
(2014) 12 AP CK 0119
In the Andhra Pradesh High Court
Case No : Criminal A. No. 230 of 2007

Karri Venkata Rama Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 20, 7

Citation : (2015) 1 ALD(Cri) 833

Hon'ble Judges : U. Durga Prasad Rao, J.

Bench : Single Bench

Advocate : K. Gani Reddy, for the Appellant; M.B. Thimma Reddy, for the Respondent

Final Decision : Allowed

Judgement

U. Durga Prasad Rao, J.?This criminal appeal is preferred by the Accused Officer (AO) aggrieved by the judgment dated 1.2.2007 in CC No. 26 of 2003 passed by learned Special Judge for SPE & ACB cases, Vijayawada convicting him for the offences under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (for short "P.C. Act") and sentencing him to undergo R.I. for a period of two years and to pay a fine of Rs. 5,000/- and in default to suffer S.I. for three months on first count and suffer R.I. for two years and to a pay fine of Rs. 5,000/- and in default to suffer S.I. for three months on the second count with a direction that the substantive sentences of imprisonment under both counts shall run concurrently. The factual matrix of the case is thus:

"(a) AO-Karri Venkata Rama Reddy worked as Additional Assistant Engineer (Operation), Eastern Power Distribution Corporation of Andhra Pradesh Ltd. (EPDC), Chagallu Section, West Godavari District during 2003.

(b) According to prosecution, Katuri Satyanarayana-complainant (PW1) is a native of Nelatur Village of Chagallu Mandal, West Godavari District and his uncle who is having 5 acres of land, applied for electrical connection for his agricultural

bore-well about four years ago and as he is an old aged person, PW1 approached AO several times regarding electrical connection. On 20.3.2003 the AO demanded PW1 to pay bribe of Rs. 4,000/- and in spite of PW1 expressing his inability to pay the bribe amount, the AO did not heed his request.

(c) On 26.3.2003 when PW1 met the AO on the road, AO reiterated his earlier demand and further threatened him that connection would not be given to his uncle unless the bribe amount was paid by 28.3.2003 evening.

(d) Unwilling to pay bribe, PW1 submitted Ex. P2-report to DSP, ACB, Vijayawada Range, Vijayawada (PW6) on 27.3.2003 who after conducting discreet enquiries registered the same as a case in Cr. No. 3/ACB-RCT-EWG/2003 and successfully laid a trap against AO on 28.3.2003 at 7.15 p.m. On completion of investigation, charge-sheet was laid against AO.

(e) On appearance of AO, charges under Sections 7 and 13(2) read with 13(1)(d) of P.C. Act were framed against him and trial was conducted.

(f) During trial, PWs. 1 to 6 were examined and Exs. P1 to P17 were marked and MOs.1 to 7 were exhibited on behalf of prosecution. DW1 was examined and Exs. X1 to X3 were marked on behalf of defence.

(g) The trial Court on appreciation of evidence held that prosecution proved the guilt of accused beyond reasonable doubt and accordingly convicted the AO, as stated supra."

Hence, the appeal by AO.

2. Heard arguments of Sri P. Kesava Rao for Mr. K. Gani Reddy, learned Counsel for appellant/AO and Sri M.B. Thimma Reddy, learned Special Public Prosecutor (Spl. PP) for ACB cases.

3a. Impugning the judgment, learned Counsel for appellant-Sri P. Kesava Rao firstly argued that in a trap case, vital ingredients to be established by prosecution are demand and acceptance of bribe but the prosecution miserably failed in this regard. However, the trial Court on erroneous appreciation of facts and evidence and without considering that PW5 who is a close friend of PW1 instigated PW1 to implicate him in the case due to previous grudge on AO, has held as if prosecution proved its case beyond reasonable doubt.

3b. Secondly, on the demand aspect, learned Counsel argued that as per Ex. P2-complaint the AO made first demand on 20.3.2003 and second demand on 26.3.2003 but in deed no official favour was pending with AO by the date of complaint and trap. He argued that even long prior to the date of Ex. P2-complaint, the AO sent indent for material (vide Ex. P8-made up file and Ex. P13-Despatch Register) to the Additional Divisional Engineer and thus did his part of work and unless material was supplied from the stores, he could not do anything for laying the electrical connection from poles to bore-well of uncle of PW1 and hence no official favour was pending with him to demand bribe.

Commenting on the evidence of PW1 on the demand aspect, learned Counsel argued that as per PW1, AO demanded him bribe since one year after he gave Ex. P1-application. He argued that this allegation is quite far-fetching in view of the fact that Ex. P1-application was presented on 20.4.1996 whereas as per Ex. X3-Service Record, AO took charge as Additional Assistant Engineer at Chagallu on 6.8.2001. Therefore, the question of his demanding bribe since one year after Ex. P1 does not arise.

3c. Thirdly, regarding further demand and acceptance of bribe on 28.3.2003, learned Counsel argued if really AO instructed PW1 to bring bribe amount on the evening of 28.3.2003, he would not go on camp till evening but wait in the office for arrival of PW1. Further, on seeing the trap party admittedly he did not tremor or shiver which is common for the bribe mongers when caught red-handed. On the other hand, he coolly explained them his activities of that day while explaining them that he did not demand and accept bribe. Learned Counsel argued that his conduct would clearly show that he never sought for bribe amount and it was planted surreptitiously by PW1.

3d. Fourthly, learned Counsel argued the evidence of PW5 would amply demonstrate that bad blood existing between PW5 and AO since AO booked cases against him for pilferage of energy and hence PW5 who is a friend of PW1 instigated him to implicate AO in a false case. He further submitted in this case except the doubtful evidence of PW1 who is a friend of PW5, there is no other reliable evidence on the demand and acceptance of bribe and the amount was not found on the person of AO but found in table drawer and therefore, the probabilities are more in favour of AO than prosecution. Learned Counsel submitted that in a similar case reported in Ayyasami Vs. State of Tamil Nadu, , the apex Court did not believe the sole testimony of PW1 regarding his placing the money in the drawer on the instructions of appellant/AO and acquitted AO and hence considering the same, his appeal may be allowed.

4a. Per contra, learned Spl. PP while supporting the judgment firstly argued that prosecution could amply establish the demand and acceptance of bribe by AO and hence the trial Court rightly convicted him. He argued that PW1 who is a rustic villager and only a signatory and no motive was established for PW1 to implicate AO in a false case. Merely because PW5 and PW1 are co-villagers and some cases were booked against PW5 and PW1 got drafted Ex. P2 through him, on that ground the evidence of PW1 cannot be suspected. Learned Spl. PP brought to the notice of the Court that PW1 denied the suggestion that both PW1 and PW5 colluded together and presented Ex. P2-report to implicate AO.

4b. Secondly, regarding demand aspect, he argued that PW1 clearly deposed that accused demanded him Rs. 4,000/- as bribe for giving electric supply from pole to bore well of his uncle and because of illiteracy he might not have given the dates on which AO demanded him bribe but he was emphatic that AO demanded him bribe of Rs. 4,000/-.

Regarding pendency of official favour he argued that though electric connection was sanctioned but the execution part was pending and erection of poles and laying of electric wire from the poles to bore well was pending even by the date of trap which indicates that official favour was indeed pending with AO to prompt him to demand bribe.

4c. Thirdly, acceptance of bribe is concerned, learned Spl. PP argued that amount was found in the office drawer of AO and hence he owed an explanation for it. Except saying before the trap party members that he did not know about the tainted amount and later in the trial, giving an explanation that PW1 implanted money when he was engaged in looking files in the rack situated on the other side of his chair, the AO could not substantiate his defence plea as the aforesaid explanation was proved wrong because no rack was available in his room as per Ex. P14 (rough sketch) and further it would be highly difficult for a person sitting/standing on the other end of the table to plant money by opening the drawer without the knowledge of AO. He submitted that considering all the facts and probabilities the trial Court rightly held that AO could not explain the presence of bribe amount in his table drawer and accordingly convicted him and thus the appeal is bereft of merits. He thus prayed to dismiss the appeal.

5. In the light of above divergent arguments, the points that emerge for determination in this appeal are:

"1. Whether any official favour was pending with AO during the relevant period to demand bribe from PW1 and whether prosecution could prove the demand made by AO by cogent evidence?

2. Whether prosecution could prove the acceptance of bribe by AO and if so, whether AO could successfully explain about the possession of bribe amount?

3. Whether the judgment of the trial Court is factually and legally sustainable?"

6(a). Point No. 1: The admitted facts of the case are that as per Ex. P1-application dated 20.4.1996, R. Narayudu uncle of PW1 applied for electric connection for his 10 H.P. motor fixed to his bore well. On his request PW1 submitted application and pursuing the matter with electrical authorities, Chagallu Section, West Godavari District since his Village-Nelaturu comes under Chagallu Mandal. It appears that electric connection was sanctioned and execution part i.e., laying of poles and supply of electricity through electric wires from the poles to the motor of the applicant was pending by the date of trap. For this purpose, according to PW1, AO who is Additional Assistant Engineer (Operation), Chagallu Section demanded Rs. 4,000/- as bribe. Be that it may, in a trap case prosecution shall by cogent evidence prove demand and acceptance so as to deserve for drawing statutory and mandatory presumption under Section 20 of PC Act. So, it is imperative to scrutinize the evidence on record to know whether prosecution could discharge its burden in the light of contention of AO that he never demanded bribe and no official favour was pending with him by the date of trap and further PW1 at the instigation of PW5 implicated him in a false

case. In this regard, the observation of the trial Court is that though electrical service connection was sanctioned, two electric poles were to be installed to lay electric connection to bore well by the date of trap and during the evidence of PW1 the accused has not explained the reason for pending of that work and hence, it shall be deemed that official favour was pending with AO by the date of demand as well as trap. Then demand aspect is concerned, basing on the oral evidence of PW1 de facto-complainant and PW6-TLO and documentary evidence such as Ex. P2-report, Ex. P3-164 Cr.P.C. statement of PW1 and Ex. P5-first mediator's report, the trial Court held that prosecution could establish the aspect of demand. In this process, it observed that ill motive attributed against PW1 could not be probalised. Hence, in this appeal the above findings are again to be scrutinised in the light of arguments advanced by either side before this Court.

7. Pendency of official favour is concerned, a perusal of Ex. P8-made up file relating to R. Narayudu shows that work order was issued for supply of electric connection on 13.3.2003. Then, the Letter No. AAE/OP/CGL/D. No. 239/2003 dated 15.3.2003 addressed by AO to Assistant Divisional Engineer (Operation), Nidadavole shows that AO placed indent for material such as poles, wire, clamps etc. with the Stores Section under the control of Assistant Divisional Engineer (Operation) for laying electrical connection to the bore well of R. Narayudu. He attached material card showing the material particulars required to his letter dated 15.3.2003. This Ex. P8 file was seized on the date of trap from the office of AO. So, as submitted by AO, the letter shows that material indent was placed with the Assistant Divisional Engineer way back on 15.3.2003 and material was not received by the date of alleged demand and trap. According to Ex. P2-report, AO demanded bribe on 20.3.2003 and also 26.3.2003 but even prior to those dates, the accused placed indent for supply of material to erect poles and lay electric connection. As rightly argued, unless material was supplied the question of doing further work does not arise. So, in that view, no official favour was pending with AO by the date of alleged demands. Of course, there is a possibility for AO to demand bribe by keeping PW1 in dark. That is a different aspect which has to be decided basing on the evidence of PW1 and other attending circumstances. However, going by the record, it can be said that no official favour was pending with AO from his side as on the date of demand and trap.

8. Now, coming to the demand aspect, admittedly except PW1 none others were present who have witnessed AO demanding bribe from PW1. Therefore, the proof of demand mainly pivots on the veracity of evidence of PW1 and of course, the other corroborative evidence.

9. PW1 is concerned, his evidence would show that he is an agriculturist and studied upto 6th standard. He cannot say date, month and year of the demand. So, it is clear PW1 is a rustic villager and he cannot give the particulars of the date of demand etc. Now, coming to demand aspect, his version is that he submitted application for electric connection on behalf of his uncle along with prescribed Challans to AO who was the concerned Electrical Engineer and he

roamed to the Office of AO about 50 times but he did not comply his request. He further stated that about one year after roaming AO demanded him bribe of Rs. 4,000/- for giving electric connection. He expressed his inability but AO informed him unless the amount was paid his work would not be done. Hence, he submitted Ex. P2-report. This is the version of PW1 with regard to demand aspect. Coming to cross-examination, he emphatically stated that he gave application to AO along with DD of Rs. 15/- or Rs. 20/-. Then, most importantly with regard to demand of bribe he stated that one year after submitting Ex. P1, AO demanded him bribe and he again demanded on four occasions, but he cannot say the year, months and dates of those demands. (Emphasis supplied). He denied the suggestion that AO was not the Additional Assistant Engineer at Chagallu at the time of presentation of application in the year 1996. Regarding Ex. P2-report, he stated in the cross-examination that he got drafted Ex. P2 through PW5. He further stated that PW5 was not his relative but he was his friend and resident of the same village. PW1 denied the suggestion that himself and PW5 colluded together and gave a false report to implicate AO.

10. So, from the above evidence of PW1, the facts that emerge are that PW1 and PW5 are friends and co-villagers. PW1 had no direct animosity against AO but PW5 had some differences with AO as in the evidence of PW5, we would find that a case was booked by AO against him (PW5) for drawing unauthorised electrical connection. His evidence would further reveal that when his sugar cane crop was burnt due to short circuit, PW5 made a claim to the electrical authorities and AO dismissed his claim. Added to it, three or four months prior to the trap an altercation took place between him and AO with regard to shortage of power supply to his land. Thus, there were differences between PW5 and AO.

11. In the light of above, the veracity of evidence of PW1 relating to the aspect of demand is to be scrutinized. Then, coming to the evidence of PW1, his emphatic case was that he submitted Ex. P1-application to AO only and that one year after submitting Ex. P1, AO demanded bribe amount. This statement proved to be palpably false in view of evidence of DW1 and Ex. X3-Service Register of AO. The evidence of DW1-Senior Assistant in the Office of Superintending Engineer, Eluru is to the effect that AO worked as Additional Assistant Engineer, Rajahmundry from 12.3.1993 to 31.8.1996. Then he was transferred to Anaparthi and he worked there from 31.8.1996 to 6.7.1997. He was again transferred to Rajahmundry and worked as AAE from 1.8.1997 to 6.8.2001. Thereafter, he was transferred to Chagallu and joined duty on 6.8.2001. He gave the evidence with reference to Ex. X3. So, there is no reason to discard the evidence of DW1 with regard to service particulars of AO which would show that on the date of Ex. P1-application or one year thereafter when he allegedly demanded bribe, AO was not working in Chagallu. So, this part of the evidence of PW1 is palpably false. It is true that PW1 is an illiterate and he cannot remember and readily spell out the dates of application and demand etc. To this extent, owing to his illiteracy, he can be given concession undoubtedly. However, when identifying power of a person is concerned, illiteracy is not a bar. In that context,

the emphatic evidence of PW1 saying he gave Ex. P1-application to AO and one year thereafter he demanded bribe proved false by virtue of record. That casts a doubt on the veracity of evidence of PW1 in view of the fact that PW1 and PW5 are friends and co-villagers and PW5 already had some differences with AO.

12. Then alleged demands on 20.3.2003 and 26.3.2003 as mentioned in Ex. P2 are concerned, it is not safe to believe the evidence of PW1 in respect of those demands in view of falsity of his evidence on the aspect of his giving Ex. P1-application directly to AO and AO demanding him bribe one year after giving application and also in view of the fact that even prior to this alleged dates of demand, AO promptly sent indent letter to Assistant Divisional Engineer and waiting for the material. When the evidence of PW1 itself is not believable, the evidence of other witnesses i.e. PW2 and PW6 who are not direct witnesses for demand, cannot provide any corroboration. So, at the outset, it must be held that the prosecution failed to prove the demand aspect.

This point is answered accordingly.

13. Point No. 2: Then acceptance of bribe is concerned, admittedly PW1 alone was the direct witness and PW6-TLO did not send any accompanying witness with him to watch the happenings between PW1 and AO. Of course, PW5 claimed that he followed PW1 till the doorway of AO and watched what transpired between them which is disputed by prosecution. I will discuss the correctness of his statement little while later. That being so, as per prosecution, PW1 was the lone witness for further demand and acceptance of bribe by AO on the date of trap. PWs. 2, 3, and 6 being the members of trap party witnessed the events that took place after PW1 gave pre-arranged signal to them. In the light of his evidence being unchaste on the aspect of demand, it requires thorough scrutiny on the other vital aspect of payment of bribe.

14. According to PW1, at about 4 p.m., on the date of trap, the trap party members reached near the Office of AO and on the instructions of PW6 (TLO) he went to the Office of AO and was informed that AO went to Kalawalapally Village for some work and he would come back at 6.00 or 6.30 p.m. He passed on this information to other members. So, all of them returned to Irrigation Guest House, Nidadavole and waited till 6 p.m. and again proceeded to the Office of AO. His further version is that he went to the Office Room of AO and found him there. On seeing him, AO enquired whether he brought the demanded bribe amount, he affirmed and when he was about to give the amount, AO pulled his table drawer and asked him to keep the tainted amount in it and accordingly he kept the amount in the table drawer and thereafter on his enquiry about electrical connection AO informed him that he would complete the work within two days and then PW1 came out and gave pre-arranged signal to trap party members and they rushed the Office Room of AO, whereas he was instructed to wait outside and 15 minutes after he was again called to the Office Room of AO and on the enquiry by TLO he narrated what transpired between him and AO. This is precisely the evidence of PW1 regarding further demand and acceptance

of bribe by AO.

15. The above theory of prosecution beset with certain doubtful circumstances. Added to them, the conduct of AO, the evidence of PW5 and the omissions and commissions on the part of TLO would cumulatively create a doubt on the veracity of prosecution case.

"(i) Firstly, as per PW1, AO exhorted him that unless he pay the bribe amount of Rs. 4,000/- by the evening of 28.3.2003 he would not give electrical connection and PW1 unwillingly agreed to pay the amount. If that is correct, AO in normal circumstances would not go on camp on 28.3.2003 till evening but he would try to be there in the office to receive the bribe amount from PW1 since Rs. 4,000/- was not a small amount by the date of trap. On the other hand, the explanation offered by AO during post-trap proceedings as found in Ex. P15 would show that on that day he proceeded to Chikkala Village and stayed upto 3.30 p.m. and then went to Kalawalapally and Brahmragudem Villages and after attending the work there he returned to Chagallu at 6.00 p.m. and went to his house, had tea and came to his office at 6.30 p.m. and while attending his work at first two consumers met him and later, PW1 approached him. This part of his explanation was not seriously disputed by the prosecution and it did not try to establish that he did not visit the aforesaid mentioned villages on that day. Thus, the narration of his itinerary on the date of trap, particularly, the narration that even after returning to Chagallu at 6.00 p.m., without going to office, his going to home having tea and then leisurely coming to office to look after the work does not give an impression that he was expecting PW1 to come with bribe amount. As otherwise atleast after returning to Chagallu, he would have directly gone to office to receive the bribe amount from PW1 since he allegedly fixed that evening as deadline for payment of bribe.

(ii) Secondly, the manner of acceptance of bribe, i.e., without receiving money directly, AO by pulling his table drawer asking PW1 to keep the amount therein creates a doubt about the version of PW1. It should be noted, at that time AO was not out of reach of PW1 but he was sitting in his office chair behind the office table, whereas PW1 was also near the office table. In such a case, AO was in a position to receive the money directly from PW1. If what PW1 said was correct, it should be understood that AO was suspecting PW1 that he might trap him. That is the only inference one can draw from the narration of PW1. If that is correct, then AO would not select his Office Room as venue for accepting bribe rather select more a safer venue and safer mode of acceptance of bribe to avert danger of being trapped."

16. In the backdrop of above suspicious circumstances surrounding the evidence of PW1, the explanation of AO has to be scrutinized. Admittedly, AO pleaded before trap party that he did not demand and receive the bribe and he did not know anything, whereas during trial he suggested to PW1 that when he was searching some files in his rack PW1 kept the tainted amount in the table drawer without his knowledge. Learned Counsel for appellant argued even during post-

trap proceedings also AO expressed his doubt that PW1 might have implanted money when he was looking into the files turning towards rack on the other side of his table but this part of his narration was deliberately omitted. In this regard, in Paras 59 and 60 of the judgment the trial Court discussed about the contention of AO that his actual version was suppressed. The trial Court discarded this contention with an observation that the AO acknowledged receipt Ex. P15 and if really his version was not incorporated, he would have protested before the higher authorities or the Court.

17. I am afraid, merely because AO did not raise protest before the higher authorities that itself is not the conclusive proof that his version was honestly incorporated in Ex. P15. We will find at Page 7 of Ex. P15 about the condition of table drawer. It is mentioned thus:

"We pulled the table drawer and tested which was opened with little strain and lot of noise making which shows that the person who sits behind the table can pull it freely and easily and others cannot...."

It appears to me that if really AO did not express a doubt that PW1 might implant the amount while he was looking the files in the rack, there was no necessity of making a vivid narration of the condition of table drawer under Ex. P15. Even that narration proved wrong by PW1. He admitted in cross-examination that when AO pulled the table drawer it was opened immediately. His admission runs counter to narration in Ex. P15 to the effect that was opened with little strain and lot of noise. So, this narration besides being wrong gives an inference that only to negative the explanation of AO such a mentioning was made. Then coming to the aspect of AO looking into the files in the rack, in Ex. P14-rough sketch the presence of rack in the room of AO was not mentioned. However, PW1 in his cross-examination admitted that there was a rack by the side of AO in which office files were placed. The conspicuous omission of rack in the rough sketch gives an inference that since AO gave an explanation before the trap members that while he was looking into the files in the rack PW1 might have implanted money in the table drawer, the presence of rack was deliberately omitted in the rough sketch. So, in view of the aforesaid deliberate omissions and commissions, I have no hesitation to hold that AO gave a spontaneous explanation that he did not demand and accept the bribe and PW1 might have implanted the same in the table drawer while he was looking the files in the rack.

18. Now, the point is, whether AO could probabilise his explanation. In this regard, the trial Court rejected implant theory on certain observations narrated in Para 71 of its judgment. Firstly, it observed that it was not the case of AO that while searching for files in the rack he did not observe PW1 and so the question of PW1 waiting for sometime to implant money did not arise. Secondly, even assuming that he waited for sometime, he sat on the other end of the table from where he has no access to the table drawer to keep the amount. Thirdly, even if he tried to do so when he pulled the drawer some noise will come which will attract the attention of AO. Thus, it rejected the implant theory.

19. In my considered view, the aforesaid observations of the trial Court are not correct in view of admissions of PW1. In Ex. P15 PW1 narrated, when he went to the room of AO he enquired about the bribe amount and on his affirmation AO asked him to sit on the bench which was placed on his left hand side. So, going by his aforesaid narration, if PW1 sat on the bench, there was every possibility for him to open the table drawer as it was very much near to him. Thus, the observation of trial Court that he was sitting on the other end of the table and hence it was not possible for him to open the table drawer is not correct. So, on a conspectus of facts and evidence the possibility of implantation cannot be altogether discarded. This view of mine gets fortified from the evidence of PW5 also. PW5 in his cross-examination stated that he was present along with PW1 when he entered the Office Room of AO and he remained outside the doorway and PW1 and AO talked sometime and PW1 kept the tainted amount in the table drawer of AO and came back. When he questioned for not handing over the money to AO, he replied that he was a little bit fazed and kept the amount in the table. It is true that prosecution declared him hostile. However, in spite of it, his evidence remains that he too followed PW1 and watched PW1 keeping the amount in the table drawer of AO. It must be noted that PW5 did not state that PW1 kept the amount in the table drawer on the asking of AO. As aforesaid, prosecution declared him as hostile and cross-examined and suggested that he compromised with AO and so he deposed as if he presented and witnessed the happenings between PW1 and AO though he was not present at all and PW5 denied this suggestion. It may be noted that regarding presence of PW5 at the Office of AO, PW6 in his cross-examination stated that he examined PW5 immediately after trap at the Office of AO. However, he voluntarily added that he called PW5 and examined him but not at the Office of AO. The admission on the part of PW6 would clearly show that PW5 was very much present at the relevant time of trap as otherwise there could be no opportunity for PW6 to examine him "immediately after trap at the Office of AO". No doubt, PW6 tried to cover his mistake by adding he did not examine PW5 at the Office of AO but that covering statement cannot be accepted. Therefore, it is clear that PW5 was very much present at the Office of AO. He might have declared as hostile by the prosecution but, however, his crucial admissions of his presence at the Office of AO and watching PW1 keeping the amount in the table drawer cannot be effaced and can be relied upon by the defence side.

20. In the latest judgment Paulmeli and Another Vs. State of Tamil Nadu tr. Insp. of Police, : , Hon"ble apex Court happened to discuss its previous judgments on the aspects appreciation and probative value of a hostile witness. It observed thus:

"Thus, the law can be summarized to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence".

So, all the aforesaid circumstances and evidence would create a doubt about the

genuineness of prosecution case.

21. It must be noted that unlike the prosecution, defence side need not establish its case beyond reasonable doubt but sufficient to probabilise its version by preponderance of probabilities. It may be noted that Ayyaswamy's case (supra), cited by the appellant, under similar circumstances, the apex Court rejected the prosecution case. In that case also the prosecution version was that complainant placed the bribe amount in the drawer of appellant/AO on appellant's bidding and the same was recovered by the raid party. In that context, the observation of the apex Court is thus:

"We have heard learned Counsel for parties. There is no independent evidence to show that the appellant demanded Rs. 100/- as bribe from the complainant. The chemical solution did not inculcate him. The money was recovered from the drawer. There is no evidence apart from the complainant to show that the money was placed in the drawer by the complainant at the asking of the appellant. Under the circumstances we agree with the learned Counsel for the appellant that the conviction is based more on probabilities than on the evidence proving the guilt against him beyond reasonable doubt."

22. In the instant case also for demand and acceptance there were no other witnesses except PW1. As already observed, PW1 and PW5 are friends and co-villagers and PW5 had some differences with AO and PW1's evidence regarding demand of bribe was held to be unreliable. In this case also money was recovered from the drawer but not the person of AO. Above all PW5 was present at the time of trap. All these circumstances create a genuine doubt about the veracity of the prosecution case. Therefore, this point is concerned it must be held that prosecution failed to prove its case, whereas accused could successfully explain his stand.

This point is answered accordingly.

23. Point No. 3: In view of findings on points 1 and 2, the judgment of the trial Court is liable to be set aside.

24. In the result, this criminal appeal is allowed and conviction and sentence passed by the trial Court in CC No. 26 of 2003 are set aside and AO is acquitted of the charges levelled against him for the offences under Sections 7 and 13(2) read with 13(1)(d) of P.C. Act and his bail bonds shall stand cancelled. Fine amount if paid shall be refunded to him. As a sequel, miscellaneous applications pending, if any, shall stand cancelled.