
(2011) 11 AP CK 0082

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 915 of 2003

P. Chandra Sekharam

APPELLANT

Vs

State - A.C.B, Inspector of Police, KNR Range, Karimnagar

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 239
Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2), 20, 7

Citation : (2012) 2 ALD(Cri) 131

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; R. Ramchandra Reddy, S.C. for ACB, for the Respondent

Final Decision : Allowed

Judgement

B.N. Rao Nalla

1. The accused, aggrieved by the judgment dated 27.08.2003 passed in C.C. No.17 of 1993 by the Court of Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, whereby, he was found guilty for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short "the PC Act") and was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- in default to suffer simple imprisonment for three months for the offence u/s 7 of the Act, and further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- in ">Rs. 500/- in default to suffer simple imprisonment for three months for the offence u/s 13(1)(d) read with Section 13(2) of the PC Act and both the sentences of imprisonment were directed to run concurrently, preferred this appeal.

2. The case of the prosecution in brief is that the appellant-accused being public servant, working as Accountant in Municipal Commissioner's Office, Karimnagar at the relevant time i.e. between 18.07.1991 to 07.07.1992, had an occasion to

come in contact with the complainant who is related to PW 2-contractor; that the complainant has gone to the office of the appellant-accused to collect the cheque for an amount of Rs. 36,999/- due on account of a contract work; that on 01.07.1992 the complainant approached the appellant-accused and requested him to handover the cheque for the said amount; that however, the appellant-accused has demanded one percent on the total amount under the cheque as bribe, which would come to Rs. 370/-; that on 06.07.1992 the amount was reduced from Rs. 370/- to Rs. 300/- ; that the complainant, unwilling to pay bribe, approached PW 5-Deputy Superintendent of Police, Anti-Corruption Bureau, Karimnagar Range on the same day at about 5 p.m. and preferred Ex.P1 complaint; that on the following day i.e. 07.07.1992 a trap was arranged after securing two mediators, PW 3 and another; that under Ex.P12 pre-trap proceedings were prepared, tainted currency notes were kept in the shirt pocket of the complainant; that he was sent to the office of the appellant-accused along with mediators; that on receiving pre-arranged signal, the trap party entered into the office of the appellant-accused; that phenolphthalein test was conducted on the fingers of the left hand of the appellant-accused; that it gave a positive result; that right hand fingers of the appellant-accused did not yield any result; that the tainted amount of Rs. 300/- was recovered from the almirah of the appellant-accused in his office and that when questioned, the appellant-accused denied having received any bribe money from PW 1. Ex.P17-second mediators report was recorded to that effect. After obtaining sanction from the Government under Ex.P19, charge sheet was laid against the appellant-accused into Court for the offence punishable under Sections 7, 11 & 13(1)(d) read with Section 13(2) of the PC Act.

3. On appearance of the accused, the accused was examined under Sec.239 Cr.P.C. and charges under Sec.7, 13(1)(d) r/w.Sec.13(2) of the PC Act were framed, read over and explained to him in Telugu, for which the accused pleaded not guilty and claims to be tried.

4. The prosecution in order to prove its case had examined PWs.1 to 3 and got marked Exs.P-1 to P-18(a) and M.Os.1 to 8 on its behalf, whereas no witnesses were examined and no documents were marked on behalf of the defense.

5. The trial Court taking into consideration the evidence of the prosecution witnesses and other material on record had found the appellant - accused not guilty for the offences charged with and as such acquitted the appellant - accused agreeing with the plea raised on behalf of the appellant - accused that he never demanded any bribe amount from PW.1, however as he has pushed the currency notes with his left hand while PW.1 trying to thrust the same into his pocket and as PW.1 has handled his pen on the counterfoil of the cheque phenolphthalein test proved positive, and finding the evidence of PW.1 untrustworthy and there were no corroborative circumstances connecting the appellant - accused with the alleged crime of demand and acceptance of illegal gratification. The prosecution being dissatisfied with the said order of acquittal,

preferred appeal in Criminal Appeal No.1168 of 1999 and this Court was pleased to allow the said appeal by setting aside the impugned acquittal order of the aforesaid trial Court and remanded the matter back to the trial Court for adducing further evidence by granting one year time to the prosecution. Accordingly, the prosecution had adduced further evidence by getting PWs.4, 5 and 6 examined in the Court and also getting Exs.P-18 to P-21 marked. Whereas, DW.1, son of the appellant - accused, and DW.2, the Municipal Commissioner were examined and Exs.D-1 to D-5 were marked on behalf of the defense.

6. PW.4 is examined to prove Ex.P-19 sanction order. PW.5 is the D.S.P., A.C.B., who laid the trap. PW.6 is the Investigating Officer, who continued the investigation and ultimately laid the charge sheet. The evidence of PW.4, who is examined to prove the sanction order of the Government, does not prove in any way the case of the prosecution.

7. PW.5 is the DSP, ACB, who laid the trap. He has also testified as to his conducting pre and post-trap proceedings during the course of which MO.1 tainted currency notes were recovered from the almirah of the appellant - accused in his evidence. That his evidence does not in any way improve the case of the prosecution. Therefore, his evidence is not worth consideration. Whereas, PW.6 is the Investigating Officer, who has continued further investigation of the case in obtaining sanction orders from the Government and in laying charge sheet. His evidence also does not in any way improve the case of the prosecution. That his evidence also not worth consideration. That so far as to the evidence of PW.1 de facto complainant is concerned, he is a total stranger to the appellant - accused and to the contract transaction. He was only related to PW.2. Therefore, it is contended that he was not entitled to receive the cheque in his personal capacity from the appellant - accused; that the evidence of DW.2, the Municipal Commissioner is that as per his instructions in writing, though the cheque was prepared on 23-06-1992, he ordered not to handover the same to the party since there was no sufficient amount in the account.

8. That on 01-07-1992 and 02-07-1992, DW,2, the Municipal Commissioner was on leave; that on 03-07-1992 and 04-07-1992, the appellant - accused was on leave; that on 05-07-1992 happened to be a public holiday being a Sunday; that on 06-07-1992, DW.2, the Municipal Commissioner, has given instructions in writing on finding some amounts being deposited in the accounts, to give cheques to the parties that were already prepared. Therefore, it is contended that the appellant - accused demanding illegal gratification from PW.1 either on 01-07-1992 or 02-07-1992 and as to reducing the bribe amount on 06-07-1992 from Rs. 370/- to Rs. 300/- does not arise and the same is false. That there was no delay on the part of the appellant - accused in handing over the cheque to PW.1 on 07-07-1992 as he received instructions from DW.2, the Municipal Commissioner to give the cheques to the parties on the previous day i.e. on 06-07-1992. It is the case of the appellant - accused that PW.1 had demanded a

bearer cheque, However, he refused to give a bearer cheque because as per the procedure and the rules of the Municipal authorities, only crossed cheques will be given. That aggrieved by the same, PW.1 de facto complainant has falsely implicated the accused - appellant in this case.

9. It is contended that the only evidence available on record is of PW.1. He was held to be unreliable witness by the Court in the first proceeding. Moreover, there is no corroborative evidence to show that the appellant - accused had demanded and accepted the bribe amount; that recovering the alleged tainted bribe amount from the almirah in the evidence of the appellant -accused cannot be said to have been recovered from his possession, and as such, it cannot be said that the ingredients of the offences punishable under Sections 7 and 13(1)(d) of PC Act are made out and / or proved.

10. A perusal of Ex.P-1 -complaint discloses that the de facto complainant had met the appellant-accused on 03-07-1992 for the first time. Of course, he is alleged to have demanded 1% of the bill amount i.e. Rs. 370/-. However, the appellant - accused is said to be on leave on 03-07-1992. Therefore, the question of the de facto complainant approaching the appellant - accused does not arise. Further, as per the case of the prosecution, the appellant - accused is alleged to have demanded the said bribe amount on 01-07-1992 and 03-07-1992 and ultimately on 06-07-1992 and he is alleged to have reduced the bribe amount from Rs. 370/- to Rs. 300/-.

11. The evidence of PW.1 reveals that he had met the appellant - accused twice on 01-07-1992, 03-07-1992 and that he also met him on 05-07-1992 as per his statement u/s 161 Cr.P.C.; that he also met him on 06-07-1992; that altogether he claims to have met the appellant - accused on five occasions and that on all such occasions, the appellant - accused had demanded bribe. As per the evidence of PW.5, the investigating officer, on 3rd and 4th July, 1992, appellant - accused was on casual leave and as the 5th July, 1992 was happened to be a public holiday being Sunday; therefore, his claim of having met the appellant - accused on 03-07-1992 and 05-07-1992 on which dates the appellant - accused is alleged to have demanded bribe does not appear to be true. Therefore, he has made contradictory statements in his evidence, in his complaint Ex.P-1 and also in his statement recorded u/s 161 Cr.P.C. May be that taking the same fact into consideration, the trial Court in the first proceedings while acquitting the appellant - accused has considered the evidence of PW.1 to be untrustworthy. That the trial Court was not justified in convicting the appellant - accused in the second proceeding of the impugned judgment basing on the evidence of PW.1, in view of there being no corroborating or any other prosecuting witness and there being no material on record supporting his version.

12. P.W.2 stated himself to be a Municipal Contractor; that he was undertaking Municipal contracts and executing the same along with the complainant -P.W.1; that an amount of Rs. 36,999/- was due from the Municipality, Karimnagar on account of the contracts that were being executed; that he instructed P.W.-1

complainant, who is related to him by caste and courtesy; that P.W.1 informed him about the appellant-accused demanding the bribe amount; that, however, he did not enquire from the appellant-accused about the same and that he has no personal knowledge of the same. He further stated in his evidence that P.W.1 himself has taken a decision to prefer Ex.P-1-complaint before the ACB authorities, whereas it is in the evidence of PW.1 that he informed ACB authorities as per the advice of P.W.2. Therefore, there is a variance in the evidence of both the witnesses on that count. Further, the evidence of PW.2 is in the nature of hearsay. He only speaks as to the information received by him from PW.1. His evidence does not appear to be crucial for the case of the prosecution.

13. P.W.3-Retired Assistant. Commissioner was examined as mediator to pre and post trap panchanama proceedings under Exs.P-12 and P-17 respectively. He admitted to have acted as a mediator to the trap proceedings. His evidence is also discloses that the D.S.P. ACB find out the name of the appellant-accused by enquiring from him; that the DSP, ACB also was examined as P.W.5. D.S.P.ACB also questioned the appellant-accused whether he has accepted the bribe amount, to which the appellant -accused has stated to have explained and stated that P.W.1 had given him an amount of Rs. 300/-, voluntarily, which he kept in his almirah. This witness, during the course of his cross-examination stated that the mediator party did not ask PW.1 as to who demanded the bribe from him; that they did not also enquire about the nature of work involved. His evidence further reveals that PW.1 did not state separately before them that the appellant-accused had demanded the bribe and that he did not enquire from P.W.1 whether it was the appellant-accused, who was working in the Municipal Office, demanded the bribe amount from him and that PW.3 also did not enquire as to the correctness and particulars about the contents of Ex.P-1-complaint. His evidence already discloses that when the trap party entered the office of the appellant-accused and when P.W.5 DSP enquired him, the appellant-accused stated that he did not demand the money and that he has not taken any money from P.W.1. In this context, it is contended that the appellant-accused neither demanded nor accepted the alleged tainted bribe amount. Otherwise, P.W-3 would have recorded in Ex.P-17 post trap panchanama as to what transpired during pre trap and thereafter. Therefore, it is also contended that Ex.P-17 panchanama loses its sanctity, as it does not reflect the true facts as to what transpired at the time of the trap.

14. P.W.4 is a formal witness. He was examined to prove Ex.P-19. As such his evidence is not relevant.

15. PW.5 was working as DSP ACB at the relevant time. His evidence is that PW.1 had preferred Ex.P-1-complaint before him. That after making discrete enquiries regarding the antecedents of the appellant - accused and after seeking permission from the Head Office, he registered the case and issued FIR under Ex.P-20; that thereafter he called PW.1 on the next day i.e. on 07-07-1992 after securing the presence of PW.3 and another, the mediators, and after arrival of

PW.1 and after ascertaining the contents of Ex.P-1-complaint and after satisfying themselves, they prepared pre-trap proceedings under Ex.P-12; that after the successful trap and after receiving pre-arranged signal, they entered the office of the appellant - accused; that when asked, the appellant - accused informed that the bribe amount was in the almirah and pointed out the place where he had kept the same. However, in his cross-examination, PW.5 has testified that as per the attendance register, the appellant - accused was on casual leave on 3rd and 4th July, 1992 and the 5th July was happened to be a public holiday being Sunday, and therefore it is contended that since the appellant - accused was on leave, the demand of bribe by him from PW.1 on 3rd and 5th July, 1992 got to be false as he was on leave on 3rd and the 5th being a public holiday. It is also contended that since it is in the evidence of PW.5 that PW.1 had borrowed the pen of the appellant - accused for signing on the counterfoil of the cheque and when the pen was returned back to the appellant - accused, he came into contact with the phenolphthalein powder, perhaps is the reason as to why his left hand fingers proved positive of the phenolphthalein test. It is the case of the appellant - accused that PW.1 had voluntarily kept the alleged bribe amount in the almirah without his knowledge.

16. So far as PW.1 meeting the Municipal Commissioner on 01-07-1992 is concerned, it is to be found in his evidence that he admitted having stated before the Magistrate while recording his statement u/s 164 Cr.P.C. that he met the Municipal Commissioner on 01-07-1992. He also vehemently denied a suggestion that the Commissioner was not in his office on 01-07-1992. The said evidence of PW.1 stands falsified by the evidence of PW.6, who has admitted in his cross-examination that the Municipal Commissioner was on leave on 1st and 2nd July, 1992 and the 5th July 1992 happened to be a public holiday being Sunday. Further, the evidence of PW.1 stands falsified in this regard by the evidence of DW.2, the retired Municipal Commissioner, Karimnagar. He has stated in clear terms that he was on leave on 01-07-1992 and 02-07-1992. That the appellant - accused was also on leave on 03-07-1992 and 04-07-1992 and that 05-07-1992 was a public holiday being Sunday.

17. So far as the motivation for preferring false complaint against the appellant - accused is concerned, it is to be found in the evidence of PW.6 that on 24-06-1992, the appellant - accused was instructed by the Municipal Commissioner not to disburse the cheque issued in the name of PW.2. In this context, it is contended that because of the Municipal Commissioner's instructions, the cheque, which was prepared on 23-06-1992 could not be handed over to PW.1 on the same day; therefore PW.1, out of grudge, preferred a false complaint against the appellant - accused before the ACB authorities. It is also contended that PW.1 stating time and again that he had met the Municipal Commissioner on 01-07-1992 and also the appellant -accused on 03-07-1992 and 05-07-1992 is false since the appellant - accused was on leave on 03-07-1992 and 05-07-1992 is a public holiday being Sunday. Therefore, PW.1 is unreliable and his evidence cannot be believed.

18. So far as the alleged demand and acceptance of the alleged bribe amount by the appellant - accused is concerned, there is no evidence proving the same except the evidence of PW.1. However, the evidence of PW.1 is neither supported nor corroborated by the evidence of any other witnesses. Moreover, the dates on which the appellant - accused is alleged to have made such demand, are conflicted and they are mutually inconsistent. His evidence discloses that the appellant - accused had made his first demand on 01-07-1992; on 03-07-1992, and also on 05-07-1992 (as per the statement u/s 161 Cr.P.C.) and he also alleged that at his request the appellant - accused had reduced the bribe amount from Rs. 370/- to Rs. 300/- on 06-07-1992.

19. As per the evidence of PWs.5, 6 and DW.2, the Municipal Commissioner was on leave on 1st and 2nd July 1992, whereas the appellant - accused was on leave on 3rd and 4th July, 992 and that 5th July 1992 was happened to be a public holiday being Sunday; therefore the question of alleged reduction of bribe amount by the appellant - accused on 06-07-1992 does not arise. In any case, the demand of the appellant - accused for the alleged bribe amount stands disproved, so also the acceptance thereof. That being so, the case of the prosecution that since the alleged bribe amount was recovered from the almirah of the appellant - accused in his office is not relevant for proving the case of the prosecution. It cannot be said to have been recovered from the possession of the appellant-accused. That as per the decisions rendered by the Apex Court, mere recovery of the alleged bribe amount from the accused is not sufficient to prove the ingredients of Sections 7 and 13(1) (d) of the Act. Therefore, there is no sufficient evidence on record warranting conviction of the appellant - accused and as such the impugned judgment of conviction passed by the trial Court is not tenable in law.

20. That the prosecution to prove its case examined PWs.1 to 6 and got marked Exs.P1 to P21 and MOs. 1 to 8 on its behalf; that the evidence of P.W-1 de facto complainant, clinchingly proves the case of the prosecution as to demand and acceptance of the illegal gratification by the appellant-accused; that the evidence of PW2 discloses that he along with PW1, who is related to him by caste and courtesy and who happened to be the Municipal Councilor, was carrying on the municipal contract works; that he also supported and corroborated the evidence of PW1 so far as the demand and acceptance of illegal gratification by the appellant-accused is concerned and that PW3 is a mediator and an independent witness for the pre and post trap panchanama proceedings (Exs.P12 and P17). PW3 has spoken to conducting of pre and post trap proceedings during which the appellant-accused was successfully trapped. PW4 is a formal witness who speaks about obtaining the sanction order from the Government under Ex.P19. PW5 is the first Investigating Officer, who had initially registered the crime after causing preliminary investigation about the antecedents of the appellant-accused. PW6 is the second Investigating Officer, who after verifying the investigation already done by PW5, has laid charge sheet against the appellant-accused into Court and that PW1 de facto complainant is trustworthy witness and his version cannot be

doubted. There are no inconsistencies in his version.

21. It is contended in this regard that the contents in Ex.P1-complaint are different from the evidence of PW1 and that what is stated in Ex.P1 complaint is not material for the purpose of the case, but what PW1 has stated in his evidence is certainly material for the purpose of the case. The Court has to consider the evidence of a witness while assessing or appreciating the case of the prosecution. Therefore, it is contended that if there are any inconsistencies or variations in the original complaint have to be seen in the light of the evidence of the person, who preferred such complaint and decide whether such inconsistencies or variations or material are not for proving or disproving the case of the prosecution.

22. The evidence of PW1 clearly goes to show and prove that the appellant-accused demanded and accepted the illegal gratification i.e., MO.1 tainted currency notes of Rs. 300/- that was recovered from the almirah in the office of the appellant-accused during the course of post trap proceedings and that the evidence of PW1 clinchingly proves that the appellant-accused had voluntarily demanded and accepted MO1-tainted bribe amount and the same was recovered from the almirah in his office. Therefore, Section 20 of the Act comes into play and the burden of proving that he did not demand and accept the tainted bribe amount is on the appellant-accused. The prosecution in support of its contention relied on a decision reported in B. Noha Vs. State of Kerala and Another, , which reads as under:

The evidence shows that when PW1 told the accused that he had brought the money as directed by the accused, the accused asked PW1 to take a cut and give the same to him. When it is proved that there was voluntary and conscious acceptance of the money, there is no further burden cast on the prosecution to prove by direct evidence, the demand or motive. It has only to be deduced from the facts and circumstances obtained in the particular case. It was held by this Court in Madhukar Bhaskarrao Joshi v. State of Maharashtra as follows (SCC p.577, para 12)

The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the Court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it.

23. The fact that in C.C. No.17 of 1993, the trial Court by its order dated 8-2-1999 had acquitted the appellant-accused for the charges i.e., Section 13 (1) (d) read with 13 (2) of the PC Act. On appeal by the prosecution, this Court had allowed the appeal setting aside the acquittal order of the trial Court and remitted the case to the trial Court with a direction to examine further witnesses by giving one year time to the prosecution; that after examining three more witnesses viz., PWs.4, 5 and 6 (PWs 5 and 6 are the investigating officers), the trial Court has given a go by to its acquittal order in the first instance and came to a contrary conclusion whereby it found the appellant-accused guilty for the offences under Sections 7 and 13 (1) (d) read with 13 (2) of the PC Act and accordingly, convicted and sentenced him as has already been stated Para No.1 supra; that once the acquittal order of the trial Court is set aside by this Court and when the matter is remitted back to the trial Court permitting the prosecution to lead further evidence, the trial Court is entitled to re-appreciate the entire evidence on record, which has been done in this case and it came to a conclusion whereby the appellant-accused was found guilty and accordingly, convicted and sentenced, as such the trial Court cannot be found fault with and that more over the defense was given an opportunity of examining two more witnesses viz., DW1 and DW2 on its behalf and further Exs.D1 to D5 are also taken on record on behalf of the defense and the same was considered by the trial Court. Therefore, the trial Court cannot be found fault with for taking a contrary view in convicting the appellant-accused.

24. On verification of the record, it is found that the appellant-accused was tried and acquitted by the trial Court in C.C. No.17 of 1993 on 8.2.1999 against which the prosecution preferred Criminal Appeal No.1168 of 1999 and this Court while considering the said appeal along with batch of other appeals had allowed the appeal setting aside the judgment of the trial Court and remitted the case back to the trial Court on 30.12.1999 giving time to the prosecution to adduce further evidence. That, thereafter, P. Ws. 4, 5 and 6 were examined and Exs.P-18 to P-21 were marked on behalf of the prosecution, whereas D.Ws.1 and 2 were examined and Exs.D-1 to D-5 were marked on behalf of the defense. That the trial Court taking into consideration the entire evidence of prosecution witnesses P. Ws. 1 to 6 in general and P. Ws. 1,3 and 6 in particular and also taking into consideration the documents and other material objects marked on behalf of both sides, the trial Court had come to a conclusion whereby it found the appellant-accused guilty of the offence under Sections 7, 13(1)(d) read with 13(2) of PC Act, assailing which the appellant-accused has filed this appeal as is already stated hereinabove.

25. It has to be seen from Ex.P17 mediators report that during the course of post trap proceedings when the Deputy Superintendent of Police, asked the appellant-accused whether he demanded and accepted any money as bribe from the complainant-PW.1, to which he answered that few minutes back PW.1 came and without his permission kept some money in the almirah. That the mediators took the said amount from the almirah and on verification, the serial numbers and

denominations were tallied.

26. It is in the evidence of PW.1 that the appellant-accused demanded and accepted the bribe amount of Rs. 300/- with his left hand and kept it in the steel almirah.

27. It is needless to reiterate that the sodium carbonate solution test conducted on the left hand of the appellant-accused proved positive. The appellant-accused is also stated to have submitted the written statement, wherein he stated to have averred that PW.1 tried to thrust something in his left side shirt pocket, however, he pushed it away with his left hand. That, thereafter, he was busy with his work and did not observe the movements of PW.1. However, this origin was not stated before the trap party by the appellant-accused during the course of post-trap proceedings.

28. The appellant-accused, as per the case of the prosecution, has demanded illegal gratification from the PW.1 on 1.7.1992, 3.7.1992 and 5.7.1992. However, the demand of bribe money by the appellant-accused on 1.7.1992 is not mentioned in Ex.P-1. It amounts to an omission. That on 3.7.1992, the appellant-accused stated to be on casual leave, therefore, the question of demanding bribe amount from PW.1 does not arise. That so far as 5.7.1992 is concerned, it happened to be a public holiday being a Sunday. Therefore, the question of appellant-accused demanding the alleged bribe amount from P.W.1 does not arise.

29. That the spontaneous explanation of the appellant-accused is that he did not demand any bribe from PW.1. However, PW.1 voluntarily kept M.O.1 tainted money in the almirah.

30. The evidence of PWs 2, 3, 4, 5 and 6 is not helpful to the case of the prosecution to bring home the guilt of the appellant-accused beyond all reasonable doubt and it does not corroborate the evidence of PW.1. Further there were discrepancies, inconsistencies and variations in the evidence of the prosecution witnesses.

31. In the above facts and circumstances of the case and also considering the evidence of prosecution witnesses, it cannot be said that the prosecution has proved its case beyond all reasonable doubt and as such, the trial court appears to have committed error in convicting the appellant-accused. Further, in view of the discrepancies in the evidence of prosecution witnesses, this Court is of the view that the plea taken by the appellant-accused appears to be probable and that in any case the trial court ought to have given and extended benefit of doubt to the appellant-accused.

32. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant-accused by judgment dated 27.08.2003 in C.C. No.17 of 1993 on the file of the Court of Principal Special Judge for SPE and ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, is set-aside.