

(1985) 07 KL CK 0001
In the High Court Of Kerala
Case No : Criminal A. No. 165 of 1952

C.S. Raman Mannadiar

APPELLANT

Vs

Dy Supdt of Police and Another

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114, 133
Penal Code, 1860 (IPC) — Section 114, 161, 165, 165A
Prevention of Corruption Act, 1988 — Section 4, 4(1), 5, 5(1)(d), 5(2)

Citation : (1985) KLJ 982

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : Chandrasekharan and Chandrasekhara Menon, for the Appellant;

Final Decision : Dismissed

Judgement

1. Accused in C.C. 8/81 before the Special Judge, Trichur, is the appellant. He was charge-sheeted for having committed offences punishable under S. 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act and S. 161 of the Indian Penal Code. The Special Judge found him guilty under both the counts. For the offence under S. 5(2) read with S 5(1)(d) of the Prevention of Corruption Act, he was sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs. 250/- and in default of payment of fine to undergo a further period of rigorous imprisonment for two months For the offence under S. 161 of the Indian Penal Code, the sentence awarded was rigorous imprisonment for one year. Both the terms of substantive imprisonment were directed to be undergone concurrently. The appellant is an Assistant Engineer, who was on deputation to the N.E.S. Block Office, Nenmara. The prosecution case is as follows. The wife of Pw. 1 applied for a loan of Rs. 5.000/- to the N.E.S. Block, Nenmara, for the construction of a residential building. Ext. P1 is the file relating to it and Ext. P1(a) is the loan application dated 6-11-1979. The loan was sanctioned. First instalment of Rs 1,000/- was ordered to be paid. The case of PW. 1 is that on

behalf of his wife, he had to pay Rs. 50/- as bribe to the Overseer attached to the same office for getting the amount. Subsequently, second instalment fell due. As a condition precedent to getting the 2nd instalment the wife of Pw. 1 had to produce a certificate of utilisation of the 1st instalment received by her. Ext. P1(b) is the utilisation certificate issued by the appellant in this connection. The version of Pw. 1 is that the appellant demanded an amount of Rs. 100/- as bribe and actually Rs. 90/- was given for procuring Ext. P1(b). Then early in 1980, the last instalment of Rs. 1,500/- fell due. For getting the last instalment the applicant had to produce another certificate of utilisation showing that the 2nd instalment was utilised for the construction. Ext. P1(c) is the notice received by the applicant in this connection from the N.E.S. Block Office. Ext. D1 is the postal envelope in which Ext. P1(c) was received. In Ext. P1(c), the applicant was informed that she should collect the last instalment after production of the utilisation certificate.

2. The case of PW. 1 was that when he approached the appellant for getting the utilisation certificate, he demanded Rs. 60/- as bribe. Therefore, on 20-2-1980 PW. 1 went to the office of PW. 7 (Dy. S.P. Vigilance, Palghat) and lodged Ext. P2. After recording Ext. P2 first information statement from PW. 1. PW. 7 drew up Ext. P3 mahazar in relation to six ten rupee notes (M O. 1 series) produced by PW. 1. PW 7 arranged a trap. The notes given by PW. 1 were smeared with phenolphthalein powder and after noting the details in Ex, P3, they were given back to PW 1. with instructions to give the amount to the appellant in case of further demand. Ext P3 mahazar was prepared in the presence of witnesses including Pw. 3. Preparation of Ext. P3 was at 1 p.m. on 20-2-1980. At about 3.30 p.m. on the same day, the police party led by Pw 7 consisting of Pws 1, 2 and 5 and others proceeded to the N.E.S. Block Office. The vehicle was stopped at a distance and Pws 1 and 5 were directed to go ahead. Pws. 1 and 5 (Pw. 5 is a police constable) were given instructions to give information by signals The instruction given to Pw. 1 was that as soon as the bribe is offered and accepted he should give signal to Pw 5 by snuffing. The further instruction to Pw. 5 was that on getting signal from Pw. 1 he should give a further signal to Pw. 7 by removing his spectacle. Pw. 1 paid M O. 1 series to the appellant inside the room and gave the signal to Pw. 5. Pw. 5 in turn gave the signal to Pw. 7 and the police party entered the room of the appellant. The Overseer was also inside the room. Pw 7 asked the appellant whether he received the amount. Mean-while, Pw. 1 told him that the amount was already paid. By the time Pw. 4, an employee of the N.E.S. Block Office, came to the room. Pw 7 tested the right palm of the appellant by applying sodium carbonate solution and the result was positive. Thereafter Pw 4 was asked to search the pocket of the shirt worn by the appellant. From the pocket, Pw. 4 took out two bundle of notes. One bundle was M.O. 1 series. The other bundle consisted of currency notes to the tune of Rs. 37/- and they are M.O. 2 series M.O. 1 series and the pocket of the shirt worn by the appellant yielded positive result to sodium carbonate solution test. Thereafter Pw. 7 prepared Ext. P5 mahazar and seized Ext. P1 file. Pws 2 and 4 are the

attestors to Ext. P5 mahazar Ext. P7 is the mahazar on the basis of which Ext. P1 file was taken to custody. Pw. 4 is an attessor to Ext P7 also. Under Ext. P7, Pw. 7 seized Ext. P6 certificate also. Ext P6 is the incomplete utilisation certificate, the preparation of which was started by the appellant, immediately after receipt of the bribe. Ext P8 sanction for prosecution was obtained and it was proved by Pw. 6. After completing investigation Pw. 7 laid the charge.

3. Pws. 1 to 7 are the witnesses and Exts. P1 to P10 are the documents on the side of the prosecution. There is no defence witness Ext. D1 is the only defence document. M.O. 1 series to M.O. 4 series are the material objects.

4. In the nature of the charge the facts to be proved by the prosecution are: (1) Demand of Rs. 60/- by the appellant as motive or reward for doing an official act of issuing the utilisation certificate, (2) receipt of the bribe, and (3) recovery from the person of the appellant the amount of Rs. 60/- so received. Appellant denies demand, receipt as well as recovery. It is admitted that during the relevant period, the wife of Pw. 1 was in need of a utilisation certificate from the appellant for the purpose of drawing the last instalment of/loan. In his official capacity, the appellant was the person who had to issue the same. The certificate was not issued also. The developments involved in the case took place at a time when the wife of Pw. 1 was called upon by Ext. P1 (c) notice to produce the utilisation certificate and draw the amount. The stand taken by the appellant seems to be that though he never demanded bribe, Pw. 1 voluntarily went over to his room on 20-2-1980 and without his knowledge and consent placed six currency notes of ten rupee denomination in the pocket of his shirt which was kept hanging on a chair inside the room. The appellant must have been fully conscious of the fact that he may have to overcome ever so many tough hurdles before establishing such a defence. For that purpose he properly dealt with Pw. 1 himself and used his good offices to establish his case. In short, his plea is that he is the innocent victim of a trap purposely arranged by Pws. 1 and 7.

5. Even though the appellant contends that demand, acceptance and recovery are not proved by the prosecution evidence, my conviction on the basis of the evidence is otherwise. It is true that P, W. 1 turned hostile and did whatever is possible in his capacity to give evidence in order to establish all the defence available to the appellant. But the evidence of P.W. 1 shows that he was fully conscious of his limitations on account of Exts. P2 and P4. Therefore, even though unwillingly, he had to make some admissions which may go against the appellant. Ext. P2 is the first information statement given by P, W. 1 under Sec, 154 of the Code of Criminal Procedure and Ext, P4 is the statement given by him during investigation under Sec, 161. Ext. P2 could be used only for the purpose of corroborating the evidence of P.W. 1 and for contradicting him, Ext P4 could only be used for contradiction. I am going to analyse the evidence of P.W. 1 bearing in mind the above limitations I am conscious of the fact that Exts. P2 and P4 cannot be used as substantive pieces of evidence.

6. P.W. 1 is the person who set the law in motion. He gave Ext, P2 on the

allegation that his wife was not able to get the utilisation certificate for drawing the last instalment of loan on account of the insistence of the appellant that he will issue the certificate only on receipt of the traditional payment of Rs. 60/- As Pw. 1 he admitted that for the purpose of getting the utilisation certificate for withdrawing the 2nd instalment of loan, he had to pay Rs. 90/- to the appellant on his demand. He further admitted that for the last instalment also, the appellant demanded illicit gratification of Rs. 60/-, that he was unwilling to pay and that this is the reason why he approached Pw 7 on 20-2-1980 and gave Ext. P2 statement. He further said that the contents of Ext. P2 are fully correct. Thus in the box he admitted and corroborated the averments in Ext. P2 to the extent necessary for the prosecution. When he was specifically confronted with the statement in Ext. P2 that for the purpose of issuing the utilisation certificate in order to enable withdrawal of the last instalment also, the appellant demanded Rs. 60/- he admitted that statement also to be correct. At the same time in other portions of his deposition, he denied demand and receipt of bride by the appellant. He said he gave Ext. P2 complaint only because he learnt from others that the appellant will issue the utilisation certificate only if he is bribed. But that version does not appear to be correct because of his admission in the box as Pw. 1 itself that what is stated in Ext. P2 is correct and he gave the complaint only because the appellant demanded Rs. 60/- as a condition precedent for issuing the utilisation certificate. Ordinarily course of human conduct as stated in S. 114 of the Evidence Act shows that a simple information of the corrupt attitude of a person without a demand for bride will not ordinarily persuade a person to file a complaint and arrange a trap. Particularly on account of the attitude of PW. 1 in the box and his determined inclination to help the appellant, coupled with other facts and circumstances, I am of the view that the former version of PW 1 and not the latter one is correct. That version is probalised and established by the evidence and circumstances also.

7. After the introduction of Sec. 165-A of the Indian Penal Code by which abetment of offences punishable under S. 161 or 165 of the Indian Penal Code are also made punishable, ordinarily the position of such a witness may not be better than that of an accomplice. Rule of caution may require that in such cases before accepting the evidence of such a person, the courts will have to insist on corroboration. Further, it could be said that Pw. 9 had occasion to offer bribe to the appellant on a previous occasion also. In the box the behaviour of Pw. 1 was not that of an honest witness. In *Panlal v. State of Maharashtra* (AIR 1979 SC 1191) it was held:

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

But the above proposition cannot be taken as a uniform rule of application in all cases. According to Section 133 of the Evidence Act, which is a rule of law, an accomplice is competent to give evidence and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But illustration (b) to Section 114, which is a rule of practice or prudence, provides that it is almost always unsafe to enter a conviction upon the testimony/ of an accomplice alone without corroboration on material particulars because he is unworthy of credit. That is only because an accomplice who turns out to be an approver is one who has participated in the crime along with the accused and then came forward to give evidence. Where a rule of law or a rule of caution or prudence which got matured into a rule of law provide guidelines for acceptability, of evidence, Courts are bound to follow the rules uniformly. But where it is only a rule of practice, caution or prudence, the ultimate discretion is with the court and having due regard to the rule of caution and prudence, it will be within the competence of the court to accept or reject the evidence, depending upon the facts and circumstances of each case. There cannot be any uniform guidelines in the matter of acceptability of evidence applicable to all cases and under all conditions. In a given case where the rule of caution is applicable it will be within the judicial discretion of the court, to consider the facts and circumstances in deciding whether the evidence of a witness could be accepted and if so to what extent. Precedents cannot provide correct guidelines in all cases: So also it may be necessary for the courts to consider the facts and circumstances of each case whether a particular witness could be treated on a par with an accomplice or not. Even in the matter of considering the evidence of a hostile witness, courts must have the discretion to accept whatever portion found acceptable under the circumstances of a particular case. Witnesses may be declared hostile for several reasons some of which may not be genuine. It may happen that an honest witness may sometimes be declared hostile for the simple reason that on a particular point he appeared to have deviated from truth. That does not mean that his evidence will have to be discarded in toto as unreliable. Courts are having the discretion to act upon the acceptable portions with or without corroboration depending upon facts. In this case, it may not be strictly correct to say that the position of Pw. 1 is that of an accomplice. Ordinarily, the dual test has to be applied before accepting the testimony of an accomplice. In the first place, it will have to be considered whether he is trustworthy. Secondly corroboration of his evidence including his participation in the crime may become necessary from independent source. As held in *Lukose v. State of Kerala* (1967 KLT 968), there are two kinds of traps, "a legitimate" and an "illegitimate trap". The former is one where an offence has already been conceived and born by the accused demanding bribe. "Illegitimate trap" is one in which, even without a demand, on the belief that the accused is having the criminal tendency of receiving bribe, he is being tempted by the officer on the basis of the trap to receive the bribe. Such an act will be illegitimate unless authorised by some provision of law. But a "legitimate trap" stands on a different footing. In such a trap the informant is only helping the State in detecting a crime and bringing an

offender to justice. Actually he is not abetting commission of an offence. He only helps bringing to book; a person who has already declared his criminal tendency. It is the duty of the State to bring all offenders to justice and it is the duty of each and every citizen to help the state in the discharge of such a duty. By his actions the person is only doing a service to the society by giving previous information to the authorities concerned regarding the possibility of the commission of a crime. If his actions and intentions are bona fide there is nothing illegal and uncharitable in what he is doing. By that action itself he need not be treated as an accomplice and as such a person of unreliable character. Actually by the alleged payment on the basis of the trap he is not genuinely offering bribe. He is only leading his services for the purpose of collecting evidence which may not be otherwise possible. In this case the evidence and circumstances amply established demand and acceptance, of bribe by the appellant. There is nothing to show that Pw. 1 had any motive other than vindication of justice at the time when he gave Ext. P2 first information statement and co-operated with Pw. 7 for arranging the trap. Therefore, I am of opinion that to the extent probalised by the other evidence and circumstances, the testimony of PW. 1 could be accepted to the extent found acceptable. It is true that PW. 1 is a hostile witness. In the box he was not actually the person who gave Ext. P2 and co-operated with the investigating agency in arranging the trap. In the box he was rather a strange and changed individual. Evidently, he was tamed and made submissive by the appellant. Pw. 1 was giving his evidence cautiously under advise and he was all out to find out defences for the appellant. But in that attempt he had to blurt out truth occasionally. Such truth came out from him only where he could not help it. On other matters he was going out of the way even to establish defences for the appellant. He admits that the appellant demanded bribe and that he went to Pw 7 and gave Ext. P2 only on being aggrieved by that demand. That seems to be genuine also. He admitted having received M.O. 1 series notes from Pw. 7 smeared with phenolphthalein powder with instructions to pay the same to the appellant on demand. He also admitted having entered the room of the appellant and made the payment, though he would qualify that he only put the notes in the pocket of the shirt of the appellant which was hanging on the chair. The latter part of the statement appears to be with the object of helping the appellant. Anyhow he admitted that he was instructed by Pw. 7 to give a particular signal after making the payment. In fact he admitted having given such a signal. In this respect, his evidence is supported by the deposition of Pw. 5. It was after getting signal from Pw 1 that Pw. 5 gave signal to Pw. 7. The evidence of Pw. 1 supported by the testimonies of Pws. 2, 4, 5 and 7 show that on getting the signals Pw. 7 and his party went over to the room of the appellant. Even though Pw. 1 said that he did not pay the amount directly to the appellant but only placed the same in the pocket of the hanging shirt, the evidence of Pw. 2, 4 and 5 indicate otherwise. The evidence of these witnesses further show that Pw. 7 was informed by Pw. 1 of the actual payment to the appellant. Though Pw. 1 says that the shirt was taken and worn by the appellant only just before Pw. 7 and others entered the room, that version

does not appear to be correct or probable.

8. Barring the version of Pw. 1 and the faint statement given by the appellant when questioned under Sec. 313 of the Code of Criminal Procedure, there is nothing to show that at the time of receipt of money the appellant was not wearing the shirt. In this connection, I am not unaware of the evidence of Pw. 4 that during hot days the appellant used to sit in the office without wearing shirt. But Pw. 4 has not seen the appellant without shirt on the particular day. Probably, Pw. 4 was only giving a version to help his colleague to get out of the clutches of law. Regarding the fact of conscious receipt of bribe, the question whether the appellant was wearing the shirt or not at the relevant time is highly material. The appellant also must have been aware of this fact. That is the reason why he made Pws. 1 and 4 give such versions. Admittedly, the Overseer working under the appellant was in his room at that time. He could have been examined as a defence witness to prove that the appellant was sitting without his shirt and that the amount was placed by Pw. 1 in the pocket of the shirt in such a position without being known by the appellant. That was not done. Anyhow in order to establish the defence that the appellant was not wearing the shirt, he ought to have examined the Overseer who was present in the room. It was held in *Gajendra Singh Vs. State of U.P.*, that non-examination of the most essential witness to prove a vital defence version in a criminal case is the strongest possible circumstance to discredit the defence version.

9. All the circumstances indicate that the defence version is improbable and false. It has to be noted that the alleged payment and recovery were during office time. Appellant is an Assistant Engineer and everything took place inside his office. During office hours officers are expected and presumed to be decently dressed. It cannot be expected that an officer, especially of the status of an Assistant Engineer, will sit half-naked in his office during office hours. Such a contention is against the presumption under Sec. 114 of the Evidence Act also. Therefore, such a plea has to be specifically proved by positive evidence. Anyhow admittedly, when Pws. 2, 4, 5 and 7 entered the room appellant was wearing the shirt. M.O. 1 series notes were found in the pocket of the shirt. There is no acceptable evidence to find that the shirt was put on by him only at that time. It is clear that in this respect. Pw. 1 was purposely perjuring to help the appellant. Nothing prevents the acceptable portion of the evidence of Pw. 1, which is probalised by the other evidence and circumstances, being accepted and the other unacceptable portions being rejected. The mere fact that he is a hostile witness will not stand in the way of such acceptance. If actually the appellant did not demand bribe and if he was prepared to issue utilisation certificate without being bribed, it is against the ordinary course of human conduct to believe that a person like Pw. 1 will be bent upon thrusting bribe and that too without the knowledge and consent of the appellant. Bribe is being paid for the purpose of inducing officers to do some official favour. If it is given without the officer getting knowledge, the purpose itself is not achieved.

10. Anyhow, it is an admitted fact that till the time of payment of the bribe on 20-2-1980, preparation of the utilisation certificate was not begun. But immediately after the amount entered the pocket of the appellant, he started preparation of the utilisation certificate. The unfinished utilisation certificate (Ext. P6), which was at the stage of being prepared, was on the table of the appellant and Pw 7 was able to seize the same under the mahazar. This fact is amply proved by the evidence of Pws. 2, 4, 5 and 7, This is a clinching circumstance and it indicates conscious acceptance of bribe by the appellant, Admittedly, the currency notes were taken by Pw. 4 at the demand of Pw. 7 from the pocket of the shirt worn by the appellant. The notes yielded positive result to sodium carbonate test as stated by the above witnesses and corroborated by documents. It is proved beyond doubt that M O 1 series are the notes smeared with phenolphthalein powder by Pw. 7 and entrusted by him to Pw. 1. The prosecution case is that the notes were received by the appellant with his right hand and put in his pocket.

If actually the notes were put in his pocket without his knowledge, his hand need not be smeared with phenolphthalein powder. But his right hand yielded positive result to the sodium carbonate solution test, thereby indicating that he handled the notes with his right hand. Under these circumstances, it was too much for the appellant to come with a fairy tale and ask the Court to accept the same.

11. In this respect also Pw. 1 came with a cock and bull story to help the appellant. He said that as soon as he entered the room of the appellant he gave Ext. P1 (c) placed inside Ext. D1 cover and the appellant received the same and read Ext. P1 (c). He also said that M.O. 1 series was at first placed by him inside Ext. D1 cover and thereafter he took them out of the cover just by the time he entered the room of the appellant. But it has to be noted that he was just coming with the police party after giving Ext. P2 information to Pw. 7. At the time when Ext. P2 was given his case was that Exts. D1 and P1 (c) were not with him. At that time he had no reason to give a false version in that respect. If so, it is not known how Exts. D1 and P1 (c) came to his possession when he entered the room of the appellant. Anyhow the story that the smeared notes were put inside Ext. D1 was only intended to offer an explanation regarding presence of phenolphthalein powder in the hands of the appellant. Thus Pw. 1 has done whatever is possible to help the appellant. But in spite of his attempt, truth happened to come out of his evidence. Those pieces of truth are in conformity with the probabilities. They are corroborated largely by the evidence of other witnesses and the attendant circumstances also. It is true that Pw 1 is an unreliable witness. But still I do not find any reason to equate him with an accomplice. He is a witness who purposely turned hostile at the behest of the appellant. There cannot be any hard and fast rule regarding acceptability of the evidence of witnesses. Acceptability must depend upon the peculiar facts and circumstances of each case. Nothing prevents the court from accepting portions of the evidence of even a hostile and unreliable witness. I am of opinion that in the matter of demand and acceptance of bribe by the appellant, the evidence of

Pw. 1 corroborated by other evidence and probabilities could be accepted in the peculiar facts and circumstances of this case. Ext. DI envelope has been produced by the appellant as a strong item of evidence probalising his version. It appears that his version is that Ext. DI was inadvertently left by Pw. 1 inside the room and he was able to pick it up. I do not think that there is anything probalising such a version. On the other hand the evidence only shows that Ext. DI was not with Pw. 1 at that time. It could only have been given to the appellant by Pw. 1 subsequently in order to shape a defence.

12. Preparation of Ext. P3 mahazar and handing over of the marked and smeared notes by Pw. 7 to Pw. 1 has been spoken to by Pws. 1, 2 and 7. Arrangement of trap was spoken to by Pws. 1, 2, 5 and 7. Pw. 5 said that he waited outside and Pw. 1 went inside the room of the appellant. The fact that after payment of the amount by Pw. 1, he gave signal to Pw. 5 is clear from the depositions of Pws. 1 and 5. If actually the amount was not paid by Pw. 1 to the appellant the signal would not have been given. The evidence of Pws 2, 5 and 7 show that on getting the signal from Pw. 5, Pw. 7 and party came to the room of the appellant. Information conveyed by Pw 1 to Pw. 5 regarding payment of the amount to the appellant is clear from the evidence of Pws. 4, 5 and 7 supported by the evidence of Pw. 1. The story put forward by the appellant as to how the notes came to his pocket is highly artificial. It is far from convincing also, In the face of the evidence probabilities, the defence version has only to be rejected outright. Demand, receipt and recovery will have to be taken as proved.

13. The defence contention based on the decision in *Suraj Mal v State (Delhi Admit)* (AIR 1979 SC 1408), that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable, is not applicable to the facts of the present case. It may be true that without being supported by any other evidence and circumstances, mere recovery may not operate as proof. That may not create presumption under S. 4 of the Prevention of Corruption Act also. But we are dealing with a case in which there is acceptable evidence regarding demand, acceptance as well as recovery. In this case, apart from the evidence of Pw. 7, there is acceptable evidence on the above aspects. Even without such supporting evidence, the deposition of Pw. 7 is acceptable. He is an honest police officer who was discharging his duties fairly and properly. There is nothing to indicate that he had any ill-will or grudge towards the appellant. What is proved by evidence is that he was honestly discharging his duty of bringing an offender to justice on getting information from Pw 1. It was he who arranged the trap, gave the smeared notes, gave instructions to Pws. 1 and 5 and subsequently recovered the notes. He has spoken to all these formalities. He has also spoken to the fact that M.O. 1 series were inside the pocket of the appellant and they yielded positive result to sodium carbonate solution test when taken out of the pocket of the appellant and tested. The positive result of the right palm of the appellant to the sodium carbonate solution test was also spoken to by him. He has given evidence regarding all the

other formalities also. His evidence is ably supported by the depositions of other witnesses. Even without any other evidence, the deposition of Pw. 7 could have been sufficient to establish the guilt of the appellant. In *Hazari Lal Vs. State (Delhi Administration)*, it said:

Where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the Court may unhesitatingly accept the evidence of such an Officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance.

14. In this case it is proved beyond doubt that the appellant consciously demanded and received bribe. The marked and smeared notes were on the spot recovered from the pocket of the shirt worn by him, His contention that it was put in his pocket without his knowledge is evidently false. His hand, pocket and the notes yielded positive result to sodium carbonate test. The defence version is proved to be thoroughly false. In such a situation, the circumstances must be taken as speaking for themselves. They must be taken as leading to the only conclusion namely the guilt of the appellant. In *Man Singh Vs. The State of Haryana*, it was laid down:

Now the crucial question in this case is whether the appellant was wearing the shirt from which the currency notes, which were marked, were recovered. If the shirt was lying elsewhere the Special Judge might have legitimately taken the view which he did, but if the shirt was recovered from his person and the money was found therefrom, then clearly it was incumbent under the law on the appellant to show how he came into possession of that money. Even according to him that money did not belong to him and he never claimed that it had come from any other source except that it had been planted in the pocket of his shirt by Amar Singh. Pw. 1.

15. In this case also the appellant has no case that the money belonged to him. In fact his defence is as acceptance of the fact that M.O. 1 series are the notes which were found in his pocket. No acceptable explanation came from him as to how the notes came into his pocket. In such a situation, the presumption under S. 4 of the Prevention of Corruption, Act is also available. S. 4 of the Prevention of Corruption Act reads:

4. Presumption where public servant accepts gratification other than legal remuneration- (1) where in any trial of an offence punishable u/s 161 or section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause

(b) of sub-section (1) of section 5 of this Act punishable under sub-section (2) thereof it is proved that an accused person has accepted or obtained, or he is agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable u/s 165-A of the Indian Penal Code (Act XLV/1860) or under clause (ii) of sub-section (3) of section 5 of this Act it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-section, if the gratification or thing aforesaid is in its opinion, so trivial that no inference of corruption may fairly drawn.

16. It may be true that the presumption is not available for offences punishable under S 5(1)(d) of the Act. But evidently it is applicable to an offence under S. 161 of the Indian Penal Code. But in this case we need not confine ourselves to the presumption under Sec. 4 of the Prevention of Corruption Act alone. Regarding offer, acceptance and recovery, there is clinching evidence. In *The State of Assam Vs. Krishna Rao*, it was observed:

Where it is proved that a gratification has been accepted, the presumption under S. 4 of the Prevention of Corruption Act shall at once arise, It is a presumption of law and it is obligatory on the court to raise it in every case brought under Sec 4. The words "unless the contrary is proved" mean that the presumption raised by S. 4 has to be rebutted by proof and not by bare explanation which may be merely plausible. The required proof need not be such as is expected for sustaining a criminal conviction; it need only establish a high degree of probability.

Thus if moneys were recovered from the pocket of the two accused persons which were not their legal remuneration then there can be no further question of showing that these moneys had been consciously received by them.

17. *M.P. Gupta v. State of Rajasthan* (AIR 1974 SC 773) it was laid down:

If the prosecution proves the acceptance of the amount by the accused and the

amount does not represent legal remuneration in any form or of any kind, the presumption must be raised under the section and the accused must establish that the amount was not accepted by him as a motive or reward such as is mentioned in Section 161, Penal Code. The accused can establish his case by preponderance of probabilities, that is to say, he need not prove his case beyond a reasonable doubt.

It cannot be contended that the presumption u/s 4(1) can be raised only if the prosecution established in the first instance that the amount was paid otherwise than as legal remuneration. Such a contention is contrary to the clear terms of Section 4(1) and would render illusory the presumption arising under the section. To cast on the prosecution the burden of proving that the amount was accepted by the accused otherwise than by way of legal remuneration is to ask the prosecution to prove that the amount was paid and accepted by way of bribe.

18. The prosecution evidence discussed above, when taken along with the attendant circumstances, undisputably establish that in furtherance of the demand made by the appellant P.W. 1 made the payment and it was consciously accepted by the appellant. The recovery has clinched the issue beyond all doubts. This is a case in which the presumption u/s 4 of the Prevention of Corruption Act is squarely applicable. There is absolutely no acceptable evidence even by way of preponderance of probability in support of the defence version. That version is inherently of improbable and its falsity is patent from circumstances. Even without the aid of the presumption u/s 4 the prosecution evidence is sufficient to stand on its own legs to prove the guilt of the appellant beyond doubt. Ext. P8 is the sanction for prosecution. It was proved by P.W. 6. It was not argued before me that the sanction was not given by the competent authority or that it is not a valid sanction. Evidently sanction was given by competent authority after getting the necessary satisfaction. Prosecution has succeeded in establishing the guilt of the appellant beyond doubt on both the counts. The conviction under both the counts are fully justified by the evidence. The sentences awarded are not in any way disproportionate to the crime. Sentences were allowed to be undergone concurrently. The defence counsel had nothing to say regarding the sentence. Therefore, no interference is required in the sentence also.

The conviction and sentence are confirmed and the CrI. Appeal is dismissed.