(1995) 08 BOM CK 0007

In the Bombay High Court

Case No : Criminal Appeal No. 49 and 50 of 1993

Sri Giridhar Vithal Kambli — APPELLANT

Vs

State of Goa — RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 165, 34

Citation : (1997) 99 BOMLR 64

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Judgement

T.K. Chandrashekhara Das, J.—Criminal Appeal No. 49 of 1993 is filed by accused No. 1 in Sessions Case No. 1/85 in the District & Sessions Court, South Goa, Margao, and Criminal Appeal No. 50 of 1993 is filed by accused No. 2 in the aforesaid case. Since both these Appeals arise out of a common judgment, I am disposing of these two Appeals by this common judgment.

2. The appellant in Criminal Appeal No. 49 of 1993 was working as a Talathi of Record of Rights and the appellant in Criminal Appeal No. 50 of 1993 was Assistant of the aforesaid Taiathi. The appellants were charged for offences under Sections 161 and 165 of Indian Penal Code r/w Section 5(2) of Prevention of Corruption Act, 1947 r/w Section 34 of Indian Penal Code. After trial, the appellants were convicted. They were found guilty for offences under Sections 161 and 165 I.P.C. read with Section 5(2) of the Prevention of Corruption Act, 1947 read with Section 34 I.P.C and they were sentenced to undergo Rigorous Imprisonment for 1 year and a fine of Rs. 500/- each. In default of payment of fine, the accused were sentenced to undergo Simple Imprisonment for 1 month each. The learned Advocate Mr. D.P. Bhisse appeared for appellant in Appeal No. 49 of 1993 and learned Advocate Mr. Lotlikar appeared for appellant in Appeal No. 50 of 1993.

3. The prosecution case was that on 27.2.1981, one Assuncao Pereira (P.W.3) had filed a petition Exhibit P-6 for the purpose of entry of her name in survey

records in respect of a plot in Survey No. 114/4. After more than 2 years, the said Assuncao Pereira had received a notice from Talathi, Record of Rights to appear for an inquiry on 22.6.1983 at 10:00 a.m. at Panchayat Office, at Xeldem. She along with her husband Mr. Mathew Pereira (P.W.1) went to Panchayat Office. The accused No. 1, Giridhar Kamble, who was working as Talathi, and his assistant, accused No. 2 Augustto Fernandes, were there in the Panchayat Office. Mathew Pereira(P.W.1) handed over the notice to Giridhar Kamble, accused No. 1, who in turn, handed over the same to accused No. 2, Augustto Fernandes, who told that nothing could be done in the matter and that the details will have to be found out in Guard Book maintained in the Survey Office at Margao. Thus, the accused/ appellant in Appeal No. 49 of 1993 refused to look into the document and informed P.W.1 and P.W.3 that no correction would be done either at the present or in future. Thereafter, accused/appellant in Appeal No. 49 of 1993 wrote something on a paper and asked P.W.3 to sign but she refused to sign the same and then he told them that nothing could be done. After waiting for sometime, at about 12 noon, both the accused/appellants left the Office and started proceeding towards Tilamol junction. P.W.1 and P.W.3 also followed them. When all of them reached near Tilamol junction, appellant in Appeal No. 49/93 turned back and asked for a cigarette from P.W.1 and P W.1 offered a cigarette to appellant. At that moment, appellant in Appeal No. 49/93 Mr. Kamble told P.W.1 that matter could be sorted out, but there was lot of difficulty in doing the same and that P.W.1 will have to spend some money for the same. Thereafter he showed 3 fingers of his right hand and on seeing the same, P.W.1 asked him whether the amount was Rs. 30/-. Then appellant Mr. Kamble clarified that the amount was Rs. 300/- which has to be paid to two Officers at Margao. Then P.W.3 enquired with appellant Mr. Kamble whether the entire amount could be sorted out by paying Rs. 300/- and then Mr. Kamble said that Rs. 300/- were to be paid to two officers of Survey Department at Margao and apart from that, Rs. 100/- each will have to be paid to him and to appellant in Appeal No. 50/93, Augustto Fernandes. Mr Kamble then told Mathew Pereira (P.W.1) that if work has to be done, he should bring Rs. 500/ at Xeldem Panchayat Office. The prosecution case further contained that on 24.6.1983 when P.W.1 went to Xeldem Panchayat, at 11:00 a.m. both the accused/ appellants were present. After waiting for sometime when people who gathered there had left, Mr. Kamble asked Mathew Pereira (P.W.1) whether he had brought the amount upon which Mathew Pereira told him that he could not bring the money and asked him whether some more time could be given to him to bring the money and also requested him to reduce the amount. Then Mr. Kamble replied that no reduction was possible but time till 25.6.83 (next day) could be granted. Then P.W.1 told Mr. Kamble that he will definitely give that money on the next day upon which the appellant Mr. Kamble took a piece of blank paper and asked P.W.1 to draw a sketch on a paper in order to show the location of the property. Then sketch was prepared by P.W.1 and it was given to Mr. Kamble. I narrated the above facts in such detail that later part of this judgment was mainly based on these facts.

4. Thereafter P.W.1 and P.W.3 discussed the matter in detail and decided that a complaint should be filed. Then P.W.1 took Rs. 500/- and left for Panaji at about 4:45 p.m. on 24.6.1983. He met Ashok Dessai, Vigilance Officer, P.W.2 and informed him that the accused were demanding money in order to make entries in the Record of Rights. P.W.2 then took the complainant and Mathew Pereira to Panaji Headquarters and thereafter he took him to Altinho from where he took him to the house of Dy. S.P. Moraes at St. Inez and inform him of the matter. Then Dy. S.P. Moraes told Mathew Pereira to come to the Police Station on 25.6.1983 at 6:30 a.m. Ashok Dessai was also asked to arrange two panchas. P.W.1 Mathew Pereira stayed at Hotel Natraj for the night since he was called at the Panaji Police Station at about 6:00 a.m.

5. On 25.6.1983 at about 6:30 a.m. Mathew Pereria went to Police Station and handed over Rs. 500/- in denomination of Rs. 100/- each to Dy. S.P. Moraes. Panchas were arranged by Ashok Dessai, P.W.2. Scientific Assistant Mr. Joshi, P.W.4, was called. P.W.4 explained the use of phenolphthalein and a demonstration was shown by him using phenolphthalein on 500 rupees notes and the same notes were folded and they were put into the right side hip pocket of the pant of Mathew Pereira, P.W.1, who was told not to touch the said notes except when the accused demanded the same. P.W.1 was also told to give a signal with his left hand by wiping his forehead so that the raiding party who would park the car at a little distance gets the signal that the trap has been successful. With these instructions, the raiding party went to Quepem Police Station and from there went to the junction little ahead of Quepem Court building where four roads meet and Mathew Pereira, P.W.1, was dropped and told to proceed to Xeldem Panchayat Office. Thus a trap was laid Pancha Cajetan Siqueria P.W.5, was asked to follow him with instructions to try to be as close as possible to see the transaction between him and the accused. Then P.W.1 went inside the office of Panchayat and P.W.5 stood in the verandah of Panchayat and pretended that he was reading the Notice Board while in fact keeping a watch as to what was happening around. Then P.W.1 entered the office of Panchayat. When P.W.1 entered the office of Panchayat. When enquired with Mr.Kamble whether he was doing his work and to this Augustto Fernandes told P.W.1 that work would be done later on .Then Mr. Fernandes asked P.W.1 Mathew Pereira "your case" and saw in the direction of Mr. Kamble Then he told P.W.1 "your case 29th 30th June". While saying so Mr. Kamble made a sign with the thumb and forefinger of his right hand to indicate money. P.W.1 Mathew Pereira nodded to convey to Mr. Kamble that he had brought money and then Mr. Kamble told Mr. Fernandes in a slow voice "Fernandes go". Then P.W.1 understood that Mr. Kamble had asked Mr. Fernandas to go out and collect the money and the former had made signs to the latter with his head requesting to go out. Then Mr. Fernandas came out along with P.W.1. When Mr. Fernandes came out along with P.W.1, they saw a private car was parked on the road in front of Panchayat office at a distance of 50 metres and somebody trying to repair it. On seeing the car, Mr. Fernandes asked whose car it was and P.W.1 told him that it would be of

someone in the saw mill. Then Fernandes asked Mathew Pereira whether he had brought correct amount and P.W.1 replied in the affirmative. Therefore, Mathew Pereira took out Rs. 500/- from his pant pocket with his right hand and handed over the same to Mr. Fernandes. He received the amount and immediately put it in his right pant pocket. At that time, P.W.5 was in verandah and was watching the same. After receiving the money, Mr. Fernandes started walking to go to office and P.W.1 took out handkerchief from the left pant pocket and started wiping his forehead which was the signal to the police that money was handed over. In the meanwhile Mr. Fernandes went inside the office and immediately thereafter police party, panchas and P.W.1 also entered the Office. Dy. S.P. Moraes told accused not of move and asked Mr. Fernandes whether he had received money from Mathew Pereira and he replied in the affirmative. It is thus that the trap was implemented and Mr. Fernandes was caught red-handed though the trap was mainly aimed at Mr. Kamble. The police drew a panchanama of what had happened in detail. Thereafter the police searched the houses of appellants and took custody of certain files.

6. It is argued on behalf of the appellant in Appeal No. 49/93 that even though the trap laid by the raiding party has been proved, there was no demand of money and receipt of money in pursuance of that demand as are necessary to establish the ingredients of Sections 161 and 165 of I.P.C. He took me in detail through the evidence of various witnesses and argued that those ingredients were not proved against him.

7. Before examining this aspect of the case, it is essential to deal with another important submission made on behalf of the appellant in Appeal No. 49/93 that the sanction obtained by the prosecution as envisaged u/s 5 of the Prevention of Corruption Act is improper as the sanction has been given by the District Collector without applying his mind. The order of the Collector dated 12.3.1984 is exhibited as Exhibit 23-A. In that letter, the District Collector has been referring to the order of suspension dated 30.6.1993 whereby the appellants were suspended upon the receipt of the Report of the Police dated 25.6.1983 and letter dated 27.8.1983 addressed to the Dy. Vigilance Secretary, Panaji by the Superintendent of Police (Crime) C.I.D. Branch and the Collector was also referring to the trap laid and to the manner in which the appellants were trapped and arrested by Quepem in Crime No. 52/83. He refers in that letter that he has perused the police report and other papers on the file. Therefore, on a plain reading of Exhibit 23-A, it would go to show that sufficient materials were already there before the Collector to be relied upon by him to apply his mind before passing the order of suspension. The order also indicates that he had perused those papers before passing the orders. The Collector, Mr. J.P. Singh, has been examined in this case as P.W.18. The learned Counsel for the appellant in Appeal No. 49/93 has relied upon his statement in the cross-examination that he does not remember exactly whether the case papers placed before him comprised of statements of witnesses and argued that this will go to show that before the Collector came to the conclusion to give sanction for the prosecution

he has not looked into the case papers and statements of witnesses. I am afraid that such an inference cannot be drawn by the counsel. One should not lose sight of the fact that the witness was testifying about an event which had taken place 5 years ago. There is nothing improper or artificial while he says that he does not exactly remember what papers he had perused. It is quite normal in human conduct that every minute detail need not be necessarily remembered, that too, an I.A.S. Officer who is discharging responsibility as a Commissioner of Housing Delhi Development Authority at the lime of his examination. Inspite of being subjected to strenuous cross-examination by the counsel for the accused, his evidence could not be taken to come to a conclusion that he has not applied his mind while he gave sanctions for prosecuting the accused. In cross-examination he said: "I say that there was a bunch of papers produced before me by the I.O. but I do not recollect exactly whether in this bunch of papers the statements of witnesses were there, however, I say that in all probability the statements of witnesses should be there in the bunch of papers". This fact has been reflected in the order also. He categorically stated in the Order that he had passed that Order after perusing the case papers. Therefore, the plea advanced by the counsel for the accused No. 1 that the sanction order is passed in this case without application of mind cannot be accepted.

8. The next contention of the counsel for the appellant in Appeal No. 49/93 is that norms stipulated by the Apex Court in proving the sanction have not been satisfied in this case. He relied on a Supreme Court decision in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, where the Supreme Court has laid down the requirements of the proof of valid sanction u/s 6 of the Prevention of Corruption Act, 1947. The Supreme Court stated in para 3:

It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority alter it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence to show the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio.

9. As I pointed out earlier, the guidelines laid down by the Supreme Court in the aforesaid decision have been fully satisfied in this case, if one glances through the evidence of P.W.18, District Collector, and also the Sanctioning Overproduced before the Court.

10. The next phase of a regiments advanced by the counsel for the appellant in Appeal No. 49/93 is that the ingredients that are necessary to be established in a case falling u/s 161 of the Indian Penal Code have not been established by the prosecution in this case. For the reasons mentioned hereinafter, I do not accept the contention of the counsel. As far as the accused No. 1 (appellant in Appeal

No. 49/93) is concerned, all the ingredients required by Section 161 which have been subject-matter of discussion in-many cases before the Supreme Court have been established. In the famous case of R.S. Nayak Vs. A.R. Antulay and Another, of the judgment, Bhagwati, J. says as follows:

...What Section 161 envisages is that any gratification other than legal remuneration should have been accepted or obtained or agreed to he accepted or attempted to be obtained by the accused for himself or for any other person as a motive or reward for doing or forbearing to do any official net or for showing or forbearing to show, in the exercise of his official Function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person.... Whereas u/s 161 ii is necessary to establish that the taking of gratification must be connected with any specific official action, favour or service by way of motive or reward....

11. Thus, it can be seen that the ingredients that are necessary for establishing the guilt of an accused u/s 161 are (a) that the accused must be public servant; (b) that he must be shown to have obtained from any person any gratification and (c) the gratification should be other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in the exercise of his official functions favour or disfavour to person. If, in a case where ingredients of (a) and (b) were established, of course, the presumption u/s 4(1) will come into play. In this background, let us analyse the evidence in this case, P.W.1 has spoken that they required help of Mr. Kamble for solving the problem of Record of Rights with regards to the property of his wife. In his evidence, it has been undoubtedly established that there was demand of Rs. 500/- from P.W.1 and P.W.3 for solving the problem of Record of Rights in respect of their property and P.W.1 agreed to come with the money on the 25th June, 1983. He has also spoken that he went again on 24th June, 1983 and talked to accused No. 1 and bargained for reduction of money and he requested for extension of one day, namely, 25.6.83. He also has spoken about the incident happened on 25.6.83. When he entered the room of the Village Panchayat Office on 25.6.83, the accused No. 1 said that his case can be done 29th-30th. He has also spoken that because of the presence of other people, accused No. 1 made signs with his thumb and forefinger of his right hand to indicate the money and to this P.W.1 has nodded in order to convey to him that the had brought the money. Then accused No. 1 asked the accused No. 2 calling him by name to go out indicating him to go out and take it. Accordingly, the accused No. 1 went away followed by P.W.1 and money was given to the accused No. 2 and after that every thing went on as arranged by the team of the trap.. This happening in the Village Panchayat''s Office room has been corroborated by P.W.5 Cajotan Trinidade. he is also the panch witness of the arrangement of trap also. he says that he was instructed by Dy. S.P. Moraes that he had to follow the complainant P.W.1. In the cross-examination, he said that the complainant had gone about 20 metres ahead when he was able to follow, He was at a distance of about 20 metres when the complainant reached the Panchayat Office. He said that he

stopped in the verandah when the complainant went inside the office but he could observe from there through window what was going on inside. He also said that he saw the complainant outside with another person who followed him and came outside. He stated without being controverted that he was pretending to read Notice Board while at the same time he was seeing everything what was going on inside the Office room. The evidence of P.W.5 will definitely go to show that the arrangement made between P.W.1 and his wife and Mr. Kamble has been practically implemented. The only change occurred in implementing the trapping plan was that Mr. Kamble entrusted the responsibility of receiving the money with Mr. Fernandes. But this unanticipated development in the trapping arrangement, however, did not render the trap being unsuccessful. Therefore, in all aspects, the demand and acceptance and agreement to the bribe has been established against the appellant in Appeal No. 49/93. Eventhough the actual obtaining of money is not there, I cannot, from the evidence adduced in this case, come to a conclusion that all ingredients necessary for establishing the guilt of the appellant in Appeal No. 49/93 u/s 161 of I.P.C. cannot be said to have been proved. Appellant in Appeal No. 49/93 was a Government servant, the complainant and his wife were badly in need of his help in getting the entry in the Record of Rights in respect of there property. There was a reluctance on the part of Mr. Kamble at the first instance to do the job and then there was negotiation and barging with P.W.1 and P.W.3 in respect of quantum of money that had to be passed on as consideration for the help to be rendered by Mr. Kamble and, accordingly, the money was brought by P.W.1. Mr. Fernandes has said that their case will be cleared on 29th to 30th and he had asked P.W.1 whether money was brought by gesture and P.W.1 also showed by gesture that he has brought the money and Mr. Fernandes told accused No. 1 to go out and take it. All this chain of events has been established beyond doubt against Mr. Fernandes. Eventhough the learned Counsel for accused No. 1 tried to demolish the evidence by pointing out some minor contradictions here and there, in my opinion, the substantial evidence adduced in this case goes a long way to establish the guilt of the accused No. 1 u/s 161 of the Indian Penal Code.

12. The counsel for the accused No. 1 has tried to persuade me by arguing that the fact that one of the elements required to be proved by the prosecution has not been established in this case. The learned Counsel argues that since the money has not been received by accused No. 1, the presumption u/s 4(1) of the Prevention of Corruption Act will not arise and, therefore, it is incumbent upon the prosecution to establish beyond all doubt to connect the accused with the offence, namely, the fact of demand of gratification and the receipt of the same. The learned Counsel taking me through the evidence of P.W.1 and P.W.3 argued that the demand of money has not been established by the prosecution. Adverting to this argument, it is necessary to refer that part of evidence led by P.W.1 and P.W.3. When P.W.1 and P.W.3 went to the Village Panchayat Office on 22.6.1983 and the accused Nos. 1 and 2 told them in point blank that it is difficult to do anything in the way of helping them in their case with regard to the

preparation of Record of Rights in respect of property of P.W.3. The conduct of parties after that is most relevant in this context. P.W.1 says in his chief examination:

Then both the accused No. 1 and 2 collected their briefcases and started walking out from the office towards Tilamol. On seeing the accused leaving the office we also got up and followed them. When we reached near Tilamol road accused No. 1 slightly turned back towards us and then requested whether I have a cigarette to give him. I approached the accused No. 1 and gave him a cigarette and lit the same time on and asked him again to help me and give the guidance. Accused No. 1 told me that the matter could be done but there was a lot of difficulty to do it. When I asked him what sort of difficulty he meant, he enquired from me whether I could spent money in the matter. I then asked him how must amount I have to spend Accused No. 1 Thereupon showed his 3 fingers of his right hand after seeing the said finger I asked the accused No. 1 whether he meant that Rs. 30/- Accused No. 1 clarified that it was Rs. 300A which amount to be given two Officers at Margao. My wife after overhearing the conversation asked the accused whether the entire matter could be sorted by paying Rs. 300/-. At that time accused No. 1 made it clear that besides being paid Rs. 300/- for the officers at Margao we should give also Rs. 200 more, for Rs. 100/- for the accused No. 1 and Rs. 100/- for the accused No. 2 By that time we reached to Tilamol junction and one bus proceeding to Margao had already reached at the junction. Then accused No. 1 asked us whether we would be willing to give the money and if so we should come on 24.6.83 in the same Panchayat I said yes and then both of them left by bus.

12. In the evidence of P.W.3 she has spoken in the same line corroborating the evidence of P.W.1. In cross-examination of these witnesses, except some suggestion was made to deny the demand of money by accused No. 1, the statement made by P.W.1 and P.W.3 in their chief examination regarding demand and agreement or understanding arrived at between the accused on one side and P.W.1 and P.W.3 on the other side stand uncontroverted .

13. The statement before the police and the statement made by P.W.1 and P.W.3 as quoted above has not been effectively rebutted by the accused No. 1. Therefore, this part of evidence has to be taken to have been proved for establishing the demand of gratification on the part of the accused No. 1. The argument of the counsel for the accused No. 1 cannot be countenanced that the presumption laid down u/s 4(1)of the Prevention of Corruption Act cannot be made use of for establishing the guilt of accused No. 1. According to me, in view of the above, the evidence established against accused No. 1 raising a presumption u/s 4 does not arise. It is worthwhile to note that there was a demand for gratification on the part of accused No. 1 and on the basis of that, the trap was laid and the said trap was successfully implemented. Merely because the appellant No. 1 has not received the money we cannot say trap had failed. On the other hand, there is sufficient evidence to prove that the accused

No. 2 received the money at the instance and on behalf of the accused No. 1, who cannot wriggled out from this incriminating circumstance. Section 161 has clearly mentioned that"...it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification?."

14. It is to be noted that actual receipt of money as bribe is not a sine qua non establishing the guilt u/s 161 of the I.P.C. Section itself spelt out that mere agreement to accept bribe by a public servant will be sufficient to find a public servant guilty u/s 161 of the I.P.C. Moreover, as discussed above, the accused No. 2 obtained the money evidently on behalf of accused No. 1 It is on the basis of directions of accused No. 1 that the accused No. 2 has gone out and collected money from. P.W.1. Therefore, the Court below is perfectly justified in finding accused No. 1 guilty of the offence and I uphold the conviction and sentence passed by the Court below against the appellant in Criminal Appeal No. 49 of 1993. The said Appeal is dismissed. His bail bond stand discharged. He is required to surrender before the Sessions Judge, Panaji, forthwith.

15. As regards the appellant in Criminal Appeal No. 50 of 1993, the counsel for the appellant/accused No. 2 argued that except the receipt of money as a part of the trap, the accused No. 2 has nothing to do with the agreement or understanding made between the accused No. 1 and P.W.1. I have gone through the entire evidence on record and the learned Counsel for the accused No. 2 has taken me through the entire oral evidence and other evidence in this case and tried to point out that no incriminating factors have been established against the accused No. 2 for having participated in the negotiations and agreement made by accused No. 1 with P.W.1 and P.W.3. It is true that on 22.6.1983 when P.W.1 and P.W.3 went to the Office of the Panchayat, the accused No. 2 as an assistant of accused No. 1 was there as a part of this official responsibility. It has also come out that accused No. 2 has nothing to do with the Record of Rights in respect of the properties of P.W.3 but he was only a peon or assistant or attendant of accused No. 1. There was also no case put forth by P.W.1 and P.W.3 or any other witnesses that the thing got to be done by P.W.1 and P.W.3 can be discharged or undertaking by accused No. 2. It is also pertinent to note that even P.W.1 and P.W.3 did not mention anything about the accused No. 2 when they discussed about the amount of gratification and also the arrangement that was been made between the accused No. 1 on one hand and P.W.1 and P.W.3 on the other hand. Therefore, implicating accused No. 2 u/s 34 of I.P.C. is not justified. The only role played by accused No. 2 is that, according to the directions of accused No. 1, he went outside the Panchayat Office. Then P.W.1 gave the 500 rupees notes which were chemically treated in the hands of accused No. 2. The prosecution has not proved that the accused No. 2 is a party to the original understanding and agreement between the accused No. 1 and P.W.1 and P.W.3. In this context, it is necessary to refer to certain decisions of the Supreme Court relied on in the similar circumstances. So long as he is not a party to the agreement for payment of gratification, it cannot be said that the third ingredient

as mentioned in R.S. Nayak Vs. A.R. Antulay and Another, that the gratification should be other than legal remuneration as a motive or reward for any official act or for showing or fore bearing to show, in the exercise of his official functions in favour or disfavour of a person. Therefore, in order to justify a conviction u/s 161 of I.P.C as laid down by the Supreme Court, all the 3 ingredients shown above should be established. There is no evidence spoken by any witnesses that the accused No. 2 is supposed to do anything with regard to the entry of Record of Rights in respect of the property of P.W.3. It is profitable to refer to a decision of the Supreme Court in this context. In Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe Vs. The State of Maharashtra, the Supreme Court, in para 11 of the judgment, held thus:

As regards accused No. 2 merely because he was entrusted with some money to be passed on lo accused No. 1 it could not be held that he was guilty of any one of these offences unless it is established that he was a party lo the arrangement and the arrangement arrived at was that the money would be handed over to accused No. 2 to be given over to accused No. 1."

This conclusion by the Supreme Court in that case is clearly applicable lo the case of the accused No. 2 in this case. There was no evidence before the Court below that accused No. 2 is a party to the agreement. In fact, it has come out in evidence that the money had to be paid by P.W.1 to accused No. 2 only on account of unanticipated circumstances of the trap. The actual trap was laid to catch hold of accused No. 1 and P.W.1 and P.W.3 had no case even before the Vigilance Officer and other Police Officers that the accused No. 2 had demanded any gratification or he was a party to the understanding. Therefore, the finding of the Court below that the accused No. 2 is guilty of the offences under which he was prosecuted, is without any legal basis. Since the guilt against the accused No. 2 has not been established beyond all reasonable doubt, the accused No. 2 is entitled to be acquitted.

16. In the result, the Criminal Appeal No. 50 of 1993 is allowed. The conviction and sentence passed by the Court below against the appellant/accused No. 2 is set aside and he is acquitted from all the charges.

