

(2005) 03 GUJ CK 0077
In the Gujarat High Court
Case No : Criminal Appeal No. 185 of 1988

Ajaykumar Chandrasinh Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 161, 342, 363, 376
Prevention of Corruption Act, 1947 — Section 4, 5(1)(D), 5(2)

Citation : (2005) 3 GLR 2279

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : K.J. Shethna, for the Appellant; H.M. Prachchhak, APP and Nigam R. Shukla, for the Respondent

Judgement

C.K. Buch, J.—This Criminal Appeal is preferred by the appellant accused against the judgment and order of conviction dated 3.3.1988 recorded by Special Judge, Ahmedabad in Special Case No. 30/1986, on a prosecution instituted by Central Bureau of Investigation (CBI for short) on behalf of the State of Gujarat.

2. The appellant is the original accused who has been held guilty of the offence punishable under Sec. 5(2) R/w Sec. 5(1)(D) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the "Old Act") and under Sec. 161 of Indian Penal Code (IPC for short) and came to be convicted to undergo R/I for 1 Year and to pay a fine of Rs. 500/ (Rs. Five hundred only), I/d to undergo R/I for 3 Months for the offence punishable under Sec. 5(2) R/w Sec. 5(1)(D) of the Old Act and to undergo R/I for 1 Year and to pay a fine of Rs. 500/ (Rs. Five hundred only), I/d to undergo R/I for 3 Months for the offence punishable under Sec. 161 of IPC.

3(i) The case of the prosecution in brief is that the accused Ajaykumar Solanki was serving with Bank of Baroda and during the discharge of his official duties of sanctioning and giving loan amount, demanded illegal gratification of sum of Rs. 1200/ in two parts i.e. Rs. 700/ in the form of commission + Rs. 500/ for

disbursing the loan amount and accepted the said sum in two parts i.e. Rs. 600/ from the complainant Roopchandbhai Bhembhai Baraiya and remaining amount of Rs. 600/ when he was trapped on the strength of the complaint on the fateful day i.e. on 26.02.1985.

(ii) Piplod is a small town, say a big village, of district Panch Mahals and the accused was performing his duties as an Agricultural Officer in Piplod Branch of Bank of Baroda, one of the Nationalised Bank. It is not disputed that the appellant accused was a "public servant" within the meaning of the Old Act. Complainant Roopsingh was having his shop in the name of Vishwas Machinery Stores, Opp: Bus Stand at Piplod. One Shri Dhirabhai of village Asaydi, a nearby village of town Piplod, was anxious to have loan with the assistance and guidance of District Industrial Centre (DIC for short) at Godhara and, therefore, he applied for obtaining subsidized loan for purchasing one Oil Engine for his floor mill. His case was recommended by DIC, Godhara for subsidized loan to the tune of Rs. 9700/ somewhere in January-1985 and in turn, loan application of Dhirabhai was sent with recommendations to the Bank of Baroda, Piplod Branch (hereinafter referred to as the "Bank"). As per the case of the prosecution, when Shri Dhirabhai came to know that his application has been sent to the Bank, he met the accused, but he was told that application was not received. Thereupon, said Dhirabhai met complainant Roopsinghbhai and talked to him. Complainant Roopsinghbhai, therefore, approached the accused who demanded Rs. 1200/ from the complainant for disbursing the loan amount. On sale of Oil Engine, the complainant obviously, was to earn some profit.

(iii) That on 22.02.1985, the accused went to the shop of the complainant Roopsinghbhai and repeated the demand of illegal gratification and obtained Rs. 600/ from the complainant against the amount of Rs. 1200/ demanded by the accused. The complainant also informed the accused that he will pay balance amount of Rs. 600/ on 25.02.1985. As the complainant did not want to pay the amount of illegal gratification, he lodged a complaint in the ACB at Godhara on 25.02.1985. Thereafter, Inspector of ACB Office at Godhara arranged for calling panch witnesses for the purpose of laying trap after recording the complaint and preparing panchanama and after observing necessary formalities of explaining the nature and effect of anthracene powder and experiment of ultra-violet lamp and production of muddamal notes of Rs. 100/ each amounting to Rs. 600/ smeared with anthracene powder and placed into the pocket of the bus shirt of the complainant. After going through all the formalities, a trap was laid at about 4.50 O'clock in the evening on 25.02.1985 at the shop of the complainant. At that time, the accused approached the complainant at his shop and first he took the favour of motor cycle from the complainant for going to village Asyadi and he returned after about 20 minutes to the shop of the complainant. It is the case that at that time, bus going to Limbdi arrived at the bus stand and so he ran to board the bus for going to his place, repeating his demand for remaining amount of illegal gratification. So, the complainant did not give the amount of RS. 600/ as the accused had also told the complainant to see him on the next day for

collecting the said amount.

(iv) That on the next day i.e. on 26.02.1985, the accused came to the shop of the complainant and demanded remaining amount of Rs. 600/ and accepted the same by accepting the muddamal currency notes of Rs. 600/ from the complainant. After placing the said 6 notes of Rs. 100/ each in the left pocket of his shirt, the accused turned to go out of shop and in the meantime, as arranged, panch witness No. 1 Mr. Malek and PSI Mr. Patel were in the process of coming out from the rear room. When the accused was about to leave the shop, PSI Mr. Patel asked the accused to stop there. It is the case of the prosecution that thereupon the accused hurriedly left the shop of the complainant, threw away the muddamal notes on the road near the corner of the shop and started running fast towards the Bank. He was ultimately caught and brought to the shop of the complainant where necessary formalities were gone through.

(v) That after the trap operation and registration of offence and initial part of investigation, the case was entrusted to CBI as the accused being a bank employee, CBI was the agency to carry further investigation and also to file chargesheet if so decided. CBI completed further investigation and filed chargesheet before the Court after obtaining necessary sanction, on 16.10.1986. The accused came to be tried for the offence punishable under Sec. 5(2) R/w Sec. 5(1)(D) of the Old Act and under Sec. 161 of IPC and vide impugned judgment and order, came to be convicted and sentenced as stated earlier, which judgment and order is challenged by the accused by filing present Criminal Appeal.

4. The accused being an employee of a nationalised Bank, the investigation was then transferred/ entrusted to CBI by the State Machinery, but substantive part of initial investigation has been carried out in the present case by the State Agency. CBI completed further investigation and filed the chargesheet.

5. There is no serious dispute as to the legality and validity of the sanction granted by the competent authority and the status of the accused of a "public servant" is also not under challenge.

6. Ld. Sr. Counsel Mr. Shethna appearing for the appellant accused has taken me through the detailed cross-examination of all important witnesses examined by the prosecution and has submitted that the Id. trial Court has failed in appreciating the say of the appellant as an accused otherwise the Id. trial Judge ought to have held that he has been wrongly trapped in the offence and ACB Officials have also not acted objectively. According to the case of the appellant accused, he was serving as an Agricultural Officer in the said Bank and was required to attend the work of "agricultural loans" and was supposed to examine and process loan applications received from Taluka Panchayat and the case of the appellant is that when the application falls within the ambit of rules and regulations of the Bank, only then Taluka Panchayat is supposed to forward the application to the Bank. The accused was recommending the grant of such loan,

but the decision taking authority was the competent officer i.e. Manager of the Branch. He was not either sanctioning or disbursing authority. So, there was no scope for him to demand any amount as illegal gratification. The loan application of the complainant was not for any "agricultural advance" and the work with regard to the type of loan demanded in the present case, was being attended by the Manager of the Bank himself. So, whenever any such application with recommendations from DIC, Godhara was received, the same was being attended by the Manager of the Bank and after proper scrutiny, the Manager himself was sanctioning the loan in view of the recommendations and he was the disbursing authority. Follow-up was also attended by the Manager of the bank and the accused was never entrusted any follow-up work in case of grant of loan to the Shri Dhirabhai Patel. According to Id. Sr.Counsel Mr. Shethna, in January-1985, loan application for purchase of Grinding Machine & Oil Engine moved by one Shri Dhirabhai Kalubhai Patel, was received from DIC, Godhara and the entire process was handled by the Branch Manager Mr. Shathe. Having found some discrepancy, the papers were returned to DIC, Godhara and Shri Dhirabhai was informed accordingly on 17.01.1985 and the entry in that regard is there in the Bank Register. After rectifying the mistake, the loan application was again sent to the Bank with recommendations with the letter dated 11.02.1985 and all relevant papers were lying with the Manager and in the drawer of his table and, therefore, there was no scope for the accused to interact or negotiate as to the loan application made between 07.01.1985 and 26.01.1985. There is clear evidence on record that the work of sanctioning and disbursing the loan to PW Dhirabhai was outside the scope of the appellant accused, but he had to attend the work of Manager between 22.02.1985 to 26.02.1985 when Manager Mr. Shathe was on leave. From 22.02.1985, Manager Mr. Shathe was on leave and the accused assumed charge of the Manager during the office hours in the morning of 21.02.1985, but there was no entrustment any work concerning the loan application of P.W. Dhirabhai. It is the further say of the accused that he had not gone to the shop of the complainant on 22.02.1985 as alleged and demanded and accepted the amount of Rs. 600/ by way of illegal gratification. It is in evidence that the complainant was carrying on business of machinery and machinery parts and was simultaneously attending to the work of loan applications of inhabitants of nearby locality and villages and sanction of loan from the bank for purchase of such machinery or part, which was also indirectly beneficial to his business. As per the procedure prescribed and as per the rules of the Bank, loan amount for purchase of such machinery was being directly given by cheque to the complainant. The fact that relevant papers of loan have been seized by the Inspector Mr. Ranganekar from the drawer of the table of Manager Mr. Sathe on 26.02.1985, clearly indicates that the accused was not aware about the pendency of the loan application of Shri Dhirabhai. So, according to Sr. Counsel Mr. Shethna, the accused had no occasion to attend the work of giving advance to Shri Dhirabhai.

7. It is argued by Id. Sr. Counsel Mr. Shethna that on 26.02.1985, the accused

came from Limbdi to village Piplod by bus at about 10.45 A.M. and when he was on the way to the Bank, complainant casually asked in usual course about the loan application of Shri Dhirabhai. Thereafter, the complainant tried to give small bundle of 100 Rs. notes and offered the said amount to the accused. According to Id. Sr. Counsel Mr. Shethna, this is a case of forcible planting of the amount as the accused did not accept the bundle of notes and the complainant, thereupon, attempted to place that bundle of notes into the pocket of the shirt of the accused. Complainant when was halfway in inserting the notes into the pocket of the accused, accused pushed back the notes with his hands. The accused had never entered or reach the shop of the complainant on 26.02.1985 and according to the accused, when he pushed back the notes which was there in the hands of the complainant, bundle of notes in the process fell down on the road. The prosecution, therefore, has carved out a false case that after accepting the amount, the accused threw away the muddamal currency notes on the road smelling something wrong with the conduct of the complainant. According to the accused, he was intercepted by two or three unknown persons and was caught hold when he had already reached the Bank. It was a great shock & surprise to the accused and, therefore, he attempted to get himself released by pushing the persons with his hand. By that time, Police Inspector Mr. Ranganekar reached there and the accused was apprehended. On introduction, the accused came to know about the trap for illegal gratification laid on him.

8. Ld. trial Judge while appreciating the say of the prosecution and evidence led during the trial, has discussed six important points and has appreciated oral as well as documentary evidence placed on record and it appears that the case of the appellant accused, if appreciated, then the entire story placed by the prosecution shall have to be divided into three major parts; viz

(a) incident of 22.02.1985 and the story prior to that date;

(b) event of 25.02.1985, the day on which the trap was arranged, but could not succeed and the conduct of the complainant as well as of the accused;

(c) incident of 26.02.1985, the day on which the accused was caught by ACB Police Inspector Mr. Ranganekar with the members of the Raiding Party and recovery of muddamal currency notes lying on the road, a public place at a distance of some meters from the shop of the complainant;

9. Ld. Sr. Counsel Mr. Shethna has concentrated his arguments on all the three events and the conduct of the parties and especially the complainant and the accused on all the above-said three occasions. While dealing with the judgment, it is argued that certain vital aspects in the background of the probabilities have not been appreciated by the trial Judge, is one of the main contention of Mr. Shethna. It is not a matter of dispute that in Piplod Branch of the Bank, there were two officers; (i) Manager of the Bank, and (ii) Agricultural Officer, and on all occasions if the Manager of the Bank was to proceed on leave, Agricultural Officer was entrusted the work of the Branch Manager and vice-a-versa. So, it

would be difficult for this Court to accept the say of Id. Sr. Counsel Mr. Shethna that the accused was not even authorised to take an independent decision or to play any role in either sanctioning the loan or in parting with the loan amount to the applicant loanee recommended by the Investigating Agency. It is also not the matter of dispute that in June-1985, loan application for purchase of grinding machine and oil engine moved by P.W.3 Dhirabhai Kalubhai Patel was received from the District Industries Centre (DIC for short), Godhara and the work and correspondence with regard to that application was being attended by the Branch Manager Shri Sathe. But the period of leave of Branch Manager Shri Sathe is found relevant, and the Id. trial Judge has rightly reached to the conclusion that during the period between 07.01.1985 and 26.02.1985, the accused had no occasion at all to attend the work concerning the loan application of PW Shri Dhirabhai Kalubhai or during this period the accused did not have any knowledge or information about the pendency of such loan application. It is true that size and structure of the bank premises has not been specifically proved by any of the prosecution witnesses in convincing manner. P.W.3 Dhirabhai exh.36 has proved one important aspect that when he went to the Bank after 2 days, at that time, he was informed by the accused that there were elections and witness should come to the Bank after elections and this witness thereafter again went to the Bank and he show the accused. At that time, Shri Dhirabhai was informed that there was mistake in the loan papers and, therefore, they have been returned back to DIC, Godhara. Shri Dhirabhai thereafter went to complainant Roopsingh and informed him about the alleged mistake found in the loan papers and the fact of return of papers to DIC, Godhara. This evidence is corroborated by P.W. 2 Roopsingh exh.34 who ascertained as to what had happened to the loan application. In the deposition of P.W.2 Roopsingh, he has not said anything which can be said to be incriminating against any of these two officers namely Manager Shri Sathe or the accused. P.W.3 Dhirabhai had received one letter from DIC, Godhara as was received from the Bank and, therefore, he has reason to believe that the loan amount must have been sanctioned or the same is being sanctioned. Thus, the conduct of P.W.2 Dhirabhai as to his visit to Piplod Branch can be said to be natural. Though, he has approached Shri Sathe first, but it has come on record and that too during the course of cross-examination of Manager Shri Sathe, that he directed him to the accused. It is true that the defence counsel has made certain suggestions to P.W.2 Dhirabhai as well as P.W. 3 Roopsingh, but certain crucial suggestions have been denied by both these witnesses. Some important contradictions have been brought on record through the deposition of prosecution witnesses as to the receipt of the papers from DIC, Godhara and conversation that has taken place between the Branch Manager Mr. Sathe and prosecution witnesses, but these contradictions are not found material which can be said to have any serious adverse effect on the strength of the case of the prosecution. DIC, Godhara was to recommend for loan and ultimate discretion mainly was with the Bank and especially with the Branch Manager.

10. This Court is not able to ignore other set of documents consisting of letter

dated 11.02.1985 Exh.15 written by the General Manager, DIC, Godhara to the Branch Manager of Piplod Branch and the letter exh.18 dated 21.01.1985. It is clear through the papers that original letter dated 07.01.1985 exh.22 was written with necessary correction in the amount of loan from Rs. 10,000/ to Rs. 9700/ on or about 11.02.1985. It also appears that the application for necessary correction was received by the Bank and an endorsement (made by black ink) is not in the margin of the document exh.15. This endorsement is in the handwriting of P.W. Shri Sathe exh.39. Deposition of Shri Sathe is clear on the point that he had handed over the charge of the Branch to the accused on 21.02.1985 as on that day, the accused had reported in the Bank as he was on leave. Prior to 21.02.1985, the accused was not present, but it is proved beyond doubt that on 21.02.1985, the appellant has taken over the charge of the Bank as a Manager. After rectification of mistake, a fresh quotation from the complainant was taken and the papers were again transmitted to the bank, but it emerges from the oral evidence led by P.W. Dhirabhai, P.W. Roopsingh and P.W. Shri Sathe that when letter was again produced before the Bank, it was tendered to the accused and on that day, the witness was abused and addressed the question "whether his father had left any money". It is true that there is no exact evidence as to the day on which this conversation has taken place, but it is on record that the Branch Manager Shri Sathe was not present in the Bank, but he was sure that a week before 21.02.1985, he had gone to the Bank and at that time the said incident had occurred. There is no major conflict in the evidence of the prosecution witnesses and, therefore, this Court is not in agreement with the submission of Id. Sr. Counsel Mr. Shethna that this part of story is either improbable or unnatural. It is not possible to criticize this part of evidence led by the prosecution. On the contrary, version of P.W.3 Dhirabhai as rightly held by the Id. trial Judge that same, sounds quite natural and the same is supported by the circumstances flowing from the documents noted by the Id. trial Judge. Id. trial Judge has rightly held that the defence version is not found acceptable that the accused was merely entrusted with key of the Bank as per Key Register exh.29 and the loan papers of Dhirabhai were kept in the drawer which was left locked and key was with the Branch Manager. Though Shri Sathe has not apparently deposed against the accused, but has clearly stated that the accused was entrusted with loan papers of Dhirabhai or has not stated categorically in his examination-in-chief that loan papers was lying in the drawer locked by him and the accused was not able to unlock that drawer as key was not with him. There is reiteration of the version of Dhirabhai available on record about how he was abused by the accused and how the demand was made for Rs. 700/ from the complainant and Rs. 500/ from P.W. Dhirabhai for disbursing the loan and passing the loan application of Dhirabhai. It is true that the complainant had not expressed any grievance directly or indirectly qua the demand made by the accused before Shri Sathe in the capacity of the Branch Manager. There is no categorical evidence on record to show that P.W. Dhirabhai never agreed to part with any amount so that the same can be given to the accused for passing his loan application. Ultimately, it is the case of the prosecution and there is

evidence on record that there was demand of Rs. 1200/ and that this amount as told/suggested by the accused that the complainant should pay Rs. 700/ as he has to get commission and profit because of the sale of machinery and Rs. 500/ by the applicant loanee as he was getting the benefit of the scheme floated by the government. Though an attempt was made to attack the character of the complainant and bunch of documents is produced with the list exh.42, however, Id. trial Judge has rightly appreciated this part of defence version in paras 33 & 34 of the impugned judgment. It is true that the documents exh.44 & 47 reveal that the complaints were filed against the complainant of this case for cheating. Such complaints were with regard to the grinding machines, oil machines purchased under loan transactions entered into by loan applicants through the present complainant or for the fraud as regards the machinery purchased from the complainant or given for repairs to the complainant by such purchasers. But it is observed by the Id. trial Judge that dates of all these documents are of the months between October 1985 to February 1986. The list of documents is of 21.08.1987. It will be difficult for the Court to comment upon the genuineness of such complaints or allegations made therein. The Court is also aware that the complainant was facing one more serious allegation as to his involvement in rape case where four persons including the present complainant was facing said charge pending ACB case against the appellant accused. Initially, the complaint was filed in the form of an application before the Id. Magistrate on 25.10.1985 and ultimately inquiry was ordered by the Id. Magistrate. It is necessary to reproduce the relevant part of the judgment of the trial Court as to how these allegations have been dealt with by the Id. trial Judge before recording the finding against the accused :-

"..... On a reference to exh.43, it can be seen that one Kesharabhai Ratnabhai Koli appears to have filed through his Advocate Mr. P.J. Patel a complaint in the court of Judicial Magistrate, First Class, at Baria. It was numbered as Inquiry No. 59 of 1985. The complaint was directed against four persons including the complainant as accused No. 1. It is filed under sections 342, 363, 376 and 114 of Indian Penal Code. It is recited in the application that one girl Bai Leela who was Keshrabhai's brother's daughter was residing at his place. She was going to Piplod market for purchase of household articles. She was minor and unmarried. She was confined by the complainant of this case in his shop in the name and style of Vishwas Machinery Stores on 16th September 1985. The complaint further recites that after calling the other accused persons, the girl was forced to sit in a tempo and she was accordingly taken to Godhra where she was confined in one room. There she was threatened with a knife and was raped by accused No. 3 Valabhai Mahasukhbhai and other accused persons abetted in such crime. During the course of that night, she was raped thrice by threatening her with knife. In this manner said Bai Leela was confined for a period of 15 days. Thereafter, the son of the brother of the complainant Keshrabhai lodged the complaint with the police with the result that said minor girl Leela was sent to Nari Sadan from where the custody of the girl was taken by the complainant in that application. It

is asserted in that application that accused No. 3 Velabhai Mahasukhbhai had entered into love marriage by getting the marriage registered in the office of the Sub-Registrar of Marriages. Such an application was filed in the Court of the learned Magistrate on 25.10.1985. It appears from the document that inquiry was ordered by the learned Magistrate. Before I take myself to the appreciation of this document, it should not be lost sight of that the certified copy of the complaint filed by the son of the complainant's brother in the police in that case with regard to that incident has not been brought on the record of this case. Even then, it is a fact that the complainant of this case is shown accused No. 1 in the said proceedings before the Magistrate."

The ultimate finding recorded by Id. trial Judge is that merely because such prosecution or complaints after the date of incident and arrest of the accused are against the complainant, would not by itself make the say of the complainant and prosecution witnesses totally untrustworthy.

11. Certain contradictions as to at what point of time or on which particular day PW Dhirabhai met the accused are also found of trivial nature. So, there is sound evidence as to the demand of money and it is proved beyond doubt that as per the story narrated by the complainant, loan applicant Dhirabhai had met the complainant and had expressed his grievance as to demand of money made by the accused and complainant as well as Dhirabhai both had met the accused prior to the actual disbursement of the loan amount. This part of story sounds natural. It is difficult for the Court to say that loanee Dhirabhai can be placed into the category of either accomplice or the person who had never agreed to pay the amount of corruption directly or indirectly. So, there is no clear evidence as to the exact date and time of meeting with complainant and Dhirabhai, complainant and the accused or Dhirabhai and the accused prior to 21/22.02.1985. But this story placed by the prosecution is found relevant and it is also found that the same has direct connection with the incident that had occurred on 22.02.1985.

12(i) The finding recorded by the Id. trial Judge (para-45) as to the incident occurred on 22.02.1985 is absolutely in accordance with law and the Court finds no error in appreciating the said part of the evidence. P.W. Dhirabhai has deposed that on none of the occasions when he met the accused in the Bank prior to 25.02.1985, the accused demanded any bribe from him and on none of the occasions Mr. Sathe or the accused told him to send the complainant to meet them. Even the complainant has not told Dhirabhai that he had paid Rs. 600/ to the accused. However, this part of evidence is rightly appreciated in the context of the case of the prosecution because it is not the case of the prosecution that in the presence of PW Dhirabhai, actual demand of money was made by the accused, illegal gratification has been demanded from the complainant and the complainant has paid Rs. 60/ as part payment on 22.02.1985. If there is convincing evidence for the conduct of the accused or words uttered by the accused on 25.02.1985 and 26.02.1985 demanding illegal gratification, then the

story put up by the prosecution as to the event occurred on 22.02.1985 can be safely accepted.

(ii) On 25.02.1985, the complainant had gone to the office of ACB for lodging his complaint. It is difficult for this Court to say that though nothing had happened on 22.02.1985 or prior thereto, the created story was unfolded before the officers of ACB while narrating the details in the complaint. Complaint exh.35 is the brief description in writing by the officer who has recorded the complaint. Substantive part of the complaint is supported by the documentary evidence. The complaint gives details of incident of 22.02.1985. So, the oral evidence led by the prosecution qua the event of 22.02.1985, can be said to have been supported/ corroborated from the document exh.35. On 25.02.1985, though the trap was arranged as discussed by the Id. trial Judge in detail, it could not succeed and it is the case of the prosecution that though agreed, the actual amount of illegal gratification i.e. muddamal amount of Rs. 600/ was not accepted by the accused. How and why the trap could not succeed is also explained by the prosecution. The complainant was asked and instructed to act in accordance with the details narrated in the part one panchanama and panch witness No. 1 Shri Malek was also directed accordingly and he was to give signal on completion of the trap. It is in evidence and rightly accepted by the Court in view of the story told by the prosecution witnesses i.e. complainant, Raiding Inspector Mr. Ranganekar, PSI Shri Patel, Panch Witness No. 1 Shri Malek that on 25.02.1985, the accused did visit the shop of the complainant. Why a Branch Manager of a nationalised bank should visit a private individual shopkeeper is the question. It is possible that because of personal acquaintance he might have visited, but visit on 25.02.1985 could not have been anticipated in advance by the complainant or other prosecution witnesses. So, this visit is found to be pre-arranged visit and this fact situation has rightly taken the trial Court to a conclusion that the story of incident of 22.02.1985 is acceptable part of the evidence led by the prosecution. When the entire team was waiting for the arrival of the accused in the vicinity of the shop of the complainant, within 15 to 20 minutes, the accused has reached the shop of the complainant and he was welcomed by the complainant. Panch witness Shri Malek realised from that the visitor is none else but the accused and accused also inquired from Shri Malek as to who he was and complainant introduced him as his cousin. Soon thereafter, the complainant demanded the key of the motorcycle saying that he wanted to go to village Asyadi and complainant also should accompany him to village Asyadi where he would take money. As the complainant expressed his inability to accompany him to village Asyadi, accused took motorcycle of the complainant and within 10 to 15 minutes, accused had returned. At that very point of time, bus proceeding from Godhara to Jhalod via Limbdi has reached the bus-stop and as the accused was to travel by that very bus for going to his residential place i.e. Limbdi, he rushed and boarded the said bus. There is no material contradiction on the evidence as to while boarding the bus, the accused told the complainant that he would see him on the next day. There is an element of

repeating demand directly or indirectly. Why he should come again to the shop of complainant is the question and the same is correctly addressed by the Id. trial Judge.

(iii) Under these circumstances, Raiding Inspector Shri Ranganekar was compelled to arrange the trap again on 26.02.1985. Id. trial Judge after narrating the incident that had occurred on 25.02.1985, has rightly held that there is ample strength in the say of the prosecution as to the story unfolded as to the incident occurred on 22 & 25.02.1985. The decision cited by the defence counsel has been rightly appreciated by the Id. trial Judge and it would be difficult for this Court to accept the arguments of Id. Sr. Counsel Mr. Shethna that an unscrupulous complainant was out to trap the accused by hook or crook and on the date of incident i.e. on 26.02.1985, he attempted to put the amount of illegal gratification forcibly in the shirt pocket of the accused. It is further argued that of course, muddamal currency were not found from the pocket of the accused, but it is held by the Id. trial Judge that busshirt of the accused was found stained with Anthracene powder, sounds abnormal and improbable. Id. Sr. Counsel Mr. Shethna has tried to explain and argue that this could be possible as the say of the accused is that the complainant seeing failure of the trap even on the second day, had tried to put money forcibly in the upper pocket of the busshirt of the accused and at that time, either muddamal notes or palm of the complainant might have touched that part of the muddamal busshirt. This submission is not found convincing. The Id. trial Judge in paras 57 & 58 of the judgment, has discussed the relevant part of evidence and has rightly observed that oral testimony of the panch witness Shri Malek inspires confidence. Panch witness Shri Malek has deposed (page 6) that the accused had received muddamal currency notes of Rs. 600/ with his right hand and immediately thereafter when accused tried to go out of the shop, PSI Shri Patel came out of the rear room and on seeing Mr. Patel, accused fled and he was warned by Mr. Patel to stop. It is in evidence that muddamal notes were found on road and the accused had started running. The conduct of the accused decides this fact, is also a circumstance which can not be ignored while appreciating the strength of the case of the prosecution. Undisputedly, the shop of the complainant is on the road. It is true that panch witness Shri Malek has not said that the accused had thrown the muddamal notes near the steps, but the place where the same were either thrown or found is near the corner (i.e. after a small curve) of the shop of the complainant. So, this part of evidence does not affect adversely to the case of the prosecution. Shri Malek was instructed by PSI Shri Patel to stay nearby the currency notes where the same were lying while running after the accused, is the evidence of PSI Shri Patel and accused was caught at a distance of about 30 to 40 ft. from the place where Shri Malek was asked to stand.

(iv) One another aspect being important and relevant needs consideration. This aspect impliedly disprove the theory of attempt of forcible plantation of bribe amount. There is recovery of one Inland Letter having address of accused from the spot where the muddamal currency notes were found. This place is after a

small curve on the street. On test, this Inland Letter was found stained with enthracene powder. This part is satisfactorily proved by the prosecution witness i.e. Panch Witness No. 1, complainant and PI Shri Ranganekar. This goes to show that the bribe amount was inside the pocket and came out with Inland letter that may be inside the pocket. Tracing of similar stains inside the pocket corroborates this situation. This has given rise to a strong legal presumption under Sec. 4 of the Act. This presumption is not found rebutted even on applying the principles of preponderance of probability.

13. There is no discrepancy in the panchanama drawn so far as this part of evidence is concerned and no material contradiction is found in the evidence of either Shri Patel or Shri Malek. So, this Court shall have to accept the say of the Id. APP that vital part of the panchanama drawn by the investigating agency practically corroborates the oral version of all the three material witnesses i.e. complainant Dhirabhai, panch witness Shri Malek and PSI Shri Patel. The accused was not supposed to accept any amount in cash from the complainant. Plea of justification is neither advanced before the trial Court nor before this Court. The defence version is of denial and it is submitted that he has never accepted the amount of Rs. 600/ i.e. six currency notes of denomination of Rs. 100/ from the complainant within the vicinity of panch witness Shri Malek.

14. The Court is also not convinced that Shri Malek has deposed against the accused either under pressure or under any other inducement or threat and the Court also does not find that he has supported the case of the prosecution merely because he is a government servant. Unwilling extension of support by such witness normally is found exposed during the cross-examination or while deposing at length for prosecution during the trial.

15. It is true that as argued by Id. Sr. Counsel Mr. Shethna, placing reliance on the decision in the case of Punjabrao Vs. State of Maharashtra, the accused is supposed to explain qua the evidence led by the prosecution as to the receipt of illegal gratification not beyond reasonable doubt and he can establish his defence by preponderance of probability. Placing reliance on para-3 of the cited decision, Id. Sr. counsel Mr. Shethna has argued that the accused has satisfactorily explained as to how his busshirt was found stained with Anthracene powder and as to how his finger tips were found with Anthracene powder. Failure of trap on 25.02.1985 helps the accused and when muddamal currency notes were found on the road, the trial Court ought to have observed that the explanation rendered by the accused of forcible planting of muddamal currency notes ought to have been accepted. However, in view of the nature of evidence led by the prosecution, this court is of the view that the ratio of the cited decision i.e. decision in the case of Punjabrao (supra) would not help the accused. It is reasonable to note that in case of Punjabrao (supra), the Apex Court was dealing with the decision of the Bombay High Court reversing the order of acquittal passed by the Id. Special Judge and on facts the Apex Court found that the Bombay High Court has wrongly reversed the order of acquittal because the

accused was entitled to establish his defence by preponderance of probability.

16. The another decision relied upon by Id. SR. Counsel Mr. Shethna in the case of Hari Dev Sharma Vs. State (Delhi Administration), is also not found helpful to the present appellant accused. The prosecution case was one integrated story which the trial Court had accepted and convicted the accused under Sec. 161 of IPC and Sec. 5(1)(d) R/w Sec. 5(2) of the Prevention of Corruption Act, 1947. The High Court, in appeal, disbelieved the vital part of the prosecution story and even then confirmed the order of conviction. In that circumstance, the Apex Court has said while allowing the appeal that when the High Court has not believed the important part of the evidence led by the prosecution, i.e. evidence as to integrated story, then the High Court ought not to have held the accused guilty. The Supreme Court observed that there were circumstances which were 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, should not have upheld the conviction. Here in the present case, none of such contingency is found. When the trial Judge after detailed discussion even on the character and status of the complainant has accepted the story unfolded by the prosecution as convincing and proved, ratio of this decision would not help the present appellant accused. Unless this Court is able to reach to a conclusion that a particular part of the basic story placed by the prosecution is neither proved nor the same is proved in convincing manner, the ratio of the above-cited decision would not help the accused.

17. Id. Sr. Counsel Mr. Shethna has placed reliance on the decision of Ramsingh Bahadursingh v. State 1 GLR 138 : (1960 GLR 138) and other decisions wherein this Court and the Apex Court have dealt with the use of Anthracene powder in arranging a trap. In the present case, Panch Witness Shri Malek or the complainant were not competent to depose in a positive manner under which it can be proved that Anthracene powder was really applied or detected on the finger tips of the accused or on the busshirt of the accused. The prosecution must lead a positive evidence by way of an expert evidence or books of science to prove the method of detecting the Anthracene powder, nature of test to be applied, nature of result to be expected and also evidence to the satisfaction of the Court that a layman (including the panch witness and complainant if they are not the real experts or scientists) can say that Anthracene powder was detected or the same was applied. Mr. Shethna, therefore, argued that the evidence led by the prosecution through the panch witness Shri Malek and complainant, therefore, can not be said to be legal and convincing evidence and use of Anthracene powder instead of phenolphthalein powder as in the present case, and therefore, the same should be held fatal. The Court is not in agreement with the submission of Id. Sr. Counsel Mr. Shethna that in each case, the prosecuting agency or authorised officer of Anticorruption Bureau arranging trap can not use Anthracene powder at all. The use of phenolphthalein powder is not a statutory requirement. When this Court is not able to record a positive finding qua the evidence of detection of anthracene powder under an ultra-violet lamp either

on currency notes or on muddamal cloth or on the finger tips of the complainant or the accused or even of panch witness as the case may be as not a convincing or haphazard in nature, the ratio of the above-cited decision on this point would not help the defence. It is true that the Court should insist for evidence of convincing nature especially when Anthracene powder has been used in a ACB Trap. The cases where a public servant is not otherwise supposed to accept currency notes from any member of the public, it is not that unsafe to use Anthracene powder to prove the transfer of muddamal currency notes from the pocket/custody of the complainant either to the accused or at the place from where the same is found at the conclusion of the trap. In the present case, which types of stains are found or where Anthracene powder is applied, was shown to the panch witnesses and the complainant. So, a prudent layman, if competent to depose, can depose that a particular type of glooming powder stains were found on the finger tips of the accused or on the muddamal cloth put on by the accused. In a given case, Anthracene powder was found on more than one place and presence of Anthracene powder would speak by itself about the journey of the currency notes, but the evidence qua this journey/ transfer of currency notes should be brought in convincing manner. In the present case, such evidence is available and it would be difficult for this Court to pass any negative comments on this aspect.

18. Ld. Sr. Counsel Mr. Shethna has argued that a person in charge of a Bank normally would not go to a shopkeeper and would accept money and that too in a public street. It was possible for the accused to call the complainant in the Bank for accepting the amount of illegal gratification. The conduct of the accused visiting the shop of the complainant by itself would not give rise to any presumption that he must have gone for receiving the bribe amount agreed upon earlier. The ratio of the decision in the case of Khilli Ram v. State of Rajasthan 1985 SCC 24, would not help the accused of the present case. In the cited decision, a police constable was found accepting the bribe and that too when he was in uniform near the crowded bus-stand instead of near the police station which was in the vicinity. In the cited decision, the Apex Court while appreciating the evidence, has observed that it was doubtful that the trap was for the accused and not for any other policeman. In the present case, no such doubt is emerging from record. The Apex Court was dealing with the case of a trap arranged on 2.10.1975. The present incident is of 1985. So, the ratio would not help the present petition. The nation has experienced increased corruption and mentalities because of speedy percolation at the grassroots level and the same has been found spreading wildly every year. Where to accept the amount of illegal gratification depends on the psychology of an individual. A shameless person or a greedy exploiter may not think on such or similar aspects and may accept the amount of bribe at any place any time. Village Piplod is not a place which can be said to be even a town. Practically the Bank working hours were over when the amount was accepted in the present case. So, in a so-called (small) bazar where possibility to have a crowd is very thin, and it being a casual

bus-stand, may not have presence of large number of persons in the area. No evidence to controvert this possible situation is there on record. Of course, the place where the accused was found accepting the bribe is the market area of village Piplod and many people were passerby, but merely because it was possible for the accused to accept the amount of illegal gratification by calling the complainant in the Bank, by itself would not make the prosecution story doubtful or improbable. On the contrary, it is in evidence that the accused was to come to the shop of the complainant. So trapping officer was compelled to arrange the trap at the shop itself. It is in evidence that on 25.02.1985, while leaving the place, the accused informed the complainant that he will come on the next day and will see him. In such a situation, if the trapping officer has arranged the trap at the same place, looks more probable and it is not either the say of the defence or lacuna in prosecution that it is even possible to infer that the trap was for some other accused than the present appellant accused. So, the ratio of the above-cited decision of the Apex Court would also not help the present appellant accused.

20. It is true that the accused has lurged into uncertainty for several years because of the pendency of the present appeal. It is also true that CBI has not actively invested the crime and trap was arranged by a local police and as the accused was on bail all throughout this period i.e. for about 20 years, it would be embarrassing for him to go to jail. Ld. Sr. Counsel Mr. Shethna, as a last and alternative submission has submitted that if this Court upholds the order of conviction, in that even token punishment be imposed on the appellant accused and period of substantive sentence should be reduced accordingly. A convicted public servant in ACB cases looses ever right and all future benefits and that is the real punishment according to Ld. Sr. Counsel Mr. Shethna. According to Ld. SR. Counsel Mr. Shethna, this Court while dealing with an appeal against the order of conviction filed in the year 1988 i.e. after several years, if reaches to a conclusion that the order of conviction requires to be upheld and confirmed, in that event, the order imposing punishment/sentence should be suitably modified and punishment should be imposed less than the minimum punishment prescribed.

21. The Court is aware about the ratio of the decision of the Apex Court in the case of State of Andhra Pradesh v. V. Vasudeva Rao, reported in AIR 2003 SCW 6555 wherein it has been enunciated that court normally should not impose punishment less than the minimum punishment prescribed. It has been observed therein that the fact that the age of the accused was 75 years and case is pending since past 14 years is not a "special reason" to reduce sentence below minimum of one year prescribed. However, in view of peculiar facts and circumstances of the case, there is some force in the alternative submission canvassed by Ld. Sr. Counsel Mr. Shethna for the appellant accused. On confirmation of conviction, the appellant would suffer tremendous financial loss and benefits as are being given recently to the Bank Employees in the form of Voluntary Retirement Scheme etc. Further, dismissal of the appellant from

service on account of conviction would result into huge financial loss as well as instability not only in financial area but also in social life also. As observed above, sword of democle has been hanging on the head of the appellant since this much year. So, this is not a case where lessor punishment than the minimum punishment prescribed requires to be imposed on the ground of protraction of trial or time consumed in hearing the appeal, but on the ground that for all these years the appellant had undergone agony of physical as well as mental torture and confirmation of order of conviction would result into huge financial loss and instability and would affect his social life also and, therefore, the sentence imposed requires to be reduced. As the Id. Trial Judge has ordered the appellant to undergo substantive sentences to run concurrently, the sentence i.e. R/I for 1 Year imposed for the offences punishable u/s 5(2) R/w sec. 5(1)(d) of the Prevention of Corruption Act as well as under Sec. 161 of Indian Penal Code, the same requires to be reduced to 3 months, whereas the order imposing fine under aforesaid sections require no interference. This would meet the ends of justice.

22. In the result, the Appeal is partly allowed. The impugned judgment and order of conviction passed by Id. Special Judge, Ahmedabad in Special Case No. 30/1986 convicting the appellant accused for the offences punishable under Sec. 5(2) R/w Sec. 5(1)(d) of the Prevention of Corruption Act as well as u/s 161 of Indian Penal Code is hereby confirmed. However, order imposing R/I for 1 Year under the aforesaid provisions is hereby reduced and the appellant accused is hereby ordered to undergo R/I for 3 months for the offence punishable under Sec. 5(2) R/w Sec. 5(1)(d) of the Prevention of Corruption Act as well as under Sec. 161 of Indian Penal Code. Order imposing fine is not altered. However, order imposing sentence in default of payment of fine amount, is reduced to 50% of the sentence imposed by the trial Court while imposing fine, for each of fine amount. Substantive sentences to run concurrently.

23. Bail-bonds of the appellant accused stands cancelled. However, considering this much long period and to make necessary arrangements, the appellant accused is given time to surrender to serve the sentence is extended till 30th April, 2005.