
(1967) 01 GUJ CK 0008
In the Gujarat High Court
Case No : Criminal Appeal No. 1054 of 1965

Hati Devdan Sarman

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-01-1967

Acts Referred:

Evidence Act, 1872 — Section 105, 3
Gujarat Village Panchayats Act, 1961 — Section 322A
Penal Code, 1860 (IPC) — Section 161, 322, 392
Prevention of Corruption Act, 1988 — Section 4(1), 5(2), 5A

Citation : (1967) 8 GLR 494 : (1968) 2 LLJ 638

Hon'ble Judges : V.R. Shah, J;B.J. Diwan, J

Bench : Division Bench

Judgement

Divan, J.—In special case No. 2 of 1965, in the Court of the learned Special Judge. Junagadh, the accused, who is appellant before us, was charged under S. 161, Indian Penal Code, and S. 5(2) of the Prevention of Corruption Act (hereinafter referred to as the Act.) At the end of the trial, the learned trial Judge found the accused guilty of the offences punishable under S. 161, Indian penal Code, and S. 5(2) of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 200, in default further rigorous imprisonment for four months. It is against this judgment and order of the learned trial Judge that the present appeal has been filed.

2. The prosecution case is that the accused was the sarpanch of the village panchayat of Kalej village in Junagadh district at the relevant time. The complainant, Hamir Lala, who was at the relevant time residing at Kalej, was carrying on business of selling "pan-bidis" and for this purpose he used to sit on the "ota" belonging to the gram panchayat of Kalej village. He was carrying on this business for about one and a half years prior to February 1964 or so. Hamir Lala used to bring his wares in separate time and keep these tins on the "ota" during the daytime and carry away the tins in the evening when going home. Like Hamir Lala two other persons, Chhaganlal Ladharam and Vejibai kesar, were

also carrying on their respective businesses on the "ota". Chhaganlal was carrying on his business of "pan-bidi" and he had been doing so for about five years prior to February, 1964. Vejibai was not a resident of Kalej village but was a resident of village Shil, situated near Kalej and she used to come to Kalej to sell vegetables and she used to sit on the "ota" for the purpose of carrying on her business. None of these three individuals, Hamir, Chhaganlal or Vejibai, paid any rent to the gram panchayat for the use that they were making of the "ota" for the purpose of carrying on their respective businesses. No permission had been obtained from the gram panchayat for carrying on these business activities. They had never been called upon, as a matter of fact, to obtain any such permission or to pay any such rent for the use of the "ota." On 29 November, 1963, Hamir Lala and Chhaganlal Ladharam were served with notices signed by the accused in his capacity as the sarpanch of the gram panchayat, calling upon these two individuals to quit the said "ota." It was alleged in these notices that Hamir Lala and Chhaganlal Ladharam had illegally encroached upon Government land and moreover the panchayat had decided to carry out immediate repairs to the "ota," which was alleged to be in a dilapidated condition. According to the prosecution case, this notice was served upon Hamir by the peon of the gram panchayat. After the notice was served, Hamir went to the panchayat office and requested the accused to allow him to continue to sit on the "ota." Hamir represented to the accused that he was a poor man but the accused did not accede to his request and ultimately Hamir stopped sitting on the "ota" with effect from 30 November, 1963. No notice to quit was served upon Vejibai kesar and she continued to sit on the "ota" and carry on her business of selling vegetables on the "ota" even till the date of the trial.

3. After vacating "ota," Hamir continued the business of rolling "bidis" and selling "pan" in his house and he did so far about a month. Hamir then along with one Natha Kala started the business of selling "pan-bidis" and "farsan" in a broken-down house located just opposite the panchayat office. Natha was carrying on his "farsan" business in these new premises and Hamir was carrying on his "pan-bidi" business. Hamir and Natha had allegedly purchased this dilapidated building in joint ownership for a sum of Rs. 600 from Rama Jadav and Bava Jadav on or about 28 October, 1963. Towards this purchase price of Rs. 600, Hamir had contributed Rs. 100 and the balance of Rs. 500 had been paid by Natha. After this structure was purchased jointly by Hamir and Natha, one Ratanji filed a suit against both of them and also against their vendors Rama and Bava. This suit was Regular Civil Suit No. 140 of 1962, in the Court of the Civil Judge, Jr. Division, Mangrel. Ratanji prayed for a declaration what the sale in favour of Hamir and Natha was void as the property had been mortgaged to him by Rama and Bava. This suit was filed on 12 November, 1963. After the filing of the suit, an application for interim injunction appears to have been made and an ex parte order, which was passed by the learned Civil Judge, Jr. Division, Mangrel, was served on Hamir and Natha on 16 November, 1966. Ratanji alleged in that suit that in spite of that injunction served upon Hamir Lala and his co-defendant

Natha Kala, certain repairs had been carried out in breach of that injunction and thereafter on 5 December, 1963, Ratanji filed an application for taking contempt proceedings against Hamir and others for the alleged repairs to the dilapidated property. The present accused had given evidence in those contempt proceedings against Hamir and that evidence was recorded on 24 January, 1964.

4. According to the prosecution case, on 18 February, 1964 the accused went to the shop of Hamir Lala and told him that the accused had made Hamir quit the "ota" of the panchayat but Hamir had started his business opposite the panchayat office and that the accused would see to it. On these words being uttered by the accused, Hamir according to the prosecution case, entreated the accused to allow him to carry on his business peacefully in the new premises or to allow him again to sit on the "ota," at which the accused told him that the permission would be given only if the accused received Rs. 40 and that Hamir should see the accused when Hamir was able to pay Rs. 40 to the accused. The prosecution case further is that accused 1 told Hamir that Hamir and Natha had carried out the repairs in the dilapidated house opposite the panchayat office without the permission of the panchayat and for this act they were liable to be prosecuted and moreover the house was a disputed property inasmuch as it was mortgaged with Ratanji and that the accused would see to it that Hamir was made to quit from these premises also. According to the prosecution, thereupon Hamir Lala agreed to pay Rs. 40 to the accused within a week's time and the accused told Hamir that he would come to his shop the following Tuesday, i.e., a week later, to collect the amount before noon.

5. According to the prosecution, Natha was present when this conversation took place between the accused and Hamir because Natha was present in the shop premises where he was carrying on his own business of "farsan." According to the prosecution case, Hamir Lala went to Junagadh and contacted the Anti-Corruption Officer. He contacted the police sub-inspector in charge of Anti-Corruption Branch on 24 February, 1964, at about 11 a.m. At that time the police sub-inspector reduced the complaint of Hamir to writing. Thereafter, the police sub-inspector approached the Judicial Magistrate, First Class, Junagadh, for obtaining sanction to investigate into his offence as required by S. 5A of the Act. The Deputy Superintendent of Police, Anti-Corruption Branch, Rajkot, was engaged in some other important work and was not in a position to take up investigation into this case. After the sanction was obtained from the Judicial Magistrate, the police sub-inspector asked Hamir to meet him at the field of Pirkhan Daudkhan on the outskirts of village of Kalej on the following morning. In accordance with this plan, Hamir contacted the police sub-inspector at the field of Pirkhan at about 8 a.m. On the record this field is referred to as the "vadi". The police sub-inspector after coming to the "vadi," sent for panchas and Hasankhan and Dwarkadas, both of Kalej were contacted through a police constable. After the panchas arrived at the "vadi," the police sub-inspector acquainted the panchas with the case of Hamir and asked them to serve as panchas. Before the panchas, Hamir produced four currency notes of Rs. 10 each

and with the help of an ultra-violet lamp, it was demonstrated to the panchas that no anthracene powder was applied to the notes till that stage. Thereafter in the presence of the panchas, anthracene powder was applied to these currency notes and a demonstration was held to show to the panchas that anthracene powder could be detected in the light of the ultra-violet lamp and not with the naked eye. Thereafter, the preliminary portion of the panchnama was drawn up by the police sub-inspector. In that preliminary portion members of the four currency notes were stated and thereafter the person of the complainant was searched and except the four currency notes, nothing else was allowed to remain with him. Thereafter the ultra-violet lamp and the bottle containing anthracene powder were both put in a box. The box was locked and the key of the lock was kept with panch Hasankhan. The currency notes having been handed over to the complainant, Hasankhan was asked to accompany Hamir and to remain with him and it was arranged that after the accused accepted the sum of Rs. 40 from Hamir, a signal should be given, and the pre-arranged signal was that the muffler should be removed from the head; and it was arranged that when this signal was given, the police sub-inspector would come to the scene of offence along with the rest of the members of the raiding party. One police constable was kept at the "vadi" along with the box containing the ultra-violet lamp and the bottle of anthracene powder; and the police constable was asked to come to the village along with the box when he received a special message to that effect. Thereafter, complainant Hamir and panch Hasankhan both proceeded towards the dilapidated building where Hamir was carrying on his "pan-bidi" business along with Natha and the police sub-inspector along with the rest of the police party followed Hamir and Hasankhan. They all went towards the dilapidated building opposite the panchayat office. Hamir sat down in his shop whereas Hasankhan kept moving about in the vicinity of the shop. The police sub-inspector and the second panch; Dwarkadas, and other police constables remained lying in wait some distance away. After about 15 minutes the accused came to the shop of Hamir and inquired from Hamir about the amount of Rs. 40. Thereupon, Hamir told the accused that he had brought the amount. The accused thereafter went inside the shop of Hamir and asked Hamir to follow him inside. The accused and Hamir sat down on a bench inside the shop. In the meanwhile panch Hasankhan saw the accused going inside the shop and the panch also followed him inside the shop and sat down on another bench inside the shop. Thereafter, Hamir took out the sum of Rs. 40 from his pocket and handed over the amount to the accused. The accused put the money in the inner pocket of his coat on the right-hand side after counting the amount and, thereafter, told Hamir that Hamir could go and sit on the "ota" of the panchayat once again.

6. After the accused had accepted the amount of Rs. 40 from the complainant, panch Hasankhan went outside the shop and gave the pre-arranged signal and thereupon the police sub-inspector, the other panch Dwarkadas and the rest of the members of the raiding party came to the shop. The police sub-inspector

disclosed his identity to the accused and asked the accused to take out the amount of Rs. 40, which he had taken by way of bribe from the complainant. The accused then took out the sum of Rs. 40 from his pocket in the presence of both the panchas and according to the prosecution case when the police party entered the shop of Hamir, Natha, who was sitting on the counter of his shop, had also gone inside the shop and witnessed the incident. There after a message was sent to the "vadi," where the police constable was waiting with the box to come to the shop with the box. After the box was brought to Hamir's shop, the box was opened with the key which was in possession of panch Hasankhan and in the light of the ultra-violet lamp anthracene powder was observed on the currency notes produced by the accused. It was also noticed on the pocket of the coat of the accused and also on the hands of the accused.

7. One post-card and one receipt, which were in the inner pocket of the coat of the accused, where the sum of Rs. 40 had been kept, also showed the presence of anthracene powder. Anthracene powder was also noticed on Hamir's hands and the pocket of the shirt were by Hamir. The numbers of the notes produced by the accused were compared with the numbers noted down in the preliminary portion of the panchnama and the numbers tallied. Thereafter, the panchnama was completed and further investigation was carried on. In the course of the investigation, the sanction to prosecute the accused was obtained from the Development Commissioner, Gujarat State, to prosecute the sarpanch under S. 322A of the Gujarat Village Panchayats Act. That sanction was granted by the Development Commissioner on 16 September, 1964, and after the papers were received back by the police sub-inspector, first information was lodged at the police station, Shil, in Junagadh district, on 25 February, 1965. Thereafter, the accused was put up before the learned Special Judge on the charges as stated above.

8. The case of the accused before the trial Court was that after Hamir had been evicted from the "ota" of the village panchayat, Hamir had gone to see one Govind Nagajan, sarpanch of Sarsali village, which is at a distance of about two miles from Kalej. Govind Nagajan had intervened on behalf of Hamir and had seen the accused about eight days prior to the incident and requested the accused to allow Hamir to sit once again and carry on his business on the "ota" of the panchayat. It was arranged between the accused, Govind and Hamir, that Hamir should pay a sum of Rs. 40 towards the past dues of rent to the gram panchayat. It was further the case of the accused that on 25 February, 1964, while the accused was passing by the shop of the complainant, Hamir, who was preparing "bidis" at that time, called the accused and told him to take away the amount of Rs. 40 from him and accordingly he had taken that from Hamir and put amount in his pocket. Thus the defence of the accused was that he had taken Rs. 40 from the complainant because of the arrangement that had been brought about through Govind Nagajan and the complainant had asked the accused to send the receipt for the amount Rs. 40 after the arrival of the secretary of the gram panchayat. Further, the defence of the accused was that he was on inimical

terms with Hamir, Natha and panchas Dwarkadas and Hasankhan; and his version was that all these persons had joined hands in filing the present false case against him.

9. The learned trial Judge disbelieved the defence of the accused and relying upon the presumption under S. 4(1) of the Prevention of Corruption Act, he held that since the amount of Rs. 40 received by the accused was other than his legal remuneration, it was for the accused to show whether the amount had been received otherwise than as a motive or reward such as is mentioned in S. 161, Indian Penal Code. Under these circumstances, this explanation of the accused was rejected and the presumption under S. 4(1) of the Act was relied upon by the learned trial Judge for deciding the case against the accused.

10. At the hearing of the appeal, Sri Trivedi, on behalf of the appellant, mainly argued the case on the merits of the case. He pointed out to us that the charge which was framed in this case was defective but he did not want to rely upon that point solely in support of the appellant's case before us. Under these circumstances, we do not wish to enter upon the point regarding the improper framing of the charge in this case.

11. As to when the burden of proof cast upon the accused by S. 4(1) of the Prevention of Corruption Act can be said to be discharged, there are various decisions of the Supreme Court. The latest judgment of the Supreme Court on this point is in V.D. Jhangan Vs. State of Uttar Pradesh, , in the light of the decisions of the Supreme Court in C.I. Emden Vs. State of Uttar Pradesh, and Dhanvantraai Balwantraai Desai Vs. State of Maharashtra, , the Supreme Court hold that to raise the presumption under S. 4(1) of Act, the prosecution has to prove that the accused has received "gratification other than legal remuneration." When it is shown that the accused has received a certain sum of money which was not his legal remuneration, the condition prescribed by the section is satisfied and the presumption must be raised. Further, the mere receipt of "money" is sufficient to raise the presumption. It was further held by the Supreme Court in that case that burden of proof lying upon the accused under S. 4(1) of the Prevention of Corruption Act will be satisfied if he establishes his case by a preponderance of probability as is done by a party in civil proceedings. It is not necessary that he should establish his case by the test of proof beyond a reasonable doubt.

12. In Mahadu Rupila Deore v. State of Maharashtra [Criminal Appeal No. 269 of 1964, decided by the Supreme Court on 10 October, 1966], it was held by the Supreme Court that the whole object of laying the trap in bribery cases is to secure an independent witness with respect to the transaction of the demand and the giving of the bribe. It may be that it may not be necessary for the prosecution to lead corroborative evidence in cases where a presumption under S. 4(1) of the Act arises against the accused but in case the accused leads evidence to rebut the presumption the importance of corroborative evidence cannot be gainsaid. The Court has to weigh the probabilities of the case and to

see whether the preponderance of the probabilities lies with the defence version or with the prosecution version irrespective of the presumption, which is sought to be rebutted by the accused person. Where there is no evidence in corroboration of the statement of the complainant, it is difficult to say that his story is a probable story. It is to be noted that in this latest judgment of the Supreme Court, the Supreme Court emphasized that when the accused leads evidence in order to rebut the presumption; the importance of corroborative evidence cannot be gainsaid. I may point out that in *State of Gujarat v. Madhavbhai* [4 G.L.R. 836] , a Division Bench of this High Court, to which I was a party, laid down certain tests in cases of presumption arising under S. 4(1) of the Act. At the time of deciding that case, the Division Bench had before it the decisions in *C.I. Emden Vs. State of Uttar Pradesh*, and *Dhanvantrai Balwantrai Desai Vs. State of Maharashtra*, and in the light of the principles deducible from those two cases certain principles were laid down as emerging from those two cases. We may point out that it is only the fourth and fifth principles laid down in that case, which are required to be considered in the light of the two subsequent decisions of the Supreme Court, viz., the decisions in *V.D. Jhangan Vs. State of Uttar Pradesh*, and *Mahadu Rupila case* [Criminal Appeal No. 269 of 1964, decided by the Supreme Court on 10 October, 1966] (vide supra). The fifth principle which I had mentioned while delivering the judgment of the Division Bench was that the Court must bear in mind the definition of the word "proved" occurring in S. 3 of the Evidence Act; and the fourth principle laid down in that case was that the burden can only be said to have been discharged by the accused when besides offering an explanation, which may be reasonable and probable, the accused shows that the explanation is a true one and for that purpose it must be borne in mind that the presumption has to be rebutted by proof and not by a bare explanation, which is merely plausible. In our opinion, the fifth principle regarding the definition of the word "proved," has to be read in the light of the subsequent decisions of the Supreme Court and once the accused leads evidence in order to rebut the presumption, as the Supreme Court points out, the test of corroboration to the testimony of the complainant becomes one of the most important factors in the case.

13. We may also point out that in *Dahyabhai v. State* [5 G.L.R. 911], the Supreme Court has considered the question as to when the burden of proof of proving special circumstances to bring the case within one of the exceptions can be said to have been discharged by the accused person under S. 105 of the Indian Evidence Act, and at p. 915 of the report, Subba Rao, J. (as he then was), has observed as follows :

"To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man." If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution

evidence, satisfies the test of "prudent man" the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under S. 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a Judge as regards one or other of the necessary ingredients of the offence itself."

14. In the instant case, in order to appreciate the contention of the accused that Hamir Lala was on inimical terms towards the accused, it is necessary to bear in mind a few facts. It was on 30 November, 1963, that Hamir had vacated the "ota" in pursuance of a notice served upon him by the panchayat and thereafter Hamir had jointly with Natha gone to occupy a dilapidated house near the panchayat office. The secretary of the panchayat, Dahya, Meraman, P.W. 6, Ex. 19, has mentioned that first a resolution was passed and the notice was then served upon the complainant, Hamir Lala. The resolution was passed on 30 November, 1963, but the notice appears to have been dated 29 November, 1968. On 12 November, 1963, Ratanji had filed Regular Civil Suit No. 140 of 1968, in the Court of the Civil Judge, Jr. Division, Mangrol, challenging the sale transaction by the vendors in favour of Hamir Lala and Natha Kala. The contention of the plaintiff Ratanji, in that case, was that he was a mortgagee of the property that was purported to have been sold to Hamir and Natha and, therefore, the sale bypassing his right was illegal. On 16 November, 1963, an order of injunction obtained by Ratanji against the defendants in that suit was served on Hamir and by that order, the defendants were restrained from repairing the dilapidated house which Hamir and Natha had purchased from their vendors. On 19 November, 1963, the summons in the suit, filed by Ratanji, was served upon Hamir. Thereafter it was alleged by Ratanji that in breach of the injunction served upon Hamir and others, certain repairs had been carried out to the property in dispute in that suit and on 5 December, 1963, Ratanji filed an application for contempt of Court alleged to have been constituted by breach of that injunction. On 24 January, 1964, the present accused gave evidence before the Civil Judge, Jr. Division, Mangrol, supporting Ratanji's version in those contempt proceedings. As to what was the exact state of repairs to the building in question, a panchnama was drawn up and that panchnama was prepared on 23 February, 1964. That panchnama was signed by the present accused and it is to be remembered that it was on the following day, i.e., on 24 February, 1964, that at about 11 a.m., Hamir approached police sub-inspector, Anti-Corruption Branch, at Junagadh. Thereafter, on 25 February, 1964, according to the prosecution case, the trap was laid. Though according to Hamir's version, the demand for bribe was made on 18 February, 1964, the information was given to the police sub-inspector, Anti-Corruption Branch, only on 24 February, 1964. These facts regarding the litigation between Ratanji, on the one hand, and Hamir, Natha and their vendors on the other, clearly go to show that because of the part which the accused was playing in that litigation supporting Ratanji against Hamir, there was ground for enmity and hostility between Hamir and Natha on the one hand and the accused on the other. Under these circumstances, the testimony of

Hamir would require corroboration, particularly as regards the talk that took place between the accused on the one hand and Hamir on the other at the time when the amount of Rs. 40 was paid to the accused on 25 February, 1964.

15. Panch Hasankhan Rehman Khan, P.W. 2, Ex. 11, has stated in his examination-in-chief that he accompanied Hamir to his shop from the "vadi." Hamir sat down at his shop and Hasankhan was moving about at that place. About fifteen minutes thereafter, the accused came from the northern side. Hasankhan knew the accused before that date. The accused came to the shop of Hamir and had a talk with him. The accused and the complainant went inside the shop and the complainant and Hasankhan also followed them. The accused and the complainant then sat on one bench, whereas Hasankhan himself sat down on another bench inside the shop. According to Hasankhan, the accused demanded Rs. 40 from the complainant and said that he would be free to carry on his business on the "ota" again. Then the accused counted the currency notes and put them in the inner pocket of his coat. As we have observed above, there is no dispute between the prosecution and the defence regarding the fact that the accused accepted Rs. 40 from Hamir Lala but the sole question is whether he accepted that money as amount other than his legal remuneration. In his cross-examination Hasankhan stated that he had not heard the talk that had taken place between the accused and Hamir outside the shop and he further deposed that no other talk had taken place between the accused and the complainant inside the shop before he demanded Rs. 40 from the complainant. Hasankhan denied the suggestion that the accused had demanded Rs. 40 by way of arrears of rent and he stated that the accused had not told Hamir about the receipt of Rs. 40 taken by him there. Hasankhan throughout his deposition does not depose as to what was the conversation that took place between Hamir and the accused before Hamir and the accused went inside the shop. When one turns to the evidence of Hamir, the complainant, who has been examined as P.W. 1, Ex. 8, at the relevant portion of his deposition Hamir Lala mentions that the accused had come to his shop about half an hour after Hamir coming to the shop from the vadi. The accused came to Hamir's shop from the side of his house. The panchayat office was closed at that time. The accused had then inquired from Hamir about the money, i.e., Rs. 40, at which Hamir told the accused that he had been able to collect Rs. 40 and asked the accused to allow him to sit on the "ota." Then the accused sat down in another portion of the shop and in the meanwhile panch Hasankhan also came over there and he also sat down on one box, where Hamir and accused were sitting together on a bench. Hamir then took out Rs. 40 which he had kept in his pocket and handed over the amount to the accused. The accused then put the amount in the right-hand side inner pocket of his coat. Thereafter the pre-arranged signal was given. According to his examination-in-chief, therefore, all the talk that took place according to Hamir between him and the accused had taken place while he and the accused were outside the shop and not inside the shop. In his cross-examination, there is nothing that can go against the accused on this aspect of the case and thus it is

clear that there is no corroboration to the version of the complainant, Hamir Lala, that the accused demanded the amount of Rs. 40 by way of illegal remuneration or as a motive or reward for allowing Hamir to occupy the "ota" once again for the purposes of carrying on his business.

16. It may be pointed out further in this connexion that Govind Nagajan, D.W. 1, Ex. 37, has stated in his deposition that he was the sarpanch in Sarsali village. He knew Hamir Lala, the complainant, as Hamir's mother belonged to Sarsali. Hamir used to come to Sarsali off and on. About 21 months prior to October 1985, Hamir Lala had come to the residence of Govind at Sarsali and told Govind that the accused made him quit the "ota" of the gram panchayat and Hamir was not knowing the reason as to why he had been asked to quit that place. Thereupon, Govind told Hamir that he would come to Kalej after two or three days and ascertain the reason. Govind had thereafter gone to Kalej and met the accused and the accused told Govind that Hamir was a scheming fellow and that he would not allow Hamir on the "ota." At this, Govind told the accused that he might charge him the rent due to the panchayat and allow Hamir to sit on the "ota." At this, the accused told Govind that as Hamir was sitting in the "ota" for the last one and a half years, the rent due would be Rs. 50 and Govind told the accused that Hamir was a poor man and that the accused should take Rs. 40 from Hamir and give him the receipt for the same. Then the accused agreed to take Rs. 40 from him and thereafter Govind and accused went to the bazaar and called Hamir, Govind told Hamir to pay Rs. 40 and that the accused would allow him to sit on the "ota" after getting the resolution passed by the gram panchayat. Hamir thereupon agreed to pay Rs. 40. Govind then went back to Sarsali. The distance between Sarsali and Kalej is about two miles.

17. Now, it was sought to be brought out in the cross-examination of Govind that he had been convicted in a case of robbery punishable under S. 392, Indian Penal Code, in 1950 by the Judicial Magistrate, First Class, Mangrol, but the defence produced a certified copy of the judgment in Criminal Appeal No. 7 of 1952, by the Sessions Judge, Junagadh. In that appeal against the decision of the learned Judicial Magistrate, First Class, Mangrol, Govind was acquitted and the appeal by him was allowed and the fine, if paid, by him was ordered to be refunded to him. Thus, it cannot be said that Govind's evidence should be disbelieved because of that conviction by the learned Judicial Magistrate, First Class, Mangrol, in regard to the offence of robbery. It was also brought on the record in the cross-examination of Govind that there was a case against him under S. 322, Indian Penal Code, and that he had been convicted in that case filed by one of the relations of Hamir. In re-examination, it was elicited from Govind that the case filed by the relative of Hamir was compromised and, therefore, there is nothing on the record which would go to indicate that Govind's evidence should be completely rejected.

18. In the light of the judgment of the Supreme Court in Mahadu Rupila case [Criminal Appeal No. 269 of 1964, decided by the Supreme Court on 10 October,

1966] (vide supra), we have to weigh the probabilities of the case and see whether the preponderance of the probabilities lies with the defence version or with the prosecution version irrespective of the presumption which is required to be rebutted by the accused. In order to rebut the presumption under S. 4(1) of the Act, the accused has led the evidence of Govind. The version of Hamir regarding the conversation which took place between him and the accused regarding the transaction of the demand and the giving of the bribe is not corroborated. In view of the litigation between Ratanji on the one hand Hamir, Natha and their vendors on the other and particularly in the light of the part which the accused played in connexion with the contempt proceedings against Hamir and Natha, Hamir had reasons to bear a feeling of hostility against the accused.

19. Under these circumstances, it cannot be said that the balance of probabilities leans in favour of the prosecution and against the accused. In our opinion, because of the failure of the prosecution to corroborate the version of Hamir regarding what transpired at the time of demanding the amount of Rs. 40 on 25 February, 1964, the prosecution case must fail.

20. We, therefore, allow this criminal appeal filed by the accused and set aside the order of conviction and sentence passed against him by the learned trial Judge. Fine, if paid, by the accused is directed to be refunded to him. Bail bonds cancelled.