers, which proved positive. The VCR M.O.1 and the bill Ex.P5 were seized under mahazar Ex.P8. Then, they proceeded to Palghat and recovered the file relating to the departmental enquiry against P.W.1 from the office of the accused under mahazar Ex.P9. The file is Ex.P15. Then, P.W.4 examined other witnesses and seized the relevant records. The further investigation was taken up by P.W.13. Then, on his transfer, P.W.14, another Inspector of Police took up investigation and obtained sanction from P.W.15. Thereafter, P.W.14 filed a charge sheet against the respondent/accused for the offences referred to above.

(h) After the evidence on the side of prosecution was over, the respondent/accused was questioned u/s 313 Cr.P.C. He filed a written submission that both the demand and the receipt of VCR are false and out of enmity, a false case was foisted against him. In order to establish that P.W.1 was inimical towards the accused, that no demand was made by him and that VCR was never received by him from P.W.1, he examined D.W.1 to D.W.7 and filed Exs.D1 to D15.

(i) On appraisal of the evidence on record, the trial Court acquitted the accused in respect of all the charges. Challenging the same, the State has filed an appeal."

6. Mr.E.Jacob R.Daniel, the learned Special Public Prosecutor appearing for the State/appellant, would submit that the trial Court acquitted the accused without appreciation of the evidence adduced by the prosecution in the proper perspective and the findings rendered by the trial Court are not only perverse but also totally against the oral and documentary evidence proved through the prosecution witnesses and exhibits.

7. On the other hand, Mr.Ranganathan, the learned counsel appearing for the respondent/accused, in justification of the judgment of acquittal would contend that the trial Court elaborately considered all the aspects of evidence and appreciated the same and rejected the prosecution case and therefore, the judgment of acquittal does not warrant interference. Both would cite number of authorities which we shall see later.

8. I have carefully scrutinised the divergent contentions as well as the materials available on record placed by both the parties.

9. At the outset, it shall be mentioned that this Court is conscious of the fact that in the appeal against acquittal, the appellate Court would not normally interfere in the factual findings rendered by the trial Court and when there are two views possible, the appellate Court would give preference only to the view which is favourable to the accused. It is also settled law that the order of acquittal could be interfered with only when the findings rendered by the trial Court are perverse and the vital materials available in the case records have been overlooked.

10. Some of the guidelines, while dealing with the appeal against acquittal, to decide as to when the order of acquittal could be interfered with, have been given by the Supreme Court in various decisions. They are:

(1) [State of Uttar Pradesh Vs. Pussu alias Ram Kishore,](#)

(2) STATE OF U.P. v. KRISHNA GOPAL AND ANOTHER 1989 Cr.L.J.288 (SC);

(3) LALIT KUMAR SHARMA AND OTHERS v. SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, GOVT. OF WEST BENGAL 1989 Cr.L.J.2297 (SC);

(4) [Ashok Kumar Vs. State of Rajasthan,](#) ;

(5) GOVERDHAN RAOJI GHYARE v. STATE OF MAHARASHTRA 1994 S.C.C.(Cri.) 15;

(6) AMRIK SINGH, SATHNAM SINGH AND ANOTHER v. STATE OF RAJASTHAN 1994 S.C.C. (Cri.) 447;

(7) HARWADI KISHOR PARMANAND v. STATE OF GUJARAT GUJARAT (2) 1994 C.C.R.456 (SC);

(8) BHARWAD JAKSHIBAI NAGJIBHAI AND OTHERS v.STATE OF GUJARAT 1995 S.C.C.(Cri.) 993;

(9) RAM KUMAR v. STATE OF HARYANANA 1995 S.C.C.(Cri.) 355;

(10)STATE OF PUNJAB v. SURJA RAM 1995 S.C.C (Cri.) 937;

(11)UPPARI VENKATASAMY AND OTHERS v. THE PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH 1996 S.C.C.(Cri.) 284;

(12)BETAL SINGH v. STATE OF M.P. 1996 S.C.C.(CrI.) 571;

(13)RAMESH BABULAL DOSHI v. STATE OF GUJARAT 1996 (1) S.C.C.(Cri.) 548

10(a) Those guidelines are as follows:

(A) Though the appellate Court does not disturb an order of acquittal normally, the said principle is not applicable where the approach of the trial Judge in dealing with the evidence is manifestly erroneous and the conclusions drawn are wholly unreasonable.

(B) The appellate Court is required to take into consideration the reasons given by the trial Court in basing a judgment of acquittal, very carefully. If the reasonings given by the trial Court are contrary to the weight of evidence, the Court of Appeal would be justified in discarding the same.

(C) If the appellate Court found that relevant and reliable evidence on record has been lost sight of, ignored or brushed aside for reasons which are unsustainable, then the appellate Court will not only be justified but it will be its duty to interfere with the acquittal.

(D) The power of the appellate Court is with a note of caution that the appellate Court should be slow in interfering with the orders of acquittal unless there are compelling reasons to do so. If a finding reached by the trial Judge cannot be said to be an unreasonable finding, then the appellate Court should not disturb that finding.

(E) The High Court as Appellate Court, while interfering with the judgment of acquittal, shall demonstrate in its well reasoned judgment that the trial Judge rejected the evidence on misplaced considerations as well as on flimsy grounds and took entirely an unreasonable view resulting into patent miscarriage of justice.

(F) While setting aside the judgment of acquittal, it is first required to seek an answer to the question whether the reasonings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If this Court answers the above question in the negative, the order of acquittal will not be disturbed. Conversely, if this Court holds that the ground of acquittal cannot at all be sustained, then this Court would go into the process of reappreciation of the evidence to arrive at its own conclusions.

11. In the light of the above legal situation, let us now go into the reasonings given by the trial Court for acquitting the accused in order to find out whether they are sustainable in law.

12. The grounds of acquittal are as follows:

"(1) P.W.1 Jothimani was inimically disposed of towards the accused and therefore, he foisted the case against the accused.

(2) The accused was not the competent authority to punish P.W.1 Jothimani in the departmental enquiry initiated against him and as such, there was no necessity for demand.

(3) Instead of applying phenolphthalein powder on the Video Cassette Recorder, P.W.4 applied phenolphthalein powder only on the bill.

(4) When P.W.4 S.S.Nair, the Trap Laying Officer and his team accompanied Jothimani (P.W.1) to lay the trap, there was no necessity for sending P.W.2 Chakrapani to overhear the conversation between the accused and P.W.1.

(5) Ex.P5 bill for the purchase of M.O.1 VCR was kept in a cover and given by P.W.1 to the accused under the guise of a letter from Chief Commercial Superintendent intended to be given to the accused. This defence theory can be accepted and therefore, the receipt of the same by the accused given by P.W.1 cannot be the illegal gratification."

13. These reasonings, in my view, on the face of it, cannot be said to be legal. Instead of evaluating the credibility of the evidence of P.W.1 and P.W.2, in the light of the recovery of VCR along with bill and connected file from the possession of the accused, the trial Court has simply thrown out the entire case on the above grounds, which are so flippant.

13(a) Let us now analyse the above grounds, which are not sound, one by one. The first ground relates to the enmity between P.W.1 and the accused.

14. The Apex Court in STATE OF U.P. v. ZAKAULLAH 1998 (1) Crimes 58 (SC) would give the following observation in a similar case:

"Complainant's evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with the consequence that no bribe giver can get away from such stigma in any graft case. No doubt P.W.5 would have been aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti-Corruption Bureau is reflective of his grievance. Such a handicap in his evidence may require the court to scrutinise it with greater care, but it does not call for outright rejection of his evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences."

15. In the light of the above observation, it cannot be held that a false case was given by P.W.1 against the accused merely because P.W.1 had been aggrieved by the conduct of the accused. Though some of the documents filed by the defence such as Exs.D1 to D15 would indicate that the accused Officer sent a report against P.W.1 regarding his misconduct, there is no material to show that on the basis of the report any action was taken against P.W.1. Therefore, there was no necessity for P.W.1 to foist a false case against the accused. Even assuming that P.W.1 got aggrieved over the conduct of the accused, it does not mean that the evidence of P.W.1 called for outright rejection even at the threshold and at the most, the Court will be called upon to scrutinise the evidence of P.W.1 with great care and caution. Hence, the first ground of acquittal is not only unsound but also against the principles laid down by the Supreme Court.

16. The second ground of acquittal would relate to the incompetency of the accused officer to grant punishment to P.W.1 Jothimani.

17. It is true that the punishing authority is only Divisional Railway Manager (D.R.M.) and not the accused officer. But, the fact remains that after the enquiry, P.W.9, the Enquiry Officer who conducted enquiry on the alleged misconduct of P.W.1 Jothimani had to send the report to the D.R.M. only through the accused officer. In this case, P.W.9 sent the enquiry report Ex.P15 to the accused officer on 25.11.1987 for being forwarded to the Divisional Railway Manager. The said file Ex.P15 was kept with the accused till 10.12.1987 and the same was seized by the Deputy Superintendent of Police (P.W.4) from the office of the accused. The evidence of P.W.9 would show that the enquiry report to be sent to the D.R.M. only through the accused and as such, the accused officer has got a say in the departmental enquiry initiated against P.W.1, while forwarding the same to the D.R.M. It is in that context, P.W.1 met the accused officer and at that time, the VCR was demanded as illegal gratification. In other words, P.W.1 was made to believe by the accused that he was in a position to help him by getting lesser punishment without losing monetary benefit through his recommendative note to be sent along with the enquiry report to the D.R.M. Therefore, the finding that there is no necessity nor opportunity for the accused to demand the VCR from P.W.1 is against the materials available on record.

18. Furthermore, as laid down in DHANESHWAR NARAIN SAXENA v. DELHI ADMINISTRATION 1962 (1) Cri.L.J.203 (SC) BANU PRASAD HARI PRASAD DEV v. STATE OF GUJARAT 1968 CrI.L.J.1505 (SC) and [Chaturdas Bhagwandas Patel Vs. The State of Gujarat](#), to constitute the offence u/s 161 I.P.C. it is enough if the public servant who accepts the gratification takes it by inducing a belief that he can render assistance to giver with any other public servant and the giver gives the gratification under that belief.

19. The reading of the above decision would make it clear that the accused even if he is not in a position to do the official favour, he is liable to be punished u/s 161 I.P.C., if the evidence is available to show that he demanded and accepted illegal gratification making the bribe giver to believe that he could do the official favour.

20. Thus, it is manifest that though the accused officer is not a punishing authority, he had the opportunity to receive the enquiry report sent by P.W.9 and to forward the same to D.R.M. with his remarks and that he availed of that opportunity to induce the belief that he would be in a position to do the favour by helping P.W.1 to get lesser punishment without losing any monetary benefit and towards the said favour, he demanded VCR from P.W.1.

21. Under those circumstances, the incompetency of the accused officer for rendering punishment to P.W.1 would not be a ground to reject the prosecution case, as the said ground would be against the settled principles of law.

22. Thirdly, the trial Court finds fault with the Investigating Officer P.W.4 for not having applied phenolphthalein powder on the Video Cassette Recorder. Applying phenolphthalein on a particular thing would be in order to find out whether the said thing has been received by the accused. In this case, the phenolphthalein powder, admittedly,

was not smeared on the VCR and the same was smeared only on the Bill Ex.P5.

23. According to the prosecution, in pursuance of the demand of VCR, P.W.1 accompanied by P.W.2 went and met the accused officer and per the direction of the accused, VCR was put on the cot in which the accused was sitting and Ex.P5 Bill for the purchase of VCR was given to him in order to show that it was a latest model and the same was purchased from the Customs Retail Shop. The said Bill was received by the accused and the same had been recovered from him by P.W.4. The test that was conducted on the fingers of the accused proved positive. Admittedly, VCR was never touched by the accused. Therefore, the question that the phenolphthalein powder was not applied on the VCR does not arise.

24. If the accused received VCR alone, the test conducted on the fingers of the accused would not have been proved positive. In this case, admittedly, phenolphthalein powder was not applied on the VCR. It is seen that M.O.1 VCR is bigger in size and black in colour. Under those circumstances, the phenolphthalein powder which is white in colour had been applied only on the Bill Ex.P5. Therefore, the non-applying of phenolphthalein powder on the VCR cannot be a ground for disbelieving the case of prosecution. Hence, this ground also would reflect the non-application of mind on the part of the trial Court while rendering the judgment of acquittal.

25. The next reasoning given by the trial Court is that there was no necessity for sending P.W.2 Chakrapani to overhear the conversation between the accused and P.W.1. This reasoning is not only perverse but also indicates the non-understanding of the purpose for which the trap was laid. P.W.1 Jothimani is admittedly an aggrieved person. On his complaint, P.W.4, the Deputy Superintendent of Police sent him to hand over the illegal gratification as demanded by the accused. In order to verify whether the demand and the receipt of gratification at the time of laying trap is true, P.W.4, the Trap Laying Officer sent one of the respectable independent official witnesses to go along with him and to watch the happenings. This is purely to get a corroborative evidence from independent source to make it sure that the illegal gratification was received by the accused in pursuance of the demand for showing a favour to P.W.1.

26. It would always be better to consider the credibility of the evidence of the complainant P.W.1, in the light of the testimony of P.W.2 Chakrapani, Excise Inspector, an independent witness, and to decide that P.W.1's version with regard to the demand and receipt of the gratification by the accused is correct or not. This method of sending an accompanying independent witness along with the complainant would not only satisfy the Trap Laying Officer while finding out the truth, but also would lend assurance to the case of prosecution while the said witness has been examined in the Court. Therefore, it cannot be said that P.W.2 Chakrapani should not have been sent along with P.W.1 to watch as to what actually happened while the trap was laid. As a matter of fact, it can be stated that it would be proper and appropriate to send this independent witness, who had neither interest in P.W.1 nor animosity against the accused, to get the real truth. So, this

ground also is unreasonable and unsustainable.

27. Next, the trial Court believed the case of the defence that Ex.P5 Bill was kept in a cover and handed over by P.W.1 to the accused under the guise of a letter from the Chief Commercial Superintendent addressed to the accused. For placing reliance on the case of defence, there is no material produced by the accused. On the other hand, it is clear from the evidence of P.Ws.1 and 2 that he received the Bill Ex.P5 from P.W.1 to show that the VCR M.O.1 was purchased only recently and the same is the latest model. Thus, the defence case has been accepted by the trial Court without any material whatsoever.

28. Therefore, all the grounds mentioned above are not only unsound but also perverse, since they have been given by totally ignoring the other vital materials available on record.

29. As noted above, in the light of the judgments of the Supreme Court, it can be stated that when this Court finds that the reasonings for acquittal are palpably wrong and demonstrably unsustainable, this Court would go into the process of reappreciating the evidence to arrive at a proper conclusion.

30. In the context of the above legal situation, we have to first see whether the evidence of P.W.1 relating to the demand of the VCR as illegal gratification and receipt of the same has been established through his evidence as well as the evidence adduced by other witnesses.

31. We may now deal with the evidence relating to the demand of the illegal gratification. According to the prosecution, P.W.1, who was working as a Catering Inspector at Coimbatore Railway Station, was facing departmental enquiry for unauthorised absence from duty. After the enquiry was over, P.W.9, the Enquiry Officer sent a report on 25.11.1987 to the accused officer who was the Divisional Commercial Superintendent for being forwarded to the Divisional Railway Manager(D.R.M.) to take action on the enquiry report. At that stage, P.W.1 visited Palghat and met the accused officer in his room. He informed P.W.1 that a file has been received by his Section and he demanded a VCR to help P.W.1 to get lesser punishment in the departmental enquiry without losing any monetary benefit by recommending to the D.R.M. On that basis, P.W.1 made arrangements for purchasing a VCR through his brother P.W.5 Santhalingam. P.W.5 purchased a VCR from Customs Retail Shop on 7.12.1987 from P.W.11 Saravanan under Ex.P5 Bill. On 8.12.1987, P.W.5 handed over M.O.1 VCR along with the Bill Ex.P5 to P.W.1. Till then, the file relating to the departmental enquiry initiated against P.W.1 which was received by the accused was not forwarded to D.R.M. by the accused. Ex.P15 enquiry report sent by P.W.9 to the accused officer was recovered from him by P.W.4 on the date of trap.

32. Thus, the fact that Ex.P15 to be forwarded to D.R.M. was pending with the accused and in that context, the accused demanded the VCR, is an important material to show

that the first demand was made by the accused immediately after the receipt of the enquiry report sent on 25.11.1987. So, in regard to the first demand, the evidence of P.W.1 has been corroborated by the evidence of P.W.9, the Enquiry Officer who sent the enquiry report Ex.P15 to the accused officer on 25.11.1987 and the consequent purchase of VCR M.O.1 under Bill Ex.P5 through his brother P.W.5 on 7.12.1987 from P.W.11 Saravanan.

33. According to P.W.1, the second demand for VCR was made on 9.12.1987 by the accused when he came to Coimbatore from Erode at about 6.30 a.m. P.W.1 met the accused officer who was travelling in Nilgiris Express from Erode to Coimbatore on the way to go to Palghat. When the train halted at Coimbatore Station, P.W.1 met the accused officer who instructed him that he must give VCR next day evening i.e. on 10.12.1987 in the Retiring Room at Coimbatore Railway Station. Though he purchased VCR on 7.12.1987 itself in pursuance of the demand made by the accused earlier at Palghat, he was not willing to offer the same as illegal gratification to him. Therefore, on 10.12.1987 at about 6.30 a.m., he approached P.W.4, the Deputy Superintendent of Police (C.B.I.) at Coimbatore. He gave Ex.P4 complaint in writing to P.W.4. After registration of the case, P.W.4 directed P.W.1 to come in the evening with VCR and Bill.

34. In the meantime, P.W.4 sought the assistance of P.W.2 Chakrapani and one Mr.Halu, the Inspectors of Central Excise, Coimbatore to assist him in laying a trap against the accused officer. Accordingly, on 10.12.1987 at about 6.30 p.m., P.W.2 Chakrapani and Mr.Halu came to the place of P.W.4. At that time, P.W.1 also came with M.O.1 VCR and Ex.P5 Bill. Then, the phenolphthalein test was demonstrated and significance of the same was explained to the witnesses. Ex.P6 entrustment mahazar was prepared. Ex.P5 Bill was smeared with phenolphthalein powder. P.W.1 was instructed to hand over the VCR and Bill to the accused only on demand. P.W.2 was requested to accompany P.W.1 and witness the receipt of the gratification, namely VCR. P.W.1 was given instruction that on receipt of the VCR, P.W.1 shall come out and give the prearranged signal.

35. The fact that second demand was made on 9.12.1987 at Coimbatore Railway Station as spoken to by P.W.1 has been mentioned in Ex.P4, the complaint. Besides this, P.W.7 Govindaraj, First Class Coach Attender and P.W.8 Selvaraj, Travelling Ticket Examiner also deposed that the accused boarded the train at about 3.45 a.m. on 9.12.1987 at Erode and was allotted a lower berth in First Class through the entry in Ex.P14 Chart. According to P.Ws.7 and 8, the said train travelled by the accused reached Coimbatore on 9.12.1987 at about 5.55 a.m. When the train halted at Coimbatore Railway Station, P.Ws.7 and 8 met the accused officer and paid respects to him, as he happened to be their senior officer.

36. These things would make it clear that the accused officer travelled in the Nilgiris Express in first class compartment and when the train stopped at Coimbatore Railway Station, P.W.1 met him on 9.12.1987 at about 6.30 a.m. where the accused reiterated the demand for VCR by asking him to hand over the same the next day i.e. 10.12.1987

evening, which constrained P.W.1 to give a complaint Ex.P4 to P.W.4, the Deputy Superintendent of Police, CBI.

37. According to the accused, he travelled only in second class in Kerala Express along with D.W.3 and reached Palghat without getting down at Coimbatore. In order to establish the same, the accused examined D.W.3 Palanivelu. Admittedly, D.W.3 was a Railway Contractor. He stated that he was travelling with the accused in second class and got down from the train at Coimbatore and that the accused did not get down in that station and straightaway went to Palghat.

38. This is quite contradictory to the evidence of P.Ws.7 and 8 through whom Ex.P14 Chart was marked. According to them, the accused travelled in Nilgiris Express and reached Coimbatore early morning of 9.12.1987. Ex.P14 which is an important document to show that the accused officer is a Senior Class-I Officer who was entitled to travel by first class and that was why P.Ws.7 and 8 allotted lower berth in First Class Coach in Nilgiris Express.

39. The deposition of P.Ws.7 and 8 would disclose that the accused officer travelled only in Nilgiris Express in First Class Coach and he got down at Coimbatore Railway Station. No suggestion was put to P.Ws.7 and 8 by the accused that on 9.12.1987 he travelled only in second class in Kerala Express along with D.W.3. The accused produced his T.A. Bill marked as Ex.D15 to show that he did not get down at Coimbatore on 9.12.1987. The author of Ex.D15 is the accused himself. The same was prepared by the accused in January 1988 for his travel during the whole of December 1987.

40. Therefore, the self-serving document, namely Ex.D15 which was prepared by the accused himself in January 1988 would not falsify the evidence of P.Ws.7 and 8 and the contents of Ex.P14 which would show that the accused had travelled from Erode and got down at Coimbatore in the early morning of 9.12.1987 which is an important document, which has been recorded by P.W.8, Travelling Ticket Examiner on 9.12.1987 itself. So, in the light of these materials, second demand also can be held to be established.

41. Let us go into the aspect of the evidence relating to trap involving the receipt of VCR and bill by the accused from P.W.1 and the recovery of the same by P.W.4, the D.S.P.

42. As mentioned above, after registration of the case on the complaint of P.W.1, on 10.12.1987 at about 7.45 P.M., P.W.1, P.W.2 Excise Inspector, an independent official witness, P.W.4 D.S.P. and his team left the Lodge and reached the Retiring Room No.1 at about 8.00 P.M. P.W.1 carried with him M.O.1 VCR and kept Ex.P5 Bill in his shirt pocket. At that time, Retiring Room No.1 was found locked. They were waiting. P.W.1 and P.W.2 alone were standing in front of the room. All the other officers were standing at a distance watching the movements of P.Ws.1 and 2. At that time, the accused officer came and opened the door. He asked P.Ws.1 and 2 to get into the room. He told P.W.1 "at last you have purchased the VCR for me". Inside the room, the accused asked P.W.1

to keep M.O.1 on the cot and he did so. The accused also was sitting on the cot. When he asked whether it is a recent model, P.W.1 took out Ex.P5 Bill and handed over the same to the accused. P.W.2 was introduced by P.W.1 as a friend of his brother. After seeing the bill, the accused told P.W.2 that he would help P.W.1 to get lesser punishment in the departmental enquiry.

43. In the meantime, P.W.1 went outside and showed the pre-arranged signal. On getting the signal, P.W.4 and his party rushed to the Retiring Room No.1 and caught the accused red handed who was carrying Ex.P5 in his pocket and M.O.1 VCR was found kept in the cot in which the accused was sitting. Then, M.O.1 VCR and Ex.P5 Bill were seized under Ex.P8 recovery mahazar. The test conducted on the accused fingers in Sodium Carbonate solution proved positive. Then, he seized other various bags belonged to the accused containing currency notes in each of the bags. Thereafter, P.W.4 took the accused and P.W.2 in a car to Palghat. The accused himself took them to office and removed Ex.P15 enquiry report submitted by P.W.9 relating to the enquiry conducted against P.W.1 and handed over the same to P.W.4. The same was seized under Ex.P9. Both these documents, namely Ex.P8 recovery mahazar and Ex.P9, the receipt memo were signed by the accused, P.W.2, P.W.4 and others.

44. The reading of the evidence of P.Ws.1 and 2 would show that both would corroborate each other on all the material particulars with regard to demand and acceptance from P.W.1 on 10.12.1987 inside the Retiring Room No.1. The accused has not disputed the presence of P.W.2 when P.W.1 came and met the accused. Similarly, the accused himself would admit that Ex.P15 enquiry report was seized from him under Ex.P9. The evidence of P.Ws.1, 2 and 4 coupled with document Ex.P8 would clinchingly prove that M.O.1 VCR and Ex.P5 Bill were handed over by P.W.1 to the accused and the same were recovered from him. Nothing has been elicited in the cross-examination of P.Ws.1, 2 and 4 to discredit their testimony.

45. Though something was said against P.W.1 that he was aggrieved over the various reports sent by the accused to the higher officials relating to the conduct of P.W.1, nothing was elicited nor suggested to P.W.1 that he had any motive to speak falsehood against the accused. Similarly, nothing has been culled out from the cross-examination of P.W.4 D.S.P. that he wanted to put up a case against the accused by laying a false trap. On the other hand, the evidence of P.Ws.2 and 4 would fully corroborate the evidence of P.W.1 in regard to the receipt of illegal gratification and its recovery.

46. Furthermore, as per Ex.P5 Bill, VCR was purchased on 7.12.1987 by P.W.5 from P.W.11. The VCR M.O.1 as referred to in the first mahazar Ex.P6, viz., entrustment mahazar was handed over to P.W.1 with instruction that he shall hand over the same to the accused only on demand. During the trap, the very same M.O.1 VCR was recovered from the room in which the accused was staying. This VCR was identified by P.W.11, who sold the same on 7.12.1987 in the name of P.W.1.

47. It may be true that in the Register, in regard to the stay of the accused on 10.12.1987 in the Retiring Room No.1, no entry was made. But, it shall be remembered that it was only a brief stopover at Coimbatore Railway Station on the way to go to Palghat. Furthermore, it is the specific evidence of P.W.3, who was working at the Coimbatore Railway Station as a Railway Retiring Room Attendant, that on 10.12.1987, the accused was occupying the Retiring Room No.1 and she was not able to get the signature of the accused in the Register on that day, since there was a crowd inside the Retiring Room No.1 in which the accused was staying. The evidence of P.W.3 has not been seriously challenged. Furthermore, there is no necessity for P.W.3 who is a woman Retiring Room Attendant to speak falsehood against the accused who happened to be the senior officer of the Railway stating that on the particular day, he occupied the Retiring Room No.1. Further, P.W.2 also would state that P.W.1 enquired the woman Retiring Room Attendant and verified whether the accused officer was staying in the Retiring Room No.1 and thereafter, both P.W.1 and P.W.2 were waiting in front of the said room which was found locked at that time.

48. It is also to be pointed out that when P.W.2, the Excise Inspector, an independent witness was cross-examined, his presence along with P.W.1 was not challenged. In that situation, there is no reason to reject the evidence of P.W.2 which is fully corroborated by the evidence of P.W.1 and the documents Exs.P6 and P8 and also by the evidence of P.W.4 and the document Ex.P9.

49. In this context, it would be worthwhile to refer to the decisions of the Supreme Court in SATPAL KAPOOR v. STATE OF PUNJAB 1997 S.C.C. (Cri.) 270 and STATE OF U.P. v. ZAKAULLAH 1998 (1) CRIMES 58 which would mandate that the evidence of the independent official witnesses, in the absence of any interest in the prosecution case or animosity against the accused, shall be given due importance and their evidence need not be discarded merely because they are official witnesses.

50. In 1997 S.C.C. (Cri.) 270 (supra) the Supreme Court has made the following observation:

"Had the CBI people been interested in foisting a case against the appellant and that too nakedly, it was no case for the raid party to have created a drama of putting the notes into his pocket and in that way to have soiled his hands with phenolphthalein powder. Without any such ritual the case could have been foisted."

51. In 1998 (1) CRIMES 58 (supra) it is held as follows:

"The most important evidence is that of P.W.4 Harendra Singh Sirohi, the Superintendent of Police who arranged the trap. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer."

52. In [State of Gujarat Vs. Raghunath Vamanrao Baxi](#), the Apex Court would hold as follows:

"The court is not entitled to reject the evidence of witnesses merely because they are Government Servants, who, in the course of their duties or even otherwise, might have come into contact with the investigating officers. Their evidence cannot be rejected merely because they are called in to associate themselves with the investigation as they happened to be available or it is convenient to call them. There is no need to view their evidence with suspicion."

53. The principles laid down by the Supreme Court, as referred to above, would indicate that how the evidence tendered by the official witnesses like P.Ws.2 and 4 should be given due importance, particularly when their testimony has been fully corroborated on material particulars through the oral and documentary evidence.

54. While we analyse the evidence of P.W.4, it is obvious that P.W.4 in order to verify the truth of the allegations contained in the complaint given by P.W.1, he took proper steps by preparing the first entrustment mahazar mentioning all these details about the demand made by the accused and obtained the signature of P.W.2 and another Excise Inspector, who are respectable officials and also instructed P.W.2 to accompany P.W.1 to watch the conversation between P.W.1 and the accused and to witness the incident involving the receipt of VCR from P.W.1. This shows that he was cautious enough to find out the real state of affairs about the accusation contained in the complaint. It is the evidence of P.W.4 that on receiving the pre-arranged signal, he went inside the Retiring Room No.1 and introduced himself to the accused. According to P.W.4, on interrogating the accused about the receipt of VCR as illegal gratification, he was found perplexed and at that time, he was keeping Ex.P5 Bill in his hand. This aspect of the evidence is not only corroborated by P.W.1 but also through the contents of Ex.P8, the second mahazar prepared by P.W.4 on the very same day in the Retiring Room itself.

55. Thus, it can be seen that the prosecution has succeeded in establishing that the accused received both VCR and Bill from P.W.1 in the presence of P.W.2 at the Retiring Room No.1 on 10.12.1987 at about 8.00 P.M. in order to show official favour to him and thereafter, P.W.4 recovered the same from the accused.

56. Once the prosecution established that the gratification in any form - cash or kind - had been paid or accepted by a public servant, the Court is under the legal compulsion contemplated u/s 4(1) of the Act to presume that the said gratification was paid or accepted as a motive or a reward to do any official act.

57. Once such a presumption is raised on the prosecution being proved, the burden of proof shifts on the accused under the very same section, however, he need not establish his case by a test of proof beyond reasonable doubt and it would be enough if he establishes his case by preponderance of probability.

58. At the same time, the mere plausibility of an explanation given by an accused u/s 313 Cr.P.C. is not enough to rebut the presumption raised. However, the said presumption would stand discharged, if the effect of materials brought on record in the chief examination and the cross-examination of the witnesses of the prosecution coupled with the statement of the accused u/s 313 Cr.P.C. in its totality renders the existence of the fact presumed improbable.

59. In other words, the presumption raised can be rebutted either through the materials culled out from the cross-examination of the witnesses of the prosecution and through his statement u/s 313 Cr.P.C. or by producing the materials on behalf of the defence through the defence witnesses and defence documents. But, the fact remains that the accused is required to establish his plea through preponderance of probability, as the degree and character of the proof which the accused is expected to furnish in support of his plea, cannot be equated with the degree and character of proof expected from the prosecution.

60. These principles have been laid down by this Court in PERIYASWAMY v. INSPECTOR, VIGILANCE AND ANTI-CORRUPTION, TIRUCHIRAPALLI 1999 CRL.L.J.2944 and the Supreme Court in MADHUKAR BHASKARRAO JOSHI v. STATE OF MAHARASHTRA AIR 2001 S.C.147.

61. In the context of the above legal situation, the defence plea can now be considered.

62. The case of the defence is that the accused did not demand the VCR as gratification nor received the same and the Bill from P.W.1 to show any official favour to him. The specific defence case is that when the accused was inside the Matron's room, P.W.1 came and met him and handed over a cover to the accused under the guise of a message from the Commercial Superintendent informing him that it requires immediate reply from him and that thereafter, the D.S.P. came and caught him in the trap and as such, he did not receive VCR and the said cover was seized.

63. To establish the said plea, the accused examined D.W.4 Venkatesh, son of one Ramasamy, Platform Inspector, since deceased. It is the specific case of the accused that P.W.1 and the accused were seen together in the Matron's room while the cover was handed over by P.W.1 to the accused, Ramasamy, Platform Inspector, the father of D.W.4, was also standing near the Matron's room witnessing the same.

64. The suggestion put to both P.W.1 and P.W.2 that when the cover was handed over by P.W.2, the said Ramasamy, Platform Inspector was present near the Matron's room, was specifically denied by P.Ws.1 and 2. In other words, there is no suggestion put to any of the witnesses that D.W.4 Venkatesh who is the son of the said Platform Inspector also was present along with his father.

65. The cross-examination of P.W.1 and P.W.2 would show that the presence of P.W.2 along with P.W.1 while meeting the accused was not disputed. Thus, it is clear that the case of the defence at the initial stage is that P.Ws.1 and 2 came inside the Matron's

room and P.W.1 handed over the cover to the accused and left the place which was witnessed only by the Platform Inspector Ramasamy.

66. Only in the statement u/s 313 Cr.P.C., the accused stated in the answer given for the last question that on 10.12.1987 night, P.W.1 Jothimani came and handed over the cover when he was at the Matron's room asking him to send his immediate reply to the Head Office and at that time, both Platform Inspector Ramasamy and his son were present.

67. The accused did not examine the said Ramasamy as his defence witness, as referred to in the cross-examination of P.W.1 and P.W.2 through the suggestion, was unable to examine him as he was no more then and that was the reason why he newly introduced the name of D.W.4 Venkatesh, the son of the Platform Inspector Ramasamy in his statement u/s 313 Cr.P.C.

68. In the light of the above fact situation, the evidence of D.W.4 has to be cautiously scrutinised.

69. As stated above, it is the case of the accused that both P.Ws.1 and 2 came inside the Matron's room and at that time, P.W.1 handed over the cover to the accused. In fact, a suggestion has been put to P.W.2 that P.Ws.1 and 2 both entered into the Matron's room to meet the accused and at that time, the Platform Inspector Ramasamy left the Matron's room saying that he had other work. This suggestion was denied.

70. But, D.W.4 would state that P.W.1 alone came to the Matron's room and handed over the cover to him. On going through the chief examination and cross-examination, it would be clear that he would not have come to the Coimbatore Railway Station on that day because he was working in a Bank which is situated 25 Kms. away from his residence. According to him, the Coimbatore Railway Station is at a distance of 7 Kms. from his house. He would state that he came back home at 5.10 P.M. and left the house carrying the food for his father and reached the Station at about 7.50 P.M.

71. Admittedly, when the Platform Inspector's room is in a different floor, there is no reason as to why D.W.4 had to come to the Matron's room. Furthermore, he would admit that he could not give the details of the topography of the Railway Station and the office room. From this, it is clear that since Ramasamy, the Platform Inspector who was proposed to be a defence witness was no more, his son has been asked to depose in favour of the defence, even though his presence was not suggested to P.W.1 and P.W.2.

72. Though it is stated by the defence that he did not occupy the Retiring Room No.1 and he went to the Matron's room only for taking back the luggage and at that time, the incident took place, this has not been established through the acceptable material and on the other hand, the evidence of P.W.3, who was a Retiring Room Attendant, would clearly show that on that day, i.e. on 10.12.1987 at 8.00 P.M., the Retiring Room No.1 was occupied by the accused and there was a crowd inside the room.

73. This evidence of P.W.3 has been corroborated by the evidence of P.W.2 and P.W.4. The absence of entry in the Register relating to the stay of the accused in Retiring Room No.1 would not be enough to reject the evidence of P.W.3 whose evidence was not seriously challenged in the cross-examination.

74. In the light of the evidence of P.W.3, the evidence of P.Ws.1 and 2 who speak about the handing over of the VCR and the Bill to the accused in Retiring Room No.1 would assume significance.

75. Furthermore, P.W.4, the D.S.P. also would state that the trap was laid only in the Retiring Room No.1. As a matter of fact, a suggestion was put by the accused to P.W.4 that P.W.4 entered into the Room No.1 for trap purposes and enquired the accused Subramaniam and at that time, the accused Subramaniam pleaded his defence. This itself shows that the accused admitted that he was inside the Retiring Room No.1 when P.W.4 came to the said room for trap. However, it is seen that the suggestion regarding the plea of the defence stated to have been made by him to P.W.4 during the course of trap was denied. The following is the deposition:

"It is not correct to say that when I entered into Room No.1 for trap purposes and enquired with the accused Subramaniam, accused Subramaniam represented to me that P.W.1 Jothimani handed over to him an envelope and represented to accused Subramaniam that it was a communication from the Chief Commercial Superintendent and that it required an immediate reply."

76. Under these circumstances, the defence plea projected by the accused through the cross-examination of the witnesses of the prosecution, statement u/s 313 Cr.P.C. and D.W.4 cannot be said to probabalise the same. On the other hand, the witnesses P.Ws.2 and 4 who are Excise Inspector, an independent official witness and the Deputy Superintendent of Police working in the Vigilance holding responsible position respectively categorically stated that the accused received VCR and Bill from P.W.1 and the same was recovered at the Retiring Room No.1 on the same day.

77. On going through the entire evidence of P.Ws.2 and 4, this Court is of the view that their evidence is cogent and convincing which would clearly prove the case of prosecution. On the other hand, the plea of the defence is not only inconsistent but also improbable.

78. In view of what is stated above, I am of the considered opinion that the prosecution has established its case against the accused beyond reasonable doubt and as such, the accused officer is liable to be convicted for the offences under Sections 161 and 165 I.P.C. and u/s 5(2) read with 5(1)(d) of the Prevention of Corruption Act and consequently, the order of acquittal passed by the trial Court is to be set aside and accordingly, the same is set aside and the accused officer is convicted for the above said offences. Thus, the appeal is allowed.

79. In regard to the question of sentence, the accused has to be given opportunity of being heard with reference to the sentence. Therefore, post the matter on 12.11.2001. The accused shall be present on that day.

M. Karpagavinayagam, J.

As directed by this Court, the respondent/accused is present. When he is questioned with reference to the sentence in regard to the offences referred to above, he would submit that he is aged about 72 years old; he has been suffering from urinary problems and ocular defects and also hypertension and consequently, he has to undergo regular medical tests and to take treatment; his wife is also sick and disabled woman and if he is sent to jail, himself as well as his family members will be put to hardship.

2. The counsel for the respondent also would point out that though there is a minimum imprisonment of one year, it can be reduced on special adequate reasons.

3. Besides this, a memo has been filed by the respondent/accused narrating the circumstances mentioned above, which is as below:

"I am now 72 years old. I have had a blemishless service for 37 1/2 years in Railways. I am the only breadwinner in the family. I have been suffering from urinary problems and ocular defects, besides being hypertensive. Consequently, I have to undergo regular medical tests and treatment. My wife is also sickly and is a disabled woman due to a direct fall from the first floor and requires constant medical attention and attendance.

I have no one else to support me and my wife. I crave leave of this Honourable Court to consider my case very sympathetically in view of my age and the family position and to pass a lenient sentence and thus render justice."

4. The learned Special Public Prosecutor would submit that if the reasons are special and adequate, the sentence of one year may be reduced.

5. It is also to be noticed that the respondent was facing the trial from the year 1989 and he was acquitted in the year 1992. Now, in the year 2001, this Court has set aside the acquittal and convicted him.

6. Under those circumstances, the ends of justice would be met by imposing a sentence of imprisonment till rising of this Court today and by directing him to pay a fine of Rs.5,000/- and ordered accordingly. The time for payment of fine is one month from today.