
(2016) 12 GUJ CK 0021

In the Gujarat High Court

Case No : Criminal Appeal No. 1278 of 1992 With Criminal Appeal No. 43 of 1993

Bhupatsinh Shivsinh Waghela

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 161, Section 165-A
Prevention of Corruption Act, 1947 — Section 5(1)(d), Section 5(2)

Citation : (2017) 1 GujLH 453

Hon'ble Judges : Mr. R.P. Dholaria, J.

Bench : Single Bench

Advocate : Criminal Appeal No.1278 of 1992; Mr. Adil Mehta, Advocate for Mr. K.J. Shethna, Sr. Advocate, for the Appellants; Ms. H.B. Punani, APP, for the Opponent/Respondent No. 1; Criminal Appeal No.43 of 1993; Mr. Nirav R. Mishra, Advocate, for the Appellant; Ms.

Final Decision : Disposed Off

Judgement

Mr. R.P. Dholaria, J. (Oral)—Both these appeals arise out of the same incident and involve common questions of law and facts and hence, they are being decided by this common judgment.

2. Criminal Appeal No.1278 of 1992 is preferred by the appellant - Bhupatsinh Shivsinh Waghela - original accused No.2 against the judgment and order dated 30.11.1992 passed by learned Special Judge, Sabarkantha at Himmatnagar in Special Case No.1 of 1989 whereby original accused No.2 - appellant herein was convicted for the offence under section 165-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months and fine of Rs. 2000/-, in default, to undergo simple imprisonment for six months. Whereas, Criminal Appeal No.43 of 1993 has been preferred by the appellant - original accused No.1 - Khemabhai Dalabhai Singada against the judgment and order dated 30.11.1992 passed by learned Special Judge, Sabarkantha at Himmatnagar in Special Case No.1 of 1989 whereby original accused No.1 -

appellant herein was convicted for the offence under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act 1947 and sentenced to undergo rigorous imprisonment for one year and fine of Rs. 2000/-, in default, to undergo simple imprisonment for six months and the appellant was also convicted for the offence under section 161 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and fine of Rs. 1000/-, in default, to undergo simple imprisonment for three months.

3. The short facts giving rise to the present appeal are that Arjanbhai Savjibhai Patel - the complainant herein was at the relevant time residing at a place - a field known as Signal Kampa, Taluka Khedbrahmma where he had his agricultural land. He had three brothers, namely, Valjibhai Savjibhai, Jethabhai Savjibhai and Devsibhai Savjibhai. Out of 21 acres and 32 gunthas of agricultural land, complainant was in possession of 5 acres and 3/4 gunthas of land while the rest belonged to his brothers. On 21.7.1987, on the sedha of the land of the complainant and his brothers, a bull was found dead which was shot by someone. In connection with the same, the Banjaras had lodged complaint at Exh.34 which was given by Jesaji Bhat and recorded vide CR No.90 of 1987. The accused No.1 came to the house of the complainant and informed him that a complaint has been received wherein it was alleged that the complainant and his three brothers have killed the bull and that statements were required to be taken for which purpose they should go to the Police Station. The accused No.1 asked complainant to be at the police station in the evening at 6.00 O'clock. Accordingly, the complainant went to the police station in the evening. The accused No.1 then informed him that he and his brothers are required to be arrested and thereafter asked the complainant to sit there at the police station and after about one to one and half hour, the personal bond of the complainant was taken by the Head Constable and the complainant was asked to come to the police station again in the morning on 23.7.1987 at 11.00 O'clock. The complainant with his surety Mohan Savjibhai - PW 4 and advocate Waghela - accused No.2 came to the police station on 23.7.1987. The accused No.2 after meeting the accused No.1 came out from his chamber and told the complainant that accused No.1 intends to arrest him and his three brothers. The accused No.2 further added that the complainant should come with his brothers on the next day at 11.00 am to the police station. The complainant then went home and informed his brothers Valjibhai and Jethabhai, however, it was not possible for them to go to the police station at that time, and therefore, on 24.7.1987 the complainant in the company of Chhaganbhai Valjibhai and Mohanbhai Savjibhai went to Khedbrahmma Police Station at 11.00 am where the accused No.2 was present. The complainant informed him that his brother had not come and that he had come with his surety. The accused No.2 thereafter went inside the chamber of accused No.1 and met him. After coming out, he informed the complainant that he should produce the gun as otherwise the complainant along with his three brothers would be taken on remand. The complainant, thereafter, told him that he had not fired and that he was also not having any gun. The

accused No.2 again met accused No.1 in his chamber and after coming out, informed the complainant that accused No.1 was demanding Rs. 10,000/- for avoiding remand of complainant and his brothers. The complainant told accused No.2 that it would not be possible for him to make arrangement for this huge amount. Again, accused No.2 went inside the chamber of accused No.1, had a talk and then came out and asked the complainant to pay Rs. 6000/-. The complainant again expressed his inability to part with this amount. Once again, accused No.2 went inside, had a further talk with accused No.1 and told the complainant that accused No.1 was not prepared to accept any amount less than Rs. 4000/-. Thereupon, the complainant went inside the chamber of accused No.1 along with accused No.2 and requested him to reduce the amount still further. The accused No.1 refused to reduce the amount and insisted for the payment of Rs. 4000/- and threatened to take the complainant and his brothers on remand if the amount is not paid to him. The complainant reluctantly agreed to pay the amount of Rs. 4000/-. The accused No.1 thereafter told complainant that all four brothers should come to the police station with Rs. 4000/- on 28.7.1987. The complainant was further told that after making formal arrest, he would give concession in remand. The complainant, thereafter, came to his house and informed his brother. The complainant, however, was not inclined to give the bribe amount and, therefore, he went to the ACB office at Himatnagar where he met Police Inspector - Maheshchandra Bhatt - PW 6 and made complaint to him.

4. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the charge-sheet against the appellants accused. The charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4.1. In order to bring home the guilt, the prosecution has examined the witnesses and also produced documentary evidences.

4.2. At the end of the trial, after recording the statements of the accused under section 313 of the Criminal Procedure Code, 1973 and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

5. Being aggrieved by the same, the appellants have preferred the aforesaid Criminal Appeals before this Court.

6. By way of preferring the present appeals, the appellants have mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of conviction. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of conviction is required to be reversed, as such.

7. Mr. Adil Mehta, learned advocate for original accused No.2 in Criminal Appeal No.1278 of 1992 has taken this Court through the entire judgment and argued that the prosecution miserably failed to prove vital ingredients as regards to

demand, acceptance and recovery of bribe amount beyond reasonable doubt and hence, benefit of doubt is required to be extended to the appellant accused. He submitted that since the conviction, many years have passed and, therefore, taking into consideration the time lag, the accused is required to be acquitted. He further submitted that the prosecution has not examined Panch No.1 who was accompanied at the relevant time with the complainant and, therefore, the prosecution has miserably failed to bring on record corroborative piece of evidence so far as allegation as regards to demand and acceptance made by the complainant and other witnesses is concerned. He submitted that in the depositions of the witnesses, there are several contradictions and omissions and taking into consideration such nature of evidence, the evidence of the complainant and other witnesses is required to be discarded as such and therefore, there is no evidence available on record to link the accused with the crime in question. He submitted that the prosecution has not examined material witness due to which also, the prosecution has failed to prove vital ingredients as regards to demand, acceptance and recovery thereof and for that reason also, the order of conviction no more remains sustainable at law. In the alternative, Mr. Mehta has submitted that if this Court would come to the conclusion confirming the impugned judgment, in that event, he urges that the incident is of the year 1987 and by now more than 30 years have passed and that taking into consideration the age of the accused, time lag and the fact that the accused has suffered a lot in the meantime, sentence imposed upon the accused may be reduced from six months as inflicted under section 165-A of IPC by recording special reasons thereof.

8. Mr. Mishra, learned advocate for original accused No.1 in Criminal Appeal No.43 of 1993 has argued that taking into consideration the oral evidence of the witnesses, the prosecution has failed to establish that there was no pre-demand or demand raised by accused No.1 and even he has not at all accepted any amount of illegal gratification and therefore, accused No.1 cannot be linked with the crime in question. He submitted that the prosecution has failed to establish, as such, the aforesaid ingredients which are necessary for constituting the offence of bribe. He submitted that even if acceptance on the part of co-accused may be believed, in that case also, accused No.2 did not accept any amount but the money was thrust upon and he being a lawyer of the complainant even if he has received any amount, for that purpose, his role cannot be relatable to accused No.1. He submitted that there is no iota of evidence to link the accused No.1 with the crime in question and the accused No.1 has been wrongly implicated in the alleged offence. In the alternative, Mr. Mishra has submitted that if this Court would come to the conclusion confirming the impugned judgment, in that event, he urges that the incident is of the year 1987 and by now more than 30 years have passed and that taking into consideration 69 years - the age of the accused, time lag and the fact that the accused has suffered a lot in the meantime in the criminal as well as civil proceedings, sentence imposed upon the accused may be reduced from one year rigorous imprisonment as

inflicted under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act 1947 and under section 161 of the Indian Penal Code by recording special reasons thereof.

9. On the other-hand, Ms. H.B. Punani, learned APP has supported the judgment rendered by learned trial Court. She submitted that this is a fit case wherein learned trial Court has considered voluminous evidence in its proper perspective and rightly convicted the accused which calls for no interference. She further submitted that finding recorded by learned trial Court is based upon the concrete and clinching evidence. She submitted that learned trial Court has recorded ample reasons based on the evidence on record for convicting the appellant and ingredients as regards to demand, acceptance and recovery are proved in accordance with law and, therefore, this Court may dismiss the present appeals.

10. This Court has heard Mr. Adil Mehta, learned advocate for original accused No.2, Mr. Mishra, learned advocate for original accused No.1 and Ms. Punani, learned APP for the State.

11. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book.

12. As per the prosecution version, prior to 28.7.1987, accused No.1 Khemabhai Dalabhai Singada, PSI, demanded and accepted illegal gratification of Rs. 4000/- from complainant - Arjanbhai Savjibhai Patel and thereby he has committed the offence punishable under section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act 1947 and section 161 of Indian Penal Code, whereas accused No.2 - Bhupatsinh Shivsindh Waghela, as an advocate of the complainant has also demanded and accepted Rs. 4000/- as abettor of said Khemabhai Dalabhai Singada - accused No.1 and thereby demanded and accepted and in fact, caught red handed and thus, committed the offence under section 165-A of Indian Penal Code.

13. PW 1 - Arjanbhai Savjibhai Patel has been examined at Exh.27. The witness has deposed that he is resident of Signal Campa and having agricultural land; he had three brothers. On 20.7.1987, one bull was found to be dead and hence on 22.7.1987, PSI Mr. Singada came to his house at about 10.30 am and he was informed that there was complaint against him that he has killed bull by using fire arm and, therefore he is required to be interrogated and he was directed to come to the police station along with his brothers. The witness has deposed that he went to the police station and he was enlarged on personal surety on that day and thereafter on 23.7.1987, while he was proceeding to the police station, he met with Mohanbhai and requested him to make arrangement for getting bail as well as for engaging lawyer and then, he went to the police station. The witness has deposed that while he was in the police station, at that time, said Mohanbhai and Chhaganbhai came along with advocate Mr. Waghela and they were taken into the chamber of PSI Mr. Singada and at that time, PSI Mr. Singada inquired about fire arm and also directed to produce the same and thereafter on

24.7.1987, the witness has gone to the police station along with Devshibhai, Jethabhai, Mohanbhai and Chhaganbhai, at that time, his lawyer Mr. Waghela was present and inquired as regards to the presence of all his brothers. The witness has deposed that thereafter said Mr. Waghela went into the chamber of PSI Mr. Singada and informed him that as the case against them is serious involving fire arm and hence, the PSI has directed to take remand, but to avoid remand, the PSI has demanded Rs. 10,000/-, to which, the complainant has said that he has no money and, therefore, again Mr. Waghela went into the chamber of Mr. Singada and came out with the figure of Rs. 6000/-, then again, the witness said that he has no money of Rs. 6000/- and hence, Mr. Waghela again went into the chamber of PSI and thereafter he again came out and told the witness to pay Rs. 4000/- as illegal gratification. The witness has deposed that thereafter the witness also went into the chamber of PSI along with advocate Mr. Waghela on 24.7.1987, at that time, the PSI was sitting on his chair and he requested that due to drought situation, he is not able to pay Rs. 4000/-, to which, the PSI told that less than Rs. 4000/- will not be received, otherwise, the witness would be taken on remand. The witness has deposed that as he was not inclined to give the amount of bribe, he approached the office of ACB at Himatnagar on 27.7.1987 and his complaint came to be recorded by Mr. M.D. Bhatt at Mark 26/1. The witness has deposed that he was called by Mr. M.D. Bhatt on 28.7.1987 at about 8.00 hours in the morning with Rs. 4000/-, the amount to be given towards illegal gratification and hence, he reached at the ACB office on that day with Rs. 4000/-. The witness has deposed that thereafter necessary procedure for carrying out the raid was followed, drawn the panchnama and noted the numbers of the tainted currency notes in the preliminary panchnama and thereafter the complainant along with the members of the raiding party reached at the police station as agreed. The witness has deposed that he met with advocate Mr. Waghela at the police chocky and asked him to get him released on bail and hence, advocate Mr. Waghela went into the chamber of PSI and then came out; in the meantime, PSI Mr. Singada came out. The witness has deposed that it is told by Mr. Waghela that complaint is lodged against four brothers wherein the name of the complainant is to be entered. In the meantime, PSI Mr. Singada came out and hence Nanjibhai talked to PSI Mr. Singada and asked him to scale down the amount of Rs. 4000/-. In turn, PSI Mr. Singada stated that the amount will not be scaled down and give the said amount to the advocate and then he went out. The witness has deposed that thereafter the witness requested Mr. Waghela, but Mr. Waghela told that the said amount is to be given to Mr. Singada, at that time, the witness asked regarding the fees of advocate Mr. Waghela, to which, Mr. Waghela told that there may not be any question if it is given by two persons and then Mr. Waghela went out. The witness has deposed that thereafter Mr. Waghela told the complainant to give the amount as said by the PSI and then he took the witness to the back side of the room of the PSI and Constable where the complainant and the panchas were present; at that time, Mr. Waghela told to give amount as stated by PSI. The witness has taken out the money from his pocket by his right hands and given it

to advocate Mr. Waghela. The witness has deposed that advocate Mr. Waghela counted the same twice and it was Rs. 4000/- and then Mr. Waghela put the said amount in the left side pocket by his left hand; thereafter, the witness along with the panch and then advocate came out, at that time, the advocate also asked to give Rs. 50/- each to the driver of the jeep and the constable, i.e. total Rs. 150/- was directed to be paid. The witness has deposed that thereafter the witness raised alarm and hence, the members of the raiding party arrived; at that time, Mr. M.D. Bhatt arrived near the witness and asked him as to whom the amount was given and thereafter he was called in the chamber of the PSI and also called the advocate in the chamber. The witness has deposed that thereafter all were gathered near the chamber and the person having the lamp was called and then Mr. Bhatt taken out the money from the advocate and that the test of ultra violate lamp on the advocate was found to be positive. The witness has also identified advocate Mr. Waghela and PSI Mr. Singada. In the cross examination, the witness has admitted that there was no dispute with PSI, Mr. Singada regarding the role of his relatives in the riot and at that time, he has not given threat to PSI Mr. Singada. The witness has admitted that he has not talked with PSI Mr. Singada on 22nd at Khedbrahma Police Station or when he went to the police chokey on 22nd in the evening, PSI Mr. Singada was not there. The witness has admitted that his statement regarding the incident was recorded by the police on 30.7.1987 and thereafter his further statements were recorded on 25.1.1988 and 3.8.1988. The witness has admitted that on 24th Mr. Waghela went in the chamber of the PSI and then came out and talked with the witness and that before Mr. Waghela talked with the witness regarding Rs. 4000/-, the PSI went in his room. The witness has admitted that he has talked with Devsibhai regarding filing of the complaint or not and the witness was aware that the complaint can be filed against the PSI for demanding the bribe amount. The witness has admitted that after filing of the complaint, he stayed upto fifteen minutes in the ACB office, at that time, Mr. M.D. Bhatt was present in the ACB office. The witness has admitted that PSI Mr. Singada has told him to come on the following day as the case papers of his case were with the constable who was not present on that day. The witness has admitted that when the witness went on the back side of the room, at that time, Mr. Waghela told him to give money as stated by the PSI and the witness has specifically admitted that this has happened. The witness has admitted that at the time of raid, he was having Rs. 4000/- with him and not any more amount and the said fact was within the knowledge of the members of the raiding party. The witness has admitted that he went to lodge the complaint in the ACB office and then the panchas have arrived in the ACB office. The witness has admitted that he was not aware whether Mr. Singada would demand and accept the amount through other constable or any other person but after the raid, he came to know that Mr. Singada would accept the amount through other person. The witness has admitted that at the time of raid, one panch was with him and another panch was standing at the distance of fifteen feet.

14. PW 2 - Jayantibhai Joitaram Chauhan has been examined at Exh.28. The witness has deposed that he is serving in the government department and he was instructed by the R.D.C. to appear as panch in the ACB office and another panch was Amrutbhai Maganbhai Khant. The witness has deposed that both the panchas together reached in the ACB office, Himatnagar on 28th at 8.00 hours in the morning where other personnel including Mr. Bhatt of the office of ACB were present. The witness has stated that the identification of the complainant was made with him and the complainant has told the entire facts orally and thereafter the complaint was read over to him. The witness has stated that the amount of Rs. 4000/- was presented by the complainant and its numbers were noted in the preliminary panchnama in his presence. The witness has stated that thereafter the said currency notes were shown in ultra violet lamp but no change in the said currency notes was noticed and then it were shown by applying anthracene powder wherein change was noticed in ultra violet lamp. The witness has stated that thereafter personal search of the complainant was made by Mr. Bhatt and then as per the instructions of Mr. Bhatt, Arvindkumar placed tainted currency notes in the pocket of the complainant. The witness has stated that thereafter the complainant was instructed to raise alarm at the time of acceptance of tainted currency note and panch No.1 was instructed to accompany with the complainant, to hear and see the transaction between the complainant and the accused person and the witness was instructed to remain as panch no.2 with the ACB party and to watch near the Khedbrahma Police Station. The witness has deposed that thereafter both the panchas, complainant and the personnel of the ACB office went to Khedbrahma and on reaching at the police station, all the persons have resumed their act as advised. The witness has deposed that the complainant has told to Mr. Bhatt that it is stated by Mr. Singada to give the amount of Rs. 4000/- as agreed to advocate Mr. Waghela. The witness has deposed that when the complainant and panch No.1 went in the compound of the police station, at that time, advocate Mr. Waghela was standing near the police vehicle where Panch No.1 and the complainant met Mr. Waghela; they discussed with each other and then Mr. Waghela went into police station and accordingly, they also went behind him. The witness has deposed that thereafter the complainant raised alarm and hence, Panch No.2 and members of the raiding party arrived there and then the accused were caught red handed. The witness has deposed that hands and clothes of Mr. Waghela were examined in ultra violet lamp which were found to be positive. The witness has deposed that the numbers of tainted currency notes were tallied with the numbers written in the preliminary panchnama and then the said tainted currency notes were recovered by Mr. Bhatt. The witness has deposed that the said tainted currency notes were recovered from the left side pocket of the pant of Mr. Waghela and the witness has also identified the said pant of Mr. Waghela. The witness has deposed that thereafter necessary panchnama was also drawn at Mark 26/2 wherein he identified his signature. In the cross examination, the witness has admitted that till the raid was carried out, he was with Mr. Bhatt and that the complainant and panch No.1 went in the police station and then came out. The witness has

admitted that till the completion of the panchnama Mr. Singada was present in the police station and Mr. Waghela went out as his pant was to be recovered. The witness has admitted that till the other part of the panchnama was completed, the witness, panch No.1 and Mr. Bhatt have not gone outside the room of Mr. Singada.

15. PW 3 - Nanjibhai Karsanbhai Patel has been examined at Exh.30. The witness has deposed that the complainant was residing at Signal Campa and he is his relative; as per the request of the said complainant, the witness has visited the police station as surety. At that time, the complainant, his brothers Valjibhai, Devshibhai, another brother and his advocate Mr. Waghela were present at Khedbrahma Police Station. The witness has deposed that advocate Waghela told that Rs. 4000/- will have to be paid to PSI, at that time, the complainant was requesting for reducing the said amount, to which, advocate Mr. Waghela told that it would not be possible as that fact has become final with PSI but he would reduce his fees and not Rs. 4000/-. The witness has deposed that when the said talk was going on, at that time, PSI came out from his chamber and told them that whatever they want to do, do it with the lawyer Mr. Waghela and thereafter, he sat on his jeep and went out from the police station and they were waiting for arrival of the constable. The witness has deposed that thereafter the PSI came to the police station and on his arrival, advocate Mr. Waghela went into his chamber and thereafter called the witness to give money and his case would be finished tomorrow and they will not be taken into custody. The witness has deposed that it was further told that as the case is registered against four brothers, names of three brothers would be removed and thereafter the complainant and one another person who accompanied him gone back side of the police station and handed over money and thereafter came on the front side, at that time, other members of the raiding party arrived there and entire team gone into the chamber of the PSI. The witness has deposed that the PSI and advocate Mr. Waghela were found there and they were caught red handed and then carried out rest of the procedure. The witness has also identified accused Mr. Waghela and Mr. Singada, PSI before learned trial Court. In his cross examination on behalf of both the accused, nothing worth has come out.

16. PW 4 - Mohanbhai Savjibhai Patel has been examined at Exh.31. The witness has deposed that he got married with the daughter of Jethabhai, resident of Signal Campa and the complainant requested him on 23.7.1987 for engaging lawyer. The witness has deposed that on the same day, he went to the police station and engaged Mr. Waghela as the lawyer of the complainant. The witness has deposed that on the same day, Mr. Waghela visited PSI Mr. Singada and appraised him that as the case is of killing animal, the presence of our brothers would be required tomorrow; on the following day, the witness had gone to the police station along with surety Mr. Chhaganbhai and met the complainant as well as his advocate Mr. Waghela. The witness has deposed that on the same day, he met to the PSI who appraised him that all the four persons were required to be remanded and also directed to produce fire arm, to which, the complainant

said that he did not have such firm arm and he did not kill any animal. The witness has deposed that therefore Mr. Waghela told that if they want to avoid remand, then they would have to pay Rs. 10,000/- as illegal gratification to the PSI, at that time, they requested to reduce the same and hence Mr. Waghela went in the chamber of the PSI twice and the amount was scaled down to Rs. 4000/- and they were directed to come along with the amount on 28.7.1987. The witness has also identified Mr. Waghela in the court. In the cross examination, the witness has admitted that he has never accompanied advocate Mr. Waghela in the chamber of PSI Mr. Singada, except this, nothing worth has come out in the cross examination of this witness.

17. PW 5 - Alkhaji Dalaji has been examined at Exh.33. The witness has deposed that he was serving in Khedbrahma Police Station as First Grade Jamadar and the complaint was recorded in the police station as CR No.77 of 1987 for the offence punishable under section 429 read with section 114 of IPC against accused Arjanbhai, Jethabhai, Devjibhai and Laljibhai and he was investigating the said offence. The witness has deposed that the said complaint was lodged by Jasaji Chandaji; he carried out the panchnama as well as also obtained medical opinion from Veterinary Doctor who opined that bull died due to firing. The witness has deposed that on 21.7.1987, he appraised the PSI as regards to death of bull by firing, he also visited the place of incident on 21.7.1987 and inquired about the accused wherein accused Arjanbhai was found. The witness has deposed that on that day, he was taken to the police station. In the cross examination, the witness has admitted that the PSI has also visited the place of incident on 22.7.1987 and advocate Mr. Waghela is practising before the Executive Magistrate.

18. PW 6 - Maheshchandra Dinkarra Bhatt has been examined at Exh.35. The witness has deposed that he was serving as Police Inspector, ACB, Himatnagar on 27.7.1987. The witness has deposed that complainant - Arjanbhai Savjibhai Patel met him wherein the complainant disclosed the facts of the complaint and accordingly, the complaint at Exh.36 came to be recorded in the presence of the witness. The witness has deposed that therefore written yadi was sent to the Collector, Sabarkantha for arrangement of panchas and then on 28.7.1987, the members of the raiding party, complainant and panchas gathered at the ACB office, Himatnagar. The witness has deposed that thereafter necessary procedure for carrying out the raid was followed and necessary instructions were given to the panchas. The witness has deposed that necessary panchnama for the proceedings of raid was drawn at Exh.29 between 8.00 hours and 9.30 hours in the ACB office at Himatnagar and then, the complainant, panchas and the members of the raiding party proceeded for carrying out raid at Khedbrahma Police Station. The witness has deposed that on the appointed date and time, the raid was carried out and the accused were caught red handed and then test of ultra violate lamp carried out on the accused as well as complainant was found to be positive. The witness has deposed that tainted currency notes were recovered from accused No.2 - Mr. Waghela and his pant was also recovered and also

drawn the panchnama. The witness has also identified the muddamal pant and the signature on the panchnama at Exh.29. The witness has also identified the accused persons. The witness has deposed that he has recorded the statement of the complainant on 30.7.1987 as well as the statements of other persons. In the cross examination, the witness has admitted that it is recorded by the complainant in his complaint that Mr. Singada has refused to receive the amount less than Rs. 4000/- as stated by Mr. Waghela. The witness has admitted that it was recorded that Mr. Singada has stated that Rs. 4000/- be given to the advocate who is present as agreed. The witness has admitted that the complaint was recorded by the complainant on 27.7.1987 in the ACB office, Himatnagar and on the basis of the said complaint, trap was arranged on 28.7.1987 and hence the offence of bribe was occurred at 13.05 hours. The witness has admitted that he entered in the chamber of the PSI along with Mr. Waghela, at that time, as per his instructions, the amount was recovered from Mr. Waghela through panch where the complainant was also present.

19. PW 7 - Jashwantsinh Kachrasinh Chavda has been examined at Exh.42. The witness has deposed that he was serving as Police Inspector, ACB, Himatnagar and he took over investigation on 8.11.1987. The witness has deposed that he recorded the statement of Vaghjibhai Shavjibhai, further statement of the complainant as well as the statement of witness Indrasinh. The witness has deposed that he has also obtained sanction from the competent authority and also recorded statements of other witnesses and filed the charge-sheet.

20. The defence has not examined any witness. However, in the statement under section 313 of the Criminal Procedure Code 1973, accused No.1 - Khemabhai Dalabhai Singada, PSI has explained that he has been wrongly implicated in the crime in question by witness Nanjibhai Kachrabhai as he as well as his brothers were involved in the agitation in 1987, whereas accused No.2 - Bhupatsinh Shivsindh Waghela has explained in his statement under section 313 of the Criminal Procedure Code 1973 that prior to 28.7.1987, he never met the complainant as well as other witnesses as alleged and on 28.7.1987 one Chhaganbhai Valjibhai engaged him as lawyer for getting bail, due to which, he accompanied him to the police station, at that time, one person tried him to deliver something, but he has pushed him so far. The accused No.2 further explained that investigation carried out by Police Inspector Mr. Bhatt is prejudicial one and witness - Nanjibhai Kachrabhai has wrongly implicated him in the crime in question.

21. At this stage, it would be fruitful to make reference to the decision of the Honourable Apex Court in A. Subair v. State of Kerala, (2009) 6 SCC 587 : (2009 AIR SCW 3994), while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification,

which are vital ingredients necessary to be proved to record a conviction.

22. In *State of Kerala and another v. C.P. Rao* (2011) 6 SCC 450 : (AIR 2012 SC (Supp) 393), the Honourable Apex Court reiterating its earlier dictum, vis-a-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

23. In a recent enunciation by the Honourable Apex Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in *B. Jayraj* (AIR 2014 SC (Supp) 1837) (*supra*) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

24. In the present case, this Court is required to scrutinize the evidence to ascertain whether there is proper, reliable and cogent evidence beyond reasonable doubt to confirm the judgment and sentence awarded by learned trial Court. If there is no such evidence on record, in that event, the conviction cannot be sustained as the onus lies on the prosecution to prove its case beyond reasonable doubt.

25. In the backdrop of the aforesaid factual as well as legal position, this Court has minutely gone through the impugned judgment and order as well as the depositions of the witnesses in light of the rival submissions made by learned advocates for both the sides.

26. In corruption cases, as laid down in the series of judgments by the Honourable Apex Court as well as by this Court, three vital ingredients are required to be established by the prosecution beyond reasonable doubt in order to prove the offence as alleged. In the present case, the prosecution has examined about seven witnesses and out of the said seven witnesses, PW 1, PW 3 and PW 4 are witnesses who have witnessed the incident as regards to demand as well as scaling down illegal gratification from Rs. 10,000/- to Rs. 4,000/- as

well as to how the amount of illegal gratification has to be paid to advocate Mr. Waghela - accused No.2. On overall analysis of the evidence of aforesaid three witnesses, it clearly emerging out not only from their examination-in-chief, but on conjoint reading of their cross examination, the presence of all the three witnesses are being established on various dates when pre-demand of Rs. 10,000/- came to be raised and the same was scaled down to Rs. 4000/-. Not only that, but the said witnesses have witnessed the incident as to how advocate Mr. Waghela - accused No.2 has requested to scale down the amount to Rs. 4000/- and thereafter also, accused No.2 has specifically told that accused No.1 is not ready by any means to further scale down the amount from Rs. 4000/-, however, ultimately accused No.2 has shown his willingness to reduce his fees, but not the demand of Rs. 4000/- as illegal gratification. On appreciation of their evidence, this Court finds that all the three witnesses have given the evidence in natural course and that their presence, pre-demand, actual demand on the day of trap, as to how the accused came to be caught red handed and as to how the amount of illegal gratification came to be recovered from the person of accused No.2 from the chamber of accused No.1 have been established in their cross examination. Under the circumstances, this Court is of the considered opinion that the said evidence of the aforesaid three witnesses is decisive evidence as regards to pre-demand, scaling down the amount of illegal gratification as well as acceptance on the day of trap itself. Even it is also established from their evidence that at the time of recovery of the aforesaid amount of illegal gratification, test of ultra violate lamp was found to be positive so far as the hands as well as pant of accused No.2 and the hands of the complainant are concerned. Further, numbers of tainted currency notes have also been tallied with the numbers noted down in the preliminary panchnama.

27. Learned advocates for the accused have vehemently contended that as the panch No.1 who was accompanied had not been examined as he died prior to recording his evidence and, therefore, the evidence as regards to predemand as well as demand is not getting corroboration from the evidence of other witnesses but the said contention is not acceptable as the fact as regards to pre-demand raised and proceeded for scaling down from Rs. 10,000/- to Rs. 4,000/- by accused No.2 - is also getting corroboration from the evidence of PW 2 and PW 3 on material particulars as the entire incident as regards to demand was made on the day of trap in their presence. In this view of the matter, the evidence of PW 2 and PW 3 is totally consistent and getting corroboration with the evidence of the complainant as well as the fact which came to be narrated before Police Inspector Mr. Bhatt in the nature of complaint. In view of the aforesaid nature of evidence, the factum regarding predemand, scaling down of illegal gratification to Rs. 4000/- from Rs. 10,000/- as well as the presence of the witnesses is being established by the defence itself.

28. As stated above, this Court has minutely examined the evidence of the witnesses and the evidence of the witnesses has been read over in the presence of learned advocates for the parties and on overall analysis of their evidence, it

leaves no manner of doubt of constituting vital ingredients as regards to demand, acceptance and recovery. Under the circumstances, this Court is in complete agreement with the finding recorded by learned trial Court and hence, this Court finds that the finding as well as conviction recorded by learned trial Court are in accordance with the evidence available on record which calls for no interference by this Court.

29. As noted above, it is the alternative arguments of Mr. Mehta and Mr. Mishra, learned advocates for accused Nos.1 and 2 that taking into consideration the time gap of more than 30 years as well as the current age of accused Nos.1 and 2 is 70 years and 69 years respectively and that the accused have faced the proceedings before various Courts and departmental proceedings, sentence awarded by learned trial Court is harsh which is required to be reduced as such. In support of his submission, Mr. Mehta has placed reliance on the decision of the Honourable Apex Court in the case of D. Srinivasan and others v. Delhi Special Police Establishment and others, reported in 1993 SCC (Cri) 792 wherein, the Honourable Apex Court has observed in paragraph 6 as under.

"6. The occurrence is said to have taken place in the year 1969. Now nearly twenty-three years have elapsed. All the appellants must have become very old and the learned counsel says that some of them may have died but not able to give the names as such but he is definite that A-1 has died. The appellants have undergone the ordeal of trial for a number of years and convictions have been hanging on their heads for all these years and they have also lost their jobs and they have large families dependent upon them. In such circumstances the Court can award lesser sentence than one year which is the maximum sentence under Section 5(2) of the Prevention of Corruption Act. The section as it stood in the year 1961 lays down that the Court for any special reason recorded can impose a sentence of imprisonment of less than one year. The circumstances pointed out above do warrant that a lesser sentence should be imposed. From the records we find that the appellants were in jail for some time and in these circumstances we confirm their convictions and reduce the sentence under each charge to the period already undergone. The sentences of fine in respect of A-1 in Criminal Appeal No.748 of 1980 D. Srinivasan, A-4 in Criminal Appeal No.617 of 1980 Sandanaswamy and A-7 in Criminal Appeal No.592 of 1980 A.R.M. Perumal Chettiar are confirmed with default clause."

30. Section 165-A of IPC provides for punishment for abetment of offences defined in section 161 of section 165 whereby the offence of abetment is made punishable with imprisonment of either description for a term which may extend to three years or with fine or with both. Section 161 of IPC provides punishment with imprisonment of either description for a term which may extend to three years or with fine or with both. However, section 5 of the Prevention of Corruption Act 1947 provides for punishment with imprisonment of term which shall not be less than one years but which may extend to seven years and shall also be liable to fine. But, the proviso to the said section provides that the court

may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

31. This Court has considered the submissions made by learned advocates for both the sides in light of the provisions of law and also gone through above referred decision of the Honourable Apex Court. The fact that the case against the accused is proved beyond reasonable doubt and is found to be culprit so far as bribe is concerned, but taking into consideration the time lag in between the date of offence and dictating this judgment, i.e. today, around more than 30 years have passed, the age of the accused, and that the accused have faced the proceedings before various Courts and having health problems as argued by Mr. Mehta and Mr. Mishra, learned advocates for accused Nos.1 and 2, as stated above, but when the accused is found to be offender, reasonable sentence is also required to be inflicted upon them. In this view of the matter, taking into consideration the facts and circumstances of the case as well as considering the decision of the Honourable Apex Court in D. Srinivasan and others (supra), this Court is of the considered opinion to reduce the sentence imposed upon the accused to meet with the ends of justice.

32. In view of the above discussion, the following final order is passed.

33. Criminal Appeal No.1278 of 1992 filed by appellant accused - Bhupatsinh Shivsindh Waghela is partly allowed and the impugned judgment and order dated 30.11.1992 passed by learned Special Judge, Sabarkantha @ Himmatnagar in Special Case No.1 of 1989 is modified to the extent that instead of rigorous sentence of imprisonment for three months for the offence under section 165-A of IPC, the appellant accused shall undergo the sentence of rigorous imprisonment for 1 and 1/2 months. Rest of the impugned judgment is not disturbed.

34. Criminal Appeal No.43 of 1993 filed by the appellant accused - Khemabhai Dalabhai Singada is partly allowed and the impugned judgment and order dated 30.11.1992 passed by learned Special Judge, Sabarkantha @ Himmatnagar in Special Case No.1 of 1989 is modified to the extent that instead of rigorous sentence of imprisonment for one year for the offence under section 5(1)(d) and section 5(2) of the Prevention of Corruption Act, the appellant accused shall undergo the sentence of rigorous imprisonment for six months, and instead of rigorous sentence of imprisonment for one year for the offence under section 161 of IPC, the appellant accused shall undergo the sentence of rigorous imprisonment for six months. Rest of the impugned judgment is not disturbed.

35. Both the aforesaid appellants accused are ordered to surrender to custody within a period of twelve weeks from today for undergoing the remainder sentence, if they have not undergone so far, failing which the investigating agency shall be at liberty to take necessary action in accordance with law. The impugned judgment and order stands modified accordingly. Bail bond, if any, stands cancelled.

36. R and P be sent back to the trial Court, forthwith.