

(2005) 07 BOM CK 0020
In the Bombay High Court
Case No : Criminal Appeal No. 155 of 2000

Dnyaneshwar Wankhede

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 114

Prevention of Corruption Act, 1947 — Section 20, 20(1), 4, 4(1), 7(1)

Citation : (2005) 07 BOM CK 0020

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : M.M. Sudame, for the Appellant; Y.B. Mandpe, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—The appellant herein who was convicted by the Special Judge, Wardha in Special Case No. 4 of 1996 by Judgment and order dated 12/5/2000 u/s 7(1) of the Prevention of Corruption Act and was sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs. 1,000/- in default sentence for two months Rigorous Imprisonment, is in appeal before this Court.

2. The complainant Madhukar Dhote lodged oral report to Anti Corruption Bureau, against the accused who was working as Head Constable in Police Station Karanja (Ghadge) in Wardha District. The complainant's grievance was that for refraining from taking action in relation to the complaint submitted by one Sudhakar Borkar's mother, the complainant had already paid to the accused bribe of Rs. 2000/-. According to complainant Madhukar Dhote the accused again demanded a sum of Rs. 1500/- for releasing complainant Madhukar and his servant on bail in another complaint filed by Dhanraj Mohod for causing injury due to assault to his cow out of which he had then paid on two occasions a sum of Rs. 100 and 200, however, now he was unwilling to pay balance demand of Rs. 1200/- and hence the complaint.

3. Upon this complaint all preparations namely, presentation of currency of a sum of Rs. 12000/- by the complainant panchanama etc. thereof, further panchanama thereof of those currency notes application of phenolphthalein Powder to the was completed. Efforts of successive raids failed, ultimately, after repeating the entire procedure on 22/8/1995, the procedure prior to raid was again undertaken.

4. The accused and the panch witness No. 1 namely Ashok Raghunathji Waghade went to the Police Station and then to the house of the accused, where the accused met the complainant and Ashok Waghade, and, enquired whether the complainant had brought money, but told them to come near Veterinary Hospital. The complainant and the Panch Witness No. 1 Ashok Waghade then kept waiting near Veterinary Hospital where, according to the complainant, the accused demanded the amount of bribe and it was paid to him by the complainant. The complainant then gave the decided signal, the raiding party appeared on the spot, caught hold both the hands of the accused and after preparing Sodium Carbonate solution and dipping fingers of the accused in it found that, the colour of the solution appeared on the hands became violate. Thereafter, the panchanama of raid was recorded, Crime No. 193 of 1995 was registered.

After the prosecution secured the sanction from the Superintendent of Police, Wardha for prosecution for the offence punishable u/s 7(1) of Prevention of Corruption Act, the chargesheet was filed against the accused.

5. Upon framing the charge, accused pleaded not guilty. In the trial, the evidence of the witnesses except Ashok Waghade panch witness No. 1 was recorded as this witness had died in the mean time.

The Panch witness No. 2 Gajanan Ambatkar was examined as PW-1. Certain departures or discrepancies were found in his statement, may be since, when this witness, though he was not present when actually the alleged demand was made by the accused firstly at his house and secondly at the Veterinary Hospital, still, this witness had deposed that the accused has demanded the bribe in his presence. Probably, due to this improvement which rendered testimony of this witness to be devoid of truth, he was declared by the prosecution to be hostile. P. W. No. 1 Gajanan Ambatkar was then cross examined, though all panchanamas were already got proved from this witness.

6. The prosecution has then examined complainant Madhukar Dhote who gave account of first payment of bribe, and the second demand leading to the complaint, cause thereof, the story of lodging of oral report, all panchanamas procedure and finally that of successful raid.

The prosecution also examined other witnesses to prove that accused was in charge of public duty and that recovery of the amount of bribe was done from him, and to prove the validity of sanction.

7. The accused in his statement u/s 313 of Cr. P.C. alleged since he has

registered offence against Shri Madhukar Dhote and his brother, they have falsely involved him in the offence.

Thereafter, the accused examined one defiance witness the Auto rickshaw Driver in whose auto rickshaw the accused was traveling, which Auto rickshaw which was stopped by two unknown persons suggesting that that the complainant and the person accompanying him stopped the auto rickshaw and the complainant requested the accused to see a buffalo which was brought near the Hospital as it was hurt. After the accused got down from the Auto rickshaw, the complainant trusted money in the left hand of the accuse, and further that the accused started saying that he did not like money and he was not interested in money and that thereafter, the Officials of Anti Corruption Bureau conducted the raid.

8. With the aforesaid evidence, the Trial Judge proceeded to decide the case. The Trial Court formulated the questions (a) as to the validity of sanction, (b) as to whether on 22/8/85 the accused was discharging his duty as a public servant, (c) as to whether the accused accepted gratification of Rs. 1200/- other than legal remuneration from the complainant Madhukar Dhote, with an intention of bribery to do further official act, (d) lastly about money being found in his possession. All questions were answered by the Special Judge in the affirmative i. e. against the accused and hence convicted and sentenced the accused.

9. In the present appeal, the learned Advocate for the appellant Shri M.M. Sudame advanced the submissions on following points :-

(i) that the witness as to demand of bribe by accused, namely the panch witness Ashok Waghade being dead, independent witness as to demand of bribe available with the prosecution was not available with prosecution.

(ii) the statement of the complainant did not have any better value than that of accomplice and could not be accepted in absence of corroboration.

(iii) second panch witness who is PW-1 being declared hostile, his testimony has to be dealt with extreme caution and in absence of independent corroboration, it has no evidentiary value, while no corroboration is available;

(iv) as the Superintendent of Police of Anti Corruption Bureau directed the accused to take out money from his pocket, it is not a case of the recovery of bribe amount from the accused is not done by the Searching Party;

(v) that no public servant would accept money in presence of strangers the location where the amount is said to have been given which is a public place and not the usual place of working or house of the accused;

(vi) unless the demand of bribe, its payment and recovery all three are proved, the accused did not have the duty to prove that the amount was received was not by way of gratification, as any presumption is not raised;

(vii) that the prosecution witness the competent authority stated in the examination in chief that all original records were transmitted to him when the

sanction was accorded, however, in the cross examination accepted that the "original record was not available with him and the sanction was granted on the basis of xerox copies", destroys the truthfulness of this witnesses and vitiates the sanction; and the sanction being vitiated, the prosecution is nullity;

(viii) The response of the accused on foisting money on him was noted in the raid panchanama Exh.18 by the Police where he had disclaimed having received the amount uttering that it was foisted upon him was supported by the evidence of defiance witness No. 1 and claimed acquittal, and this was his reflex and genuine response and not an after thought plea.

(ix) the defiance of the accused that money was foisted upon him was not required is to be proved by the accused to the hilt, and what he was required to discharge the burden sheerly to create reasonable probability by preponderance of proof of his defiance and. this burden was duly discharged by him.

(x) The cow allegedly injured was in fact, not injured as can be seen from the testimony of prosecution witness No. 2 Pandurang Ingle, the peon of Gram Panchayat and the story that the cow was brought to the Veterinary Hospital in the injured status was gravely suspicious.

10. Learned Advocate for the appellant his submissions and prepositions noted above by reading out the notes of evidence and panchanama Exh.18, and by relying upon precedents which are discussed hereinafter at appropriate place.

11. On the other hand, in reply, learned Asstt. Public Prosecutor replied contending that

(i) once the recovery of the amount of bribe is either admitted or proved, the question of proof of actual demand and payment withers away;

(ii) that on the facts of the case, the recovery of amount of bribe from the person of accused was proved;

(iii) that the defiance had failed to prove or raise reasonable preponderance and probability of facts that the amount was foisted on him; and

(iv) that any minor defect in the process of sanction unless it vitiates the process of justice, should not carry any weightage and therefore, the sanction was liable to be held to have been properly granted and conviction did not warrant any interference.

12. Learned Advocate for the appellant has cited various Judgments in support of his prepositions. These citations are listed as below which are narrated with reference to the point on which those are cited.

(A) Demand of bribe amount and its acceptance are required to be proved by the prosecution and proof of only acceptance is not sufficient.

(i) 1956 Supreme Court 645, Ramjanam Singh v. The State of Bihar.

- (ii) M.K. Harshan Vs. State of Kerala,
 - (iii) Ashok Kumar Bhagchand Wardhani Vs. State of Maharashtra,
 - (iv) Suraj Mal Vs. State (Delhi Administration),
 - (v) 1981 SCC (Cri) 586 , Gulam Mahaboob A Malek v. State of Gujarat.
 - (vi) Darshan Lal Vs. The Delhi Administration,
 - (vii) Tryambak Lilaji Binnar Vs. State of Maharashtra,
- (B) Evidence of Independent witnesses apart from complainant is necessary.
- (i) Raghbir Singh Vs. State of Punjab,
 - (ii) 1972 SCC (Cri) 696, Ram Prakash Arora v. State of Punjab.
- (C) The effect of failure to examination the material witnesses to be fatal to the prosecution evidence.
- (i) Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others,
- (D) The effect of omissions from the evidence brought by the prosecution.
- (i) Panalal Damodar Rathi Vs. State of Maharashtra,
 - (ii) 1971 SCC (Cri.) 684, Yudhishtir v. State of Madhya Pradesh.
- (E) Nature of presumption u/s 4(1) of the Act of 1947 and Section 20 under the Act of 1971.
- (i) 1983 CRI. L.J. 5 , Hakumat Rai Nigam Delhi v. The State.
 - (ii) M. Abbas Vs. State of Kerala,
 - (iii) 1975 SCC (Cri) 725 , Trilok Chand Jain v. State of Delhi.
 - (iv) Mohmoodkhan Mahboobkhan Pathan Vs. State of Maharashtra,
 - (v) Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh,
 - (vi) : 2005CriLJ2145 , C.S. Krishnamurthy v. State of Karnataka.
 - (vii) State of Orissa Vs. Mrutunjaya Panda,
- (F) Disclaimer and demur shown by the accused soon after alleged acceptance of bribe duly accredited.
- (i) M. Narsinga Rao Vs. State of Andhra Pradesh,
- (G) Weightage to be given to the defiance witnesses cannot be less than the prosecution witnesses.
- (i) Salimkhan Sardarkhan Vs. State of Gujarat,
 - (ii) Munshi Prasad and Others Vs. State of Bihar,

(H) How is the rule of precedent to be applied in Criminal Cases.

(i) Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another,

(ii) Prakash Chand Vs. State (Delhi Administration),

(iii) Chaturdas Bhagwandas Patel Vs. The State of Gujarat,

(I) Trial Court wrongly relied on the following Judgment.

(i) C.K. Damodaran Nair Vs. Govt of India,

13. Learned Asstt. Public Prosecutor Shri Y. B. Mandpe placed reliance on the following Judgments:

(A) Sanction -.

(i) : 2005CriLJ2145 , C. S. Krishnamurthy v. State of Karnataka.

(ii) State of Orissa Vs. Mrutunjaya Panda,

(B) Hostile witness -

(i) AIR 1976 SCC 202 , Bhagwan Singh v. The State of Haryana.

(C) Presumption-

(i) M. Narsinga Rao Vs. State of Andhra Pradesh, .

14. In order to appreciate the frame of law within which the facts of the case required to be examined, it would be convenient to discuss the law cited and relied upon by the prosecution first as hereinafter.

15. The prosecution proceeds on certain basic assumptions namely: -

(i) the presumption u/s 20(1) of Prevention of Corruption Act was duly raised and as per the law as govern the field after M. Narsinga Rao Vs. State of Andhra Pradesh, , N. Narsinga Rao's case, the prosecution has by very fact of proof of facts of recovery of currency note of the bribe amount from the person of accused, raised mandatory presumption u/s 20(1) of the Prevention of Corruption Act, 1988. Thus, the prior two stages of demand and payment of bribe became irrelevant and the burden to prove that the accused did not accept the amount by way of illegal gratification was to be discharged by him.

(ii) though it is said easier that sanction order is monotonous, the sanctioning authority had stepped into the witness box and proved the sanction with due application of mind and therefore, the prosecution is well supported and admission of the competent authority that it had only zerox copies while passing order of sanction does not vitiate the sanction;

(iii) only evidence available with the prosecution as to demand is the complainant as first panch witness is dead;

(iv) Second panch witness who is not witness of demand, is a witness of recovery

of bribe amount and is a witness of the panchamas i.e. he is the important witness of trap. Though this witness has spoken besides his own knowledge and was, therefore, declared hostile, his having proved the panchamas of trap and recovery, has not just proved these facts but has also corroborated the story of prosecution and falsifies the plea of the defiance that the bribe money was found on his person, it was foisted upon him.

In view of the submissions of the prosecution, it shall suffice to refer to para 19 of the N. Narsinga Rao's case which reads as follows:

"19. ... Illustration (a) to Section 114 of the Evidence Act says that the Court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession." That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellant's pocket contained phenolphthalein smeared currency notes for Rs. 500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes are relevant and useful to help the Court to draw a factual presumption that appellant had willingly received the currency notes."

Upon said observation, Lordships of the Supreme Court accepted similar view taken by the Division Bench of Supreme Court in Raghubir Singh Vs. State of Haryana, and Hazari Lal Vs. State (Delhi Administration), , where in the latter Judgment i.e. Hazarilal's case, speaking for the Bench, Lordships of the Supreme Court Justice Chinnappa Reddy had held that :

"It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW3. u/s 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the Court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for the possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption u/s 4(a) of the Prevention of

Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the Courts below."

After quoting the above referred quotation, Lordships of Supreme Court in M. Narsinga Rao's case held that the dictum in para 23 is as follows:

"23. ... The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two Judge Bench that the legal principle on this aspect has been correctly propounded therein."

Thus, now the position of law which is governing the field as it emerges is that once the presumption u/s 20(1) is raised, and it is, on the facts of the given case a burden upon the accused to over come the said presumption.

Thus according to learned APP recovery being proved, the hostile witness was trustworthy and his testimony stood corroborated. In the result according to learned APP the conviction and sentence was well supported and un-assailable.

16. Learned APP placed reliance on State of Gujarat and Others Vs. Ambalal Haiderbhai and Others, contending that when important documents pertaining to proof of fact relating to raid and recovery were proved by hostile witness PW-1, the proof of fact is not lost and barring the discrepancies in his evidence, rest of the facts proved by him are liable to be relied upon.

17. Learned APP further argued on the basis of C.S. Krishnamurthy v. State of Karnataka : 2005CriLJ2145 that the defect in the sanction was liable to be over looked.

18. In the light of the test as to attracting the presumption discussed in fore going para, it would be useful to discuss the law as relied upon by the defiance which is done in the paras to follow.

It is clear that the defiance has to face a situation that trial Court has held that tainted currency notes were recovered from the person of the accused and that the Trial Court had disbelieved the defiance version about tainted currency notes being foisted on him.

19. Thrust of the submissions of appellant is on the preposition that demand, payment and recovery of bribe amount, all these three is imperative.

In order to overcome the rigour of the Judgment of Lordships of Supreme Court in M. Narsinga Rao Vs. State of Andhra Pradesh, Coram Judges K. T. Thomas, U. C. Banerjee and R. P. Sethi, JJ), Learned Advocate for appellant urged, that this Judgment requires that "Court may presume" that the accused who took out the currency notes from his pocket, the rebuttable presumption is attracted, two Judgments rather come to his rescue namely :

(1) Tryambak Lilaji Binnar Vs. State of Maharashtra, .

(2) AIR 1956 SC 653 Ramjanam Singh v. The State of Bihar (Coram: Lordships B.K. Mukherjea, Bose and Jagannadhadas).

20. Though two Judgments are referred, it shall suffice to discuss the Supreme Court Judgment in case of Ramjanam Singh Supra referred to above as in former Judgment it has been followed. It is seen that as to the rules of appreciation of evidence. Lordships of Supreme Court emphasized the need of demand being proved as well as payment of bribe and were not satisfied with bare fact of recovery of currency notes from the accused holding that such matters need to be scrutinized with strict test as already held by the Supreme Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, . What was to be decided is the "intention of the accused of carrying through his nefarious purpose from start to finish which he has firmly and finally decided to be". The observations of Supreme Court requiring strictness of view while examining the evidence as is seen from para 37 of Judgment in Ramjanam Singh's case supra needs to be better referred by quotation:

"37. ... Now, whatever the truth of this tale may be, it is evident from the prosecution case that this was not a case of laying a trap, in the usual way, for a man who was demanding a bribe but of deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decision.

Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardians and keepers of the law. However, regrettable the necessity of employing agents provocateurs may be (and we realise to the full that this is unfortunately often inevitable if corruption is to be detected and bribery stamped out), it is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly decided shall not be done.

The very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them; and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the wickedness of wrongdoing, it behoves society and the State to protect them and help them in their good resolve; not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside. This is the type of case to which the strictures of this Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, (A) apply.

The very observations quoted above have been relied upon by the learned Single Judge of this Court Justice A.B. Palkar (as His Lordship then was) in above

referred Tryambak v. Lilaji Binar's case.

Other cases on the point of demand are of Benches having two Honourable Judges of Apex Court and are distinguished in M. Narsinga Rao's case and therefore, those are not discussed.

Thus, the conclusion to be reached is that even on the application of ratio laid down in M. Narsing Rao's Case the rule that all three acts namely demand, by accused, payment to him and recovery from him needs to be proved, and on the facts of present case this rule applies.

21. Now coming to the question namely if on facts case is one where ratio in M. Narsing Rao's case governs the situation, and the prosecution has raised the presumption, may be rebuttable and in turn, the question arises is whether the defiance has rebutted such presumption. In this regard, it shall suffice to discuss in brief other Judgments relied upon by the Advocate for the appellant.

The citations quoted under the heading "B" in paragraph No. 13 referred to the precedents of the Supreme Court on the point of need of independent and trustworthy witnesses. These Judgments need not be discussed in details for the reason that unless the testimony inspires confidence, the rate of truth in the evidence could not be demonstrated and such evidence would not persuade the Judge to accept the proof of fact.

Further submission of the learned Advocate that what is the nature of evidence to be brought by the defiance if at all the presumption is raised the value of the defiance evidence is to be assessed with same yardstick as applied to evidence of the prosecution. This Court is of the view that for this the reliance is properly placed by the defiance on the Judgment of Supreme Court namely Salimkhan Sardarkhan Vs. State of Gujarat, , which view has later been followed in M. Abbas Vs. State of Kerala, . In this later Judgment, the Lordships of Supreme Court reiterated that

"10. ... "when the accused sets up a defiance and offers explanation it is well settled that he is not required to prove his defiance beyond reasonable doubt, but only by preponderance of probabilities."

22.. Law as laid down by Their Lordship in Munshi Prasad and Others Vs. State of Bihar, is eloquent enough and the dictum to be drawn is that :-

"defiance witnesses are entitled to equal respectability and treatment that of prosecution. The issue of credibility and trustworthiness are also be attributed to the defiance witness on part with that of prosecution and lapse on the part of the defiance witness is not to be treated differently than that of the prosecution.

The ratio of this Judgment is to be kept in mind while examining the defiance and its witnesses.

23. Further observations in Ramjanam Singh's Case AIR 1956 SC 653, the Three Judge Bench Judgment contending that as laid down in para 42 in Kalyan

Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, Kalyan Chandrasarkar's case observing that:

"42. ... It is also a well established principle that while considering the ratio laid down in one case, the Court will have to bear in mind that every judgment must be read as applicable to the particular fact proved or assumed to be true since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it. See: (1) Quinn v. Leathem, State of Orissa v. Sudhansu Sekhar Misra, (3) Ambica Quarry Works v. State of Gujarat."

need to be borne in mind while applying Law laid down by two coordinate benches having same strength.

24. In the result, the test to be applied is, whether the facts, primary to proof of facts of acceptance and payment of bribe was initially proved enough to the extent and level of raising presumption, and if so, what is the weight of the defiance raised by the accused was adequate enough to create preponderance of proof of his defiance being factual and probable.

25. On the basis of the facts of the present appeal, upon scrutiny of evidence this Court reaches the conclusion that appellant has successfully raised the defiance which brings his defiance up to sustain the test of raising a probable defiance coming out raising the presumption held in case of M. Narsinga Rao Vs. State of Andhra Pradesh, , and has been able to avail the conditions of requiring the prosecution to require its case to sustain the text of proof of demand, payment and recovery of bribe as ruled by Lordships of Supreme Court in Ramjanam Singh's case reported in AIR 1956 SC 653.

26. This Court is thus persuaded to follow the ratio as laid down in Ramjanam Singh's case by relying upon Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, Kalyan Chandrashekhar's case referred to in par 24 herein before.

27. Therefore, the conclusion that this Court reaches is that the prosecution has failed in the test of proving demand by the accused, payment to him and recovery of bribe, money, all the three from the accused person. At the same time, the accused has become successful in raising reasonable preponderance of his probable defiance that money is trusted upon him and the prosecution evidence namely raid panchanama Exh.18 itself comes to the rescue of the accused where the raiding party has recorded in said Exh.18 the disclaimer by the accused. This itself establishes that the plea of the accused that he refused to take money and it was foisted upon him was not a last moment and an afterthought and/or a chance plea as was found by the Lordships of the Supreme Court in existence as a fact in N. Narsing Rao's case. Thus, the accused has discharged the burden of rebutting the rebuttable statutory presumption,

assuming that the presumption u/s 20(1) of Prevention of Corruption Act, was raised.

28. In the result, the Judgment and order of conviction and sentence is liable to be set aside and is set aside. The accused be set at liberty. Fine amount be refunded. The bail and bond stands cancelled.