

(1989) 10 MP CK 0010

Madhya Pradesh High Court

Case No: Criminal Appeal No. 1275 of 1984

State of Madhya Pradesh

APPELLANT

Vs

Shri Vishnu Prasad Babele

RESPONDENT

Date of Decision: Oct. 3, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 116
- Penal Code, 1860 (IPC) - Section 161, 165A
- Prevention of Corruption Act, 1947 - Section 4, 4(1), 5(1), 5(2)

Citation: (1991) CriLJ 1983

Hon'ble Judges: S. Awasthy, J

Bench: Single Bench

Advocate: B.P. Singh, G.A, for the Appellant; H.S. Dubey, for the Respondent

Final Decision: Dismissed

Judgement

S. Awasthy, J.

This appeal arises out of the judgment of acquittal u/s 5(1)(d), read with Section 5(2) of the Prevention of Corruption Act, 1955, and also u/s 161 of the Indian Penal Code, by the Fourth Additional Sessions Judge (Special Judge), Jabalpur in Special Criminal Case No. 1 of 1982, decided on 17-4-1982.

2. The respondent Vishnu Prasad Babele was prosecuted on the allegation that, on 15-3-1980, while working as Reader to the Executive Magistrate, accepted Rs. 50/- as bribe from Shri P.K. Tiwari (P.W. 1), Advocate, and Shri M.A. Khan (P.W. 2), Advocate, for releasing one Ganesh Prasad son of Shambhoo Prasad, who was apprehended u/s 107/116 of the Code of Criminal Procedure, on bail. The aforesaid Advocates were appearing for Ganesh Prasad and had applied for grant of bail on 13-5-1980. The said Ganesh Prasad was not released on 13-5-1980, but was sent to the jail. It is alleged that on 14-5-1980, two other accused persons were released, but not Ganesh Prasad, because the bribe was not given as demanded. The Advocates

requested the Presiding Magistrate Shri U.D. Chaube (P.W. 6) to pass in order for release of Ganesh Prasad, but the Presiding Magistrate asked them to go and contact the Reader. Being disgusted with the attitude of the Magistrate and his Reader, the said Advocates made an application (Ex. P. 1) to the Vigilence Department for taking the Reader to task. Shri Hanumant Singh (P.W. 13) arranged a trap. Rs. 50/- were treated with phenolphthalein powder and Panchnama (Ex. P. 2) was prepared in the presence of P.W. 5 Shri Mahadeo Prasad Khare and other Officers. The money was handed over to the Advocates and a trap was laid on 15-5-1980.

3. At about 3-00 p.m. on 15-5-1980, P.W. 1 Shri P.K. Tiwari and P.W. 2 Shri M. A. Khan along with P.W. 3 Shri S.K. Shukla, Advocate, went into the court-room No. 12 of Collectorate at Jabalpur and after some conversation with the accused-respondent, passed on the bribe money to him. The accused-respondent kept the money in his pocket. After receiving the signal, P.W. 5 Shri M. P. Khare and P.W. 13 Shri Hanumant Singh and others, reached the spot. The hands of the accused were washed with lotion of sodium carbonate powder and the same turned into pink colour. His pocket of the pant was also washed-which also turned into pink colour. Thereafter, a panchanama was prepared, which is Ex. P. 7. Seizure of the pant etc. was made vide Exs. P-4 and P-5. The concerning file was also seized vide Ex. P-6 Ex. P-7 is the Panchanama of the proceedings. Sanction to prosecute the respondent was obtained vide Ex. P-9 which is proved by P.W. 7 B.D. Jugade. The allegation of the prosecution is that the property in question had been changed, except the notes, which were seized from the possession of the respondent. The application for grant of bail dated 13-5-1980, filed by the learned Advocates, is also missing from the record.

4. The learned Special Judge held that the demand of bribe and acceptance thereof, has not been proved. He further held that no independent witnesses were examined. The Executive Magistrate P.W. 6 Shri U.D. Chaube did not support the prosecution case. He was not declared hostile. The story of the prosecution is unbelievable. There had been material variations in the statements of the witnesses examined by the prosecution. Thus, the trial Court was of the view that the prosecution has failed to establish its case beyond all reasonable doubt.

5. The learned counsel appearing for the State argued that the findings recorded by the learned Special Judge are perverse. There is no variation in the prosecution story. The file of the Magistrate had been tampered with and there had been material interpolations. The Magistrate Shri U.D. Chaube (P.W. 6) was out and out to help the accused respondent. Though he had not been declared hostile, but no reliance should have been placed on his version. No enmity between the accused-respondent and the two Advocates examined as P.W. 1 (Shri P.K. Tiwari) and P.W. 2 (Shri M. A. Khan) has been proved. The demand of bribe has been proved. The amount of bribe was accepted and the money was recovered from the

possession of the accused-respondent. It is submitted by the learned counsel for the State that the prosecution has proved its case beyond all reasonable doubt. Reliance was placed on the decisions of --

- (i) [Sarup Chand Vs. State of Punjab,](#) .
- (ii) [State of Gujarat Vs. Raghunath Vamanrao Baxi,](#) .
- (iii) [State of U.P. Vs. Dr. G.K. Ghosh,](#)
- (iv) [The State of Assam Vs. Krishna Rao,](#) and
- (v) The judgment of this Court, i.e., State of M.P. v. Dr. J.L. Jain (Criminal Appeal No. 214 of 1985, decided on 27-3-1989).

6. The learned counsel appearing for the respondent relied on the statement of P. W. 6 Shri U.D. Chaubey. He made a reference to para 6 of this witness's statement. He also referred to the statements of P.W. 1 Shri P.K. Tiwari, with special emphasis to paras 2, 23 and 25; P.W. 2 Shri M.A. Khan Paras 11,15, 21 and 22, P.W. 3, Shri S.K. Shuklaparas 10 and 12; and P.W. 13 Shri Hanumant Singh paras 20 and 27. His submission was that the respondent, who was merely a clerk, had no right to grant bail, as the bail orders are always passed by the Court and not by a clerk or Reader of the Court. The story that the Magistrate had delegated his power to his clerk, cannot be believed. The Magistrate was examined as P.W. 6 (Shri U.D. Chaube), but he did not support the prosecution story. He has not been declared hostile. The question was not put to him with regard to the delegation of power to his clerk by him. If this story of the prosecution is not believed, the entire case falls to the ground. In the end, it is submitted that the story put up by the prosecution, was rightly not believed by the learned Special Judge. In the alternative, it is submitted that if two views are possible and the trial Court acquitted the accused by accepting one of the two views, the appellate Court should not interfere, in an appeal against acquittal, with the view taken by the learned Special Judge. He referred to paras 8, 13, 14, 17, 20, 21, 23, 24, 26 and 31 of the judgment. He also relied on the following cases --

- (i) Dwarkaprasad v. State (1987 MPLJ 527);
- (ii) [Panalal Damodar Rathi Vs. State of Maharashtra,](#) ;
- (iii) [Bhajan Singh Vs. State of Punjab,](#) ;
- (iv) M.P. Gupta v. State of Rajasthan, AIR 1974 SC 773 : 1974 Cri LJ 509;
- (v) [Salimkhan Sardarkhan Vs. State of Gujarat,](#) ;
- (vi) [Suraj Mal Vs. State \(Delhi Administration\),](#) ;
- (vii) [Chonampara Chellappan and Others Vs. State of Kerala,](#) ;
- (viii) Moti Ram Jai Singh Pawar v. State of Maharashtra, (1985 (II) Crimes 18);

(ix) [Ramji Surya Padvi and Another Vs. State of Maharashtra](#) ;

(x) [Antar Singh v. State of M. P.](#), AIR 1979 SCI 188: 1979 Cri LJ 715;

(xi) [Dhan Kumar Vs. Municipal Corporation of Delhi](#) ; and also

(xii) [Karuppanna Thevar and Others Vs. The State of Tamil Nadu](#) . and submitted that the judgment of the Special Judge does not suffer from any infirmity as pointed out by the learned counsel for the appellant-State.

7. Before I proceed to deal with the evidence and findings recorded in the case, I feel it my duty to state the law on the subject as decided by the Supreme Court. In the case of [Panalal Damodar Rathi Vs. State of Maharashtra](#), it has been held (at page SC 1192; AIR 1979 :

"There could be no doubt that the evidence of the complaint should be corroborated in material particulars. After introduction of Section 165A of the I.P.C. making the person who offers bribe guilty of abetment of bribery the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon."

In the case of [Gulam Mahmood A. Malek Vs. State of Gujarat](#), it has been held --

".....the complainant is in the nature of an accomplice."

".....Before any court could act on his testimony, corroboration in material particulars is necessary....."

In the case of [Raghbir Singh Vs. State of Punjab](#), it has been held --

"They must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the court is not left in any doubt as to whether or not any money was paid to the public servant by way of bribe....."

xx xx xx xx xx

.".....The evidence in regard to the search of the appellant and the seizure of five marked currency notes from him is, in the context of the other facts and circumstances of the case, not such as to inspire confidence and cannot be implicitly accepted."

In the case of [Lachman Dass Vs. State of Punjab](#), it was held --

".....There ought to be some other evidence before his word can be accepted with so much other evidence to contradict him. In trap cases at least some panches over-hear the conversation or see something to which they can depose....."

xx xx xx xx xx

".....We are satisfied that there is considerable room for doubt in this case and that the statement of Kishori Lal which alone is the foundation of the charge against the appellant cannot be accepted without corroboration."

In the case of Salim Khan (supra), it was held --

".....very clever people who are young and agile are often victimised by pick-pockets and only when their valuables have been lost the fact is noticed by them. The process here is the reverse one. Instead of the pocket being picked, currency notes have been inserted into it....."

In the case of Sita Ram Vs. The State of Rajasthan, it was held (at page 1436 SC; AIR 1975) --

".....The result is that not only the story of demand of bribe by the appellant from the complainant is not proved but even the story of payment of the money by the complainant is not established beyond reasonable doubt. That being so, the rule of presumption engrafted in Section 4(1) cannot be made use of for convicting the appellant."

"....On mere recovery of certain money from the person of an accused without the proof of its payment by or on behalf of some person to whom official favour was to be shown the presumption cannot arise."

In the case of Darshan Lal Vs. The Delhi Administration, it was held --

".....There is thus no independent reliable corroboration of the statements of Niranjan Lal and Anand Behari Lal as regards the first offer. Lastly, in this background it was proper to took for unimpeachable evidence as to the passing of the currency note from Niranjan Lal to the appellant. We have already indicated certain important circumstances which cast doubt on that story".

xx xx xx xx xx

"Having regard to all these circumstances, we think it is a fit case whether the courts below should have required independent and trustworthy corroboration of the evidence of Niranjan Lal and Satish Chandra who had laid the trap....."

8. In the case of Raghbir Singh (supra), it was held that the officer laying the trap must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence. Please also see : Lachman Dass Vs. State of Punjab .

9. In the case of Darshan Lal (supra), it has been held that though the trap witness is an interested witness in the sense that he is interested to see that the trap laid by him succeeded. He could at least be equated with a partisan witness and it would not be advisable to rely upon his evidence without corroboration. The interested and partisan witnesses are concerned in the success of the trap. Their evidence

must be tested in the same way as that of any interested witness and in proper case, the court may look for independent corroboration for convicting the accused person. Please also see : [Major E.G. Barsay Vs. The State of Bombay, .](#)

10. Is the story of demand of bribe and its payment is not established, the rule of presumption engrafted in Section 4(1) cannot be made use for convicting the appellant. [Sita Ram Vs. The State of Rajasthan, .](#) In [Suraj Mal Vs. State \(Delhi Administration\),](#) it was said that mere recovery of money divorced from the circumstances under which it was laid was not sufficient when the substantive evidence in the case was not reliable to prove payment of the bribe or to show that the accused voluntarily accepted the money. In [Banshi Lal Yadav Vs. State of Bihar,](#) the Court held that before presumption can be raised, the burden is on the prosecution to prove that the accused accepted any gratification for himself. In the case of [Hari Dev Sharma Vs. State \(Delhi Administration\),](#) it is held (at page 1492 SC; AIR 1976) :--

".....Undoubtedly there are circumstances in this case which are highly suspicious against the appellant, but the High Court having disbelieved an essential part of the prosecution case on which the other part was dependent, we do not consider it safe to sustain the conviction of the appellant."

11. In the case of M. P. Gupta v. State of Rajasthan, AIR 1974 SC 773 : 1974 Cri LJ 509 the Supreme Court had held as under (at page 774 SC; AIR 1974) :--

"7. the accused can establish his case by preponderance of probabilities, that is to say, he need not prove his case beyond a reasonable doubt."

In [Sarup Chand Vs. State of Punjab,](#) it has been held--

"11. No explanation has been given by the appellant why he received the money and kept the same into his pocket. Indeed, no suggestion was given to any witness that no money was received by the appellant."

In Dwarkaprasad v. State, 1987 MPLJ 527 it has been observed --

"7-A. The principles of law regarding the appreciation of evidence in bribery or trap cases; generally speaking, are as follows --

(a) that the burden of proving the prosecution case, generally lies on the prosecution even in case of trap or bribery, this burden is not shifted by Section 4 of the Prevention of Corruption Act; (b) that Section 4 has not limited application only for raising of presumption regarding the motive of the taking of money provided it is proved that the money was obtained or accepted by the accused; (c) that even in raising the presumption u/s 4, the Act of acceptance or obtaining must be wilful, voluntary and with conscious mind; (d) that even where such a presumption is drawn, the accused can rebut it by showing there is a plausible" explanation and the basis of preponderance of probability of other theory; (e) the accused is not

required to rebut this presumption by leading evidence beyond reasonable doubt. But all that is required to show is to establish preponderance of probability in his favour; (f) that the witnesses of trap are not to be discharged as accomplices but in a given case the court can insist on independent corroboration for believing their testimony."

12. The Supreme Court, in the case of [Antar Singh Vs. State of Madhya Pradesh](#), has held as under (at page 1190 SC; AIR 1979) :-

"11.....in an appeal against acquittal, the powers of the High Court in dealing with the case are as extensive as of the trial Court, but before reversing the acquittal, the High Court should bear in mind that the initial presumption of the innocence of the accused is in no way weakened, if not reinforced, by his acquittal of the trial, and further, the opinion of the trial Court which had the advantage of observing the demeanour of the witnesses, as to the value of their evidence should not be lightly discarded. Where discarded. Where two views of the evidence are reasonably possible, and the trial court has opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the trial court, it would have taken the alternative view and convicted the accused accordingly.--"

In the case of [Dhan Kumar Vs. Municipal Corporation of Delhi](#), the Supreme Court has observed at page SC 1785, AIR 1979.

"15. It is well settled that if two views of the evidence are reasonably possible, one favouring acquittal and the other conviction, the High Court should not reverse the order of acquittal."

13. [Ramji Surjya Padvi and Another Vs. State of Maharashtra](#), it has been held as under at page 1110 : Cri LJ 1983.

"11. -- While there is no doubt that the jurisdiction of an appellate court is coextensive with that of the trial court, in the case of an appeal against a judgment of acquittal it cannot totally brush aside the appreciation of the evidence by the trial court. The reasons for reversing a judgment of acquittal should be cogent and if two views are reasonably possible, the appellate court should be slow in interfering with the judgment of the trial court even if it is possible for it to take a different view after a process of laborious reasoning....."

14. The first question which arises for consideration is whether the learned trial Court was right in holding that the prosecution has failed to prove that a demand for bribe was made by the accused-respondent? Shri P. K. Tiwari (P.W. 1), for the incident dated 13-5-1980, has stated as under :-

^^2 ----- fnu ds djhc 12 cts fnu ;k rks eq>s vfHk;qDr us dgk Fkk fnu ds djhc 2 cts vk;s vkSj mUgksaus ;g Hkh dgk vki bUrtke ls vk;sxs mudk eryc ;g Fkk iSls cxSjk dk bartke djds vk;sxsA

In para 3, he states --

^^3----- 311&4 cts esa vkSj Jh ,e- , - [kku vf/k- Jh ;q- Mh- pkcs dk;Zikfydk n.Mkf/kdkjh ds U;k;ky; esa igw♦psA rks eSus vfHk;qDr fo".kqizlkn vdsys ls dgk esa rcg fd fdrus dh tekur vkMZj gqvk rkfd eSa tekur dk QkeZ Hkj nwaA vfHk;qDr fo".kq izlkn vdsys us dgk vHkh fo".kq izlkn dh tekur ugha gqbZ gS ;q- Mh- pkScs lkgc ?kj pys x, gSA eSa ykSVus yxk rks eq>s vfHk;qDr fo".kq izlkn vdsys esa cqyk;k vkSj dgk odhy lkgc 50&60 #i;s ysdj vk, xs rHkh tekur gksxhA

15. P.W. 2 Shri M.A. Khan, Advocate, has described the incident dated 13-5-1980 as under :--

^^2----- fQj eSa vkSj Jh frokjh eus"k dh tekur djukus ds fy;s Jh ;q- Mh- pkScs dk;Zikfyd naMk- ds U;k;ky; esa x;sA ;gk♦ ij pkScs ♦;q- Mh- pkScs♦ dh vnkvr esa x;sA ;s Mk;l ij ugha FksA muds jhMj vfHk;qDr ccsys tks U;k;ky; esa mifLFkr gS mDr U;k;ky;ksa esa mifLFkr feysA vfH;qDr ccsys us gesa lwfpr fd;k fd x.ks"k dks vfHkj{kk esa tsy Hkst fn;k x;k gSA vkSj dk;Zikfydk naMk- pkScs Hkh vnkvr esa ugha gSA blfy;s x.ks"k izlkn dh tekur vkt ugha gks ldrh FkhA**

16. Shri U.D. Chaube (P.W.6), Executive Magistrate, has stated as under :--

^^1----- fn- 13&5&80 dks iqfyl ykyxat Fkjk vfHk;qDr x.ks"k izlkn dks /kkjk 151 esa fxjIrkj dj 107 @ 116 esa Hkjs U;k;ky; esa is"k fd;k x;kA esjs }kjk mls nks gekj dh l{ke tekur nsus ds vkns"k fn, x;sA tekur is"k u djus ij mls tsy Hkstk x;kA ;q- Mh- 2 esjs nLr[kr gSA mlh fn- 13&5&80 dks esjs }kjk /kkjk 116 @ 3 n- iz- la- ds varxZr vkns"k ikfjr fd;s x;sA ml vuqlkj nks gtkj #- dh tekur vfHk;qDr }kjk is"k djuh FkhA iz- Mh- 3 ij esjs nLr[kr gSA**

17. Thus, the difference in the versions of the three prosecution witnesses of the incident dated 13-5-1980 is apparent -- as they do not reconcil with each other.

18. Regarding the incident dated 14-5-1980, the versions of the prosecution witnesses are as under :--

P.W. 1 Shri P. K. Tiwari --

^^4----- fn- 14&5&80 dks 13&12AA cts fnu ds Jh ;q- Mh- pkScs dk;Zikfydk n.Mk- ds dejk ua- 12 fLFkr gS vfHk;qDr x.ks"k dh tekur ds ckjs esa x, [kku lkgc Hkh esjs lkFk FksA Jh ,e- , - [kku ,M- u Jh fo".kq izlkn vdsys ls dgk vfHk;qDr x.ks"k dh Qkby fudky yhft;sA fo".kq izlkn vdsys us dgk eSa Qkby fudkyrk gw♦A rks eSa vkSj Jh ,e- , - [kku- vf/k- vk/ks ?kaVs ;gka cSBs jgsA nksckjk vfHk;qDr ds dgus ij QkbZy x.ks"k dh fudky dj gedks nh tks dkQh ghyk gokyk dj QkbZy fudkykA oks QkbZy ns[kus ij irk yxk vfHk;qDr x.ks"k dh tekur dk vkMZj rc rd ughaa gqvk FkkA rks ge yksxksa us fo".kq izlkn ccsys ls dgk vkius vHkh rd QkbZy lkgc ds lkeus ugha j[kh vksj tekur dk vkMZj ugha djok;k rks QkbZy lkgc ds lkeus j[k nhft,A vfHk;qDr fo".kq izlkn ccsys us dgk ♦lkgc Jh ;q- Mh- pkScs♦ irk ugha dgk x;sA blh chp dksrokyh vkSj xksj[kiqj Fkkus ds nks eqyfte /kkjk 107 @ 116 Hkk- n- fo- mUgsa is"ka gksus ds djhc nks ?kaVs esa tekur

ij vfHk;qDr us eqDr dj fn;sA fnu ds ,d cts djhc tc mijksDr nksuksa eqyfte fjk gq, rks gesa irk yx x;k fd ;q- Mh- pkScs lkgkc dysDVsM esa dgh cSBs gS rks geus fo".kq izlkn ccsys vfHk;qDr ls iwNk vki gesa crkb;s fd Jh pkScs lkgc dgka cSBs gSaA rks dksVZ mifLFkr pijk"kh us gesa crk;k fd Jh PkkScs dk;Zikfyd n.Mk- dkfi lsD"ku dejk ua- 32 esa cSBs gSaA fQj eSa vkSj [kku lkgc dejk ua- 32 esa ;q- Mh- pkScs dk;Zikfyd n.Mkf/kdkjh ds ikl x;sA Jh pkScs ds le> geus vfHk;qDr x.ks"k ds vkosnu i= dh cgl dh Jh pkScs us dgk vki vfHk;qDr fo".kqizlkn ccsys ls QkbZy ij tekur ds ckjs esa fy[kokdj ykbZ;sA eSa vkSj Jh [kku vf/k- ogka ls okil vk, vkSj vfHk;qDr fo".kqizlkn ccsys ds ikl x, vkSj geus mUgs crk;k pkScs lkgc esa D;k dgk rc fo".kqizlkn ccsys us gesa dgk gesa lkYosUlh dh tekur dk vkMZj dj nsrk gwaA

5- eSaus vfHk;qDr fo".kqizlkn ccsys ls dgk vki us vHkh nks eqyfeksa dk fcuk lkYosUlh ds vkMZj dj fn;k tks vfHk;qDr fo".kqizlkn us gesa dgk vkidks nwljk jkLrk iSlks okyk crk;k FkkA vki 5 #- ys vkbZ;s rks x.ks"k dh tekur gks tk;sxhA eSaus vfHk;qDr fo".kqizlkn ccsys vfHk;qDr ls dgk gekjs ikl iSlk ugha gS rks vfHk;qDr fo".kqizlkn us gesa dgk vkidk dke ugha gksxkA

P. W. 2 Shri M.A. Khan --

^^3-----fQj fnukad 14&5&80 dks ge mDr U;k- esa tekur djkus x;sA iqu% 11 cts fnu dks x;s FksA ml le; Hkh Jh ;q- Mh- pkScs dk;Zikfyd naMk- vnkry esa mifLFkr ugha FksA vfHk;qDr ccsys ls geus iwNk rks mUgksaus crk;k fd irk ugha dgka x;s gSaA geus vfHk;qDr ls dgk fd tekur ls D;k gksxk rks vfHk;qDr us dgk fd tekur ls D;k gksxk rks vfHk;qDr us dgk fd geus dy Hkh vki ls dgk Fkk fd ipkl #i;s ys vkbZ;s ge tekur dk vkMZj djokdj j[k yssaxsA blds ckn geus vfHk;qDr ls dgk fd eqyfte tsy esa gS vkSj gekjs ikl iSlks ugha rks ccsys us dgk fd fcuk iSlk fn;s tekur dk vkMZj ugha gks ldrk vkSj ftu&ftu dh nkSyr esa tekur gksrh gS lkgc dks mldk fglkc nsuk iM+rk gSA eSa vkSj Jh ih- ds frokjh vf/k- okil vk x;sA geus pkScs lkgc dks ogka ns[kk rks og ugha feysA

4- mlh fnu ds lok nks cts ge fQj x;s Fks vkSj ih- ds- frokjh vf/koDrk iqu% mlh vnkry esa x;sA ml le; HKh Jh pkScs dk;Zikfyd naMk- viuh vnkry esa ekStwn ugha FksA vfHk;qDr fo".kqizlkn ls geus iwNk fd pkScs lkgc dgk gS vkSj x.ks"k fd tekur dk D;k gks jgk gSA vfHk;qDr us dgk fd pkScs pkgc irk ugha dgka gS vkSj x.ks"k dh tekur ds ckjs esa geus jkLrk crk fn;k gS vkSj vki djuk gh ugha pkgrsA mldks ckn esa vkSj Hkh Jh frokjh Jh pkScs dks dysDVsM ds vU; dejks esa ugha feysA pkScs th dk U;k- dejk uEcj 12 esa gSA fdUrq ges os dejk uEcj 32 esa feysA ogka eSa vkSj frokjh muls feysA vkSj izkFkZuk dh fd x.ks"k dh tekur yh tk;sA muus dgk fd vki gekjs ccsus ♦jhMj♦ ls fy[kk ykb;sA ge ogka ls fQj dejk uEcj 12 esa ccsys vfHk;qDr ds ikl vk;sA eSaus vfHk;qDr ls dgk fd fy[kdj ns nhft;sA rks vfHk;qDr us dgk fd ikap gekj #i;s dh lkYosUlh yxsxk rc tekur gksxhA geus dgk ge ikp gtkj dh lkYosUlh dgka ls yk;sxsa rks vfHk;qDr us dgk fd nwljh rjdhc ;kuh dh ipkj #i;s nks vkSj vfHk;qDr dks tekur ij NqMk yks fQj eSa vkSj Jh ih- ds- frokjh mDr dejks esa #d jgsA

5- geus ns[kk fd xksj[kiqj Fkkus ds flikgh djhc nks eqyfte dks ysdj vk;s FksA muls Hkh vfHk;qDr cusys us dgk fd ikpkl #i;s nks ge vHkh gFkdM+h NqM+ok nsrs gSaA muesa

ls ,d vfHk;qDr ls ikpl #i;s ysdj vfHk;qDr us gFkdM+h ls NqM+ok fn;kA

6- ge yksxksa dks ;g ckr cqjh yxh fd vfHk;qDr us ipkl #i;s ysdj nwlijs eqyfte dks tekur ij NksM+ fn;k vkSj ge nks fnu ls tekur ds fy;s ijs"kku FksA fQj eSa vkSj Jh pkScs dh dksVZ ls vkus yxs rks ccsys us nwlijs ewyfte ls dgk fd nks nk odhy x;s Fks ;s tekur ij ugha NqM+k lds ipkl #i;s nks ge vHkh rqEgsa NqM+k nsrs gSA ml vfHk;qDr dk uke larks"k FkkA fQj ge ckgj vk x;sA

P.W. 6 Shri U.D. Choubey --

^^2----- fn- 14&5&80 dks tc esa lgk;d v/kh{kd Jh pkScs ds dejs esa cSBk Fkk ml le; nks lTu ftUgsa esa ugha tkurk Fkk os esjs ikl vk, vkSj mUgksaus x.ks"kizlkn dh tekur ds laca/k esa eq>ls fuosnu fd;k Fkk fd x.ks"kizlkn dh tekur djokus vk, gS muls dgk fd os U;k;ky; esa pys eSa ogh vkrk gwaA rni"pkr us vius U;k;ky; esa vk;k fdUrq os nksuksa O;fDr eq>s ugha feysA**

The difference in the version of the three prosecution witnesses can be noticed.

19. Regarding the incident dated 15-5-1980, the versions of the prosecution witnesses are reproduced hereunder --

P. W. 1 Shri P. K. Tiwari --

^^8- fQj fnu ds 3 cts esa vkj- ,e- , - [kku ,M- vkj Jh [kjs ,dkmUV vkQhlj dyDVsM+ igqaps vkSj Jh ;q- Mh- pkScs dk;Zikfydk n.Mkf/kdkjh ds ;gka igqapsA dysDVsM ds eq[; }kj ds ikl ges Jh f"kodkUr "kqDyk ,M- feys mUgksaus gels iqNK vki yksx ;gka dSls rks geus dkg x.ks"k dh tekur djokus vk, gSaA tks /kjk 107 @ 116 n- i- esa can gSa vkSj 50 #fj"or ccsys ckw dks nsus vk;s gSaA Jh ,e- , - [kku ,M- us Jh f"kodkUr "kqDyk ls dgk vki ;gka dSls vk, rks Jh "kqDyk lkgc us crk;k eSa dysDVj ds ikl ,d MsiwVs"ku ysdj vk;k gwaA bruh ckrphr gqbZ rks eSa vkSj [kku vkSj Jh "kqDyk ,M- ;w- Mh- pkScs dk;Zikfyd n.Mkf/kdkjh ds U;k;ky; esa izfo"V gks x;sA eSa vkSj Jh ,e- , - [kku ,M- Jh fo".kqizlkn ccsys dh Vsfcy ds ikl igqaps vkSj eSaus vfHk;qDr fo".kqizlkn ccsys ls dgk vki dy okysx.ks"k eqyfte dh Qkby fudky nhft;s tekur djokuk gSA rks eq>ls vfHk;qDr fo".kqizlkn us iwNk nwlijk jkLrka crk;k Fkk mldh rS;kjh ls vk, gks fd ugha rks eSaus dgka vki gS vki Qkby fudkfy,A vfHk;qDr fo".kqizlkn ccsys us QkbZy fudkyh vkSj eSus fo".kqizlkn ccsys dks 50 #- ns fn,A eSa vUnj dh [kM+k jgk vkSj esjs lkFk Jh ,e- , - [kku ,M- U;k;ky; ls ckgj pys vk,A eSaus vUnj ls ns[kk Jh ,e- , - [kku ,M- us viuk p"ek mrkjdf 2&3 ckj b"kkjk fd;k ml b"kkjs ds dkj.k guqearflag] izdk"k [kjs bUlisDVj] jkek;kflag] nks rhu flikgh vkSj ,dkmUV vkQhlj [kjs Jh ;q- Mh- pkScs ds U;k;ky; esa izfo"V gks x,A fQj guqearflag lfdZy bUlisDVj us viuk ifji= Hkh fo".kqizlkn ccsys dks fn;k vkSj guqearflag us vfHk;qDr ls dgk vHkh odhy lkgc frokjh th ls 50 #- fn, gS og fudkfy;sA vfHk;qDr us ekSds ij gh guqearflag ls dgk eSaus #i;s ugha fy,A ;kn esa guqearflag us nks fxykl esa ikuh cqyk;k ,d fxykl esa ikuh lksfM;e dkcksZusV ikmMj Mkyk rks mlesa dksbZ dyj ugha vk;kA nwlijs fxykl e guqearflag us lksfM;e dkcksZusV Mkyk fdukdfFkyu ikmMj Mkyk vkSj vfHk;qDr fo".kqizlkn dk gkFk /kqyok;k rks ml ikuh esa gYdk xqykchj dyj vk x;kA ekSds ij tk ikuh gYds xqykch jax dk gks x;k mldh tIrh cukbZ vius QqyisV d ck;sa [khls

ls fudkydj vfHk;qDr us 50 #- fn,A ;g ogh #i;s Fks tks eSaus fo".kqizlkn ccsys dks fn;s FksA bu 50 #- ds uksVks ds uacj feyku fd, x,] ,Q vkbZ vkJ ds uacj ls fey x;s vkSj Jh [kjs us vius NksVs nLr[kr Hkh ns[ks tks bu uksVksij ;s [kjs lkgc us vius gLrk{kj igpku fy,A**

P. W. 2 Shri M.A. Khan

^^11- dksVZ #e esa Jh pkScs mifLFkr ugha Fks ;gka ij vfHk;qDr ccsys mifLFkr FksA Jh ih- ds frokjh us dgk fd eqyfte x.ks"k dh tekur djok nhft;sA vfHk;qDr ccsys us dgk fd #i;s yk;s gks D;k ^vfHk;qDr ccsys us dgk fd ekaxs rks frokjh viuh deht ds ck;s tsc ls fudkydj ipkl #i;s ccsys dks ns fn;kA vfHk;qDr us x.ks"k dh QkbZy fudkydj Vsfcy ij j[kh frokjh us tks uksV fn;s Fks og vfHk;qDr ccsys us isaV ds ck;s tsc esa j[k fy;s Fks blds ckn tSIs fd r; Fkk esa mDr dejs ls ckgj vk;kA eSaus viuk p"ke nks&rhu ckj yxk;k vkSj fudkykA ;s bl ckr dk fuxuy Fkk Fkk fd eqyfte us iSIs ys fy;s gSaA ojkUMs esa ;wjsfu;y ds ikl fctusl bUlisDVj guqear vius lkfFk;ksa lfgr mDr dejs esa izfo"V gks x;sA eSa Hkh dejk uEcj 12 esa vk x;kA fQj guqearflag us ccsys ls dgk [kM+s gks tkvksA vkSj vfHk;qDr ccsys ds nksuksa gkFk bUlisDVj guqear us idM+ fy;sA fQj ,d fxykl esa lkfgM;e dkcsZusV dk cksy guqear falax us cuk;kA og /kksy fcuk jax dk FkkA vkSj vfHk;qDr ccsys ds gkFk ml ?kksy esa gYdk xqykch jax gks x;kA fQj vfHk;qDr ccsys dk isaV mrjokdj isaV dh tsc dks ml ikuh esa Mkyk x;k rks mldk jax gYdk xqykch gks x;kA mDr isaV dks lhy fd;k x;A x.ks"k dk ;s izdj.k dk;Zikfydk naMk- dsU;k- esa Fkk og Hkh tIr fd;k x;kA vfHk;qDr dh tsc ls ipkl #i;s ds vfrfjDr fIDIVh lsou #i;s vkSj fudysA bu uksVks dks vyx&vyx tIr fd;k x;kA ipkl #i;s ds uksV ftuds uEcj uksV fd;s x;s Fks vkSj ftu ij [kjs lkgc ds buhf"y djok;s x;s Fks] rks mUgsa Hkh csjhQkbZ fd;k x;kA fQj tIr dh dk;Zokgh iwjh gks x;hA vkSj bl dk;Zokgh dk iapukek cuk;k x;kA**

P. W. 3 Shri Shrivkant Shukla --

^^ 1----- eq>s ih- ds- frokjh odhy lkgc vkSj ,e- ,- [kku odhy lk- feysA eSaus [kku lkgc ls iwNk vki rks ;kga fn[krs gh ugha vkt dSIs vk,A mUgksaus crk;k fd pkScs lkgc ds dksVZ esa tks ccsys gS og cM+k ijs"kku dj jgk gS lks eSua dgk os rks Hkys vkneh gS rks frokjh vkSj [kkui odhy lk- us eq>s dgk vki pydj cksy nksA fQj esa frokjh vkSj [kku vf/k- ccsys ds ikl pkScs ds dksVZ esa x,A eSaus vfHk;qDr ccsys ls dgk budk dke dj nks bUgs rax D;ksa dj jgs gksA rc rd ih- ds- frokjh us dgk eSa Hkh vk;k gwa vfHk;qDr ccsys us ge rhuksa ds lkeus dgk 50 #- yk, gks D;kA rks ih- ds frokjh vf/k- us dgk gka eSa #i;s yk;k gwa fdUrq tekur rks djk nksA fQj ih- ds- frokjh us 50 #- fudkydj vfHk;qDr ccsys dks fn;kA vfHk;qDr ccsys us og #i;s viuh isaV dh tsc esa j[k fy;sA fQj ccsys vfHk;qDr us fQj frokjh vkSj [kku vf/k- ls dgk vki cSfB;s vkSj fQj ;s yksx ogh cSBs jgs vkSj eSa pyk x;kA og QkbZy vkyekjh esa Fkh ftls vfHk;qDr ccsys <waM jgs FksA**

P. W. 6 Shri U.D. Choubey --

^^3- fn- 15&5&80 dks yap bUVjoy ds ckn esa fnu ds 2 cst gh Mk;y ij vkdj cSB x;k FkkA 15&5&80 ds "kke dks eq>s dks dksbZ ckr dk irk ugha yxkA fn- 15&5&80 ds "kke dks djhc 5AA cts eq>ls Jh frokjh vkSj [kku vf/k- us vfHk;qDr x.ks"k dh tekur ds ckjs esa ckrphr dh rc eq>s mu yksxksa us Jh frokjh vkSj [kku dks crk;k vkids dksVZ esa Vsi gks x;k gSA**

20. The learned Special Judge, in paras 12 to 18 of his judgment, has discussed the testimony of all the above witnesses and has come to the conclusion that the allegation of demand of bribe has not been proved. He relied on the statement of Shri U. D. Choubey, Executive Magistrate, for holding that the order for release of Genesh Prasad was already passed on 13-5-1989. Hence, there was no question of demanding the bribe of Rs. 50/- on 13th or 14th of May, 1980 as alleged by the prosecution. In para 20 of his judgment, the learned lower Court has again relied on the statement of Shri U. D. Choubey, Executive Magistrate, who had stated that he did not ask the accused to write the order-sheet on 14-5-1980. Hence, there was no occasion for him to demand the bribe on that day. The learned Judge, regarding the incident dated 15-5-1980, has discussed in his judgment (paras 21 to 25) the evidence of P.Ws. 1, 2 and 3, viz., Shri P. K. Tiwari, Shri M. A. Khan and Shri Shivkant shukla and has disbelieved them. He has pointed out other circumstances also for holding the prosecution story doubtful. In my view, there is no error in the judgment of the trial Court, for holding the respondent-accused not guilty of the offences with which he was charged. The view taken by the trial Court is probable and reasonable.

21. I, therefore, find no substance in this appeal, which is hereby dismissed.