(2013) 07 MEG CK 0001

In the Meghalaya High Court

Case No : Criminal A. No. 10 (SH) of 2009

Sushil Kumar Gupta APPELLANT

Vs

Central Bureau Investigation RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 07 MEG CK 0001

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S.P. Mahanta, for the Appellant; V.K. Jindal and Mr. S. Dey, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—This appeal is directed against the judgment and order dated 23.06.2009 convicting the accused/appellant u/s 7 as well as Section 13(1)(d)(i) read with Section 13(2) of the P.C. Act and sentencing him to undergo rigorous imprisonment of 6 months and fine of Rs. 10,000/- in default of payment thereof and further imprisonment of 2 months for the offence u/s 7 of the P.C. Act and further sentenced to undergo imprisonment for 1 year and imposition of fine of Rs. 20,000/- in default thereof to undergo further imprisonment for 4 months for the offence u/s 13(1)(d)(i) of the P.C. Act. Heard Mr. S.P. Mahanta, learned counsel appearing for the appellant/accused and Mr. V.K. Jindal, learned senior counsel appearing for the respondents-CBI.

2. The prosecution case is miraculously mentioned in the impugned judgment and order dated 23.06.2009. However, for appreciation of the evidence for the prosecution and also to see if the sufficient materials have been made out by the appellant/accused for interfering the impugned judgment and order dated 23.06.2009, a gist of the prosecution case is recapitulated as under:-

2.1. The contract work for the construction of hospital building for 200 bedded hospital expansion and services projects of the NEIGRIHMS at Shillong was awarded to the Engineering Projects (India) Limited (for short "EPIL") by the Hospital Services Consultancy Corporation (for short "HSCC") representing the NEIGRIHMS vide P.O. No. CAL/MMD/358/013IV dated 02.12.2002. The accused/ appellant is the Senior Manager in HSCC at Shillong. The NEIGRIHMS project was divided into four packages:-

(i) Housing

(ii) 300 bedded hospital

(iii) 200 bedded hospital expansion and

(iv) Nursing College, Auditorium etc.

2.2. The contract work at Package No. 3 i.e. 200 bedded hospital expansion was with the EPIL, the proximate value was Rs. 62 crores and the contract work of Package No. 4 awarded to the Unity Infra Project was of the proximate value of Rs. 27 crores. The appellant/accused, Shri S.K. Gupta, was in charged for the Packages No. 1 & 3. The contract work of the Package No. 3 awarded to the EPIL was again sub-contracted to the M/s. Parekh Premier Private Limited, Kolkatta (for short "PPPL") by the EPIL. For payment of any item of the work, PPPL submitted under R/A Bill to the EPIL, who in its turn again submitted to the HSCC. The HSCC made the payment to the EPIL and in its turn released the R/A Bill to the PPPL. The execution of the contract work by the PPPL consists of excavation of hard rock and ordinary rock. The PPPL submitted the 14th R/A Bill for the month of March, 2004 amounting to Rs. 7,87,520.75/-, which includes the claim for excavation of hard rock -- 1159.71 cubic meters @ Rs. 380/- cubic meter amounting to Rs. 4,40,689/- of the EPIL. There was a difference of payment between hard rock and ordinary rock for the sum of Rs. 2,76,300/-. The EPIL in its turn submitted their 18th R/A Bill for the month of March, 2004 to the HSCC, which includes the 14th R/A Bill of PPPL. The said bill for the hard rock was checked and certified by the appellant/accused, Mr. S.K. Gupta.

2.3. Shri Jayanta Kumar Dhar, PW 1 filed a written complaint dated 04.08.2004 to the Superintendent of Police, CBI, Guwahati, Assam against the appellant/ accused, Shri S.K. Gupta, Senior Manager (Tech) HSCC, Shillong, alleging that the said contract of the PPPL with the EPIL is back to back basis as they are having with HSCC. Hence, the payment of any item to the PPPL shall be released by the EPIL only after they get the payment from the HSCC. The payment was made to the EPIL, who in its turn made the payment after certified by the appellant/accused Shri S.K. Gupta, being the Senior Manager (Tech) of the HSCC. During the execution of the work, PPPL had excavated substantial quantity of hard rock which is much beyond the quantity stipulated in the bill of the PPPL. With great difficulty and persistent request by the PPPL to the appellant/accused Shri S.K. Gupta, he had certified the quantity and the PPPL received the payment of the hard rock R/A Bill of March, 2004 from the EPIL. Immediately, after receiving the payment by the PPPL, the appellant/accused Shri S.K. Gupta, had started asking the complainant (PW 1) as well as PW 3 Shri Rajiv Menon to pay

60% of the amount released against the hard rock, otherwise, he would create problem in the smooth execution of the work. The said 60% of the amount released against the hard rock comes about Rs. 1.25 lakhs. Finally, on 28.04.2004, the complainant Shri Jayanta Kumar Dhar, PW 1, had a talk with the appellant/accused, Shri S.K. Gupta over telephone from his Kolkatta Office to the appellant/accused Shri S.K. Gupta at his residence telephone at Shillong. The appellant/accused Shri S.K. Gupta, further demanded 60% of the amount received by the PPPL on account of hard rock excavation and asked the complainant to pay the amount to the tune of Rs. 1.25 lakhs at the earliest. On the request of the complainant, the appellant/accused finally agreed for payment in installments and directed to pay the first installment immediately through Mr. Rajiv Menon (PW 3) in his office. The complainant Shri Jayanta Kumar Dhar (PW 1) mentioned to him that Rs. 25,000/- will be paid as first installment and the rest after getting the payment against the bills. The complainant PW 1 as well as his Managing Director decided not to pay the bribe to the appellant/accused, as such the complaint filed a complaint with the Superintendent of Police, CBI, Guwahati for taking necessary action in this regard. After receipt of the said complaint, a case being CBI ACB, Guwahati Case No. R.C. 16(A)/2004-GWH was registered against the appellant/accused, Shri S.K. Gupta, Senior Manager (Tech) HSCC, Shillong u/s 7 of the PC Act, 1988.

2.4. As the matter relates to payment of bribe by a public servant, it was considered necessary that a trap for catching of the appellant/accused red handed, while demanding and accepting bribe from the complainant, was necessary. A trap team consisting of: (i) S/Sh. V.L. Hriata, Inspector, CBI:ACB:Guwahati, CBI:ACB:Guwahati (ii) Ng. Khamrang, Inspector, CBI:ACB:Guwahati-PW 18 (iii) K.R. Kabui, Sub-Inspector, CBI:ACB:Guwahati (iv) Amal Chakraborty, P.C., CBI:ACB:Guwahati (v) E. Lyngdoh, P.C., CBI:ACB:Shillong Unit (vi) Gilbert Sohtun, Inspr. Income Tax, Shillong-PW 13 (vii) Jangkholal Gangte, Programme Executive, AIR, Shillong-PW 14 (viii) Shri Jayant Dhar, S./Project Manager, M/s. CRL. APPL. No. (SH) 10/2009 Page 5 of 52 Parekh Premier Pvt. Ltd. - PW 1 and (ix) Rajiv Menon, Accounts In-charge of M/s. Parekh Premier Pvt. Ltd. - PW 3, assembled in the CBI:ACB, Office, Shillong on 05.08.2004 at 11:45.00 hrs and a Pre-Trap Memorandum was prepared (Ext. No. 8). The said persons assembled in the Office were explained the purpose for trap and they had been made to understand that the complaint dated 04.08.2004 was received from the complainant, Shri Jayanta Kumar Dhar (PW 1). The contents of the complaint were read over to all persons present. The complainant Shri Jayanta Kumar Dhar (PW 1) confirmed the complaint, its content and his signature on it. The said persons assembled had been informed that a trap for catching Shri S.K. Gupta, appellant/accused red handed while demanding and accepting bribe from the complainant was necessary. The complainant, Shri Jayanta Kumar Dhar (PW 1) had told that Shri Rajiv Menon (PW 3), their, officials in Shillong will be contacting the appellant/accused, Shri S.K. Gupta with the bribe, amount on behalf of the Company (PPPL) and accordingly, Shri Rajiv

Menon (PW 3) attended the CBI, Office and confirmed that he had brought the money of Rs. 25,000/- for making payment to Shri S.K. Gupta, appellant/ accused. Shri Rajiv Menon (PW 3) produced a sum of Rs. 25,000/- for payment as demanded by the appellant/accused, Shri S.K. Gupta as bribe in currency notes having denomination and numbers mentioned in the Pre-Trap Memorandum.

2.5. To the aforesaid persons, who were assembled at the time of preparation of the Pre-Trap Memorandum, use of phenolphthalene powder and its re-action with the sodium carbonate solution was explained. The phenolphthalene powder when reacts with sodium carbonate solution even in traces, the colour of the solution turned pink. For the purpose of demonstration, a portion of the phenolphthalene powder was taken on a paper. The same was applied on the aforesaid notes by Shri Amal Chakraborty in presence of all. No one else touched the powder. The remnant phenolphthalene powder was packed in the paper itself and kept in an envelope which was signed and sealed by all. The sealed envelope had been marked as "A". Witness Sh. Jangkholal Gangte (PW 14) was asked to touch the currency notes applied with the phenolphthalene powder, which he did with his right hand. Solution of sodium carbonate was prepared in a clean glass with water and Sh. Jangkholal Gangte (PW 14) was asked to dip his fingers with which he had touched the currency notes into the solution. No sooner did Sh. Jangkholal Gangte (PW 14) dip his fingers into the solution, the solution turned pink. The solution was kept in a clean bottle, which was sealed and signed by all. The sealed bottle was marked as "B".

2.6. Then, the tainted currency notes were given to Shri Rajiv Menon (PW 3) with instruction to keep the same in the front pocket of the jean he was wearing and to hand over the same to Shri S.K. Gupta (appellant/accused) only on demand and not, otherwise. He was further instructed to keep the aforesaid currency notes with him except few amounts in his other pockets for meeting his expenses on tea/snacks. Witness Shri Gilbert Sohtun (PW 13) was asked to accompany Shri Rajiv Menon (PW 3) closely and hear the conversation between Shri Rajiv Menon (PW 3) and the appellant/accused Shri S.K. Gupta attentively and also to watch the money transaction. Shri Rajiv Menon (PW 3) was also instructed that when the money was passed on to Shri S.K. Gupta (appellant/accused) on demand, he should give signal by rubbing his face with his right hand. All the other members of the team were asked to separate themselves around the place and to see the transaction and hear the conversation as far as possible. All the persons then washed their hands with soap and water. In order to further ascertain the demand and to record the same in the electronic media, Shri Rajiv Menon (PW 3) was instructed to ring up to Shri S.K. Gupta (appellant/accused) and ascertain his availability in his office. As Shri S.K. Gupta (appellant/accused) was reported out of the office at about 13:30 hrs, Shri Rajiv Menon (PW 3) contacted the appellant/accused Shri S.K. Gupta on the mobile phone. A new and unused audio cassette (T-series HQ-90 audio tape) opened in presence of the witnesses. The cassette was played on both side and was found blank. This was confirmed by witness Shri Gilbert Sohtun (PW 13) and Sh. Jangkholal Gangte (PW 14) by recording their voices as under:-

I am Shri Gilbert Sohtun. This cassette was played before me and found blank.

I am Sh. Jangkholal Gangte. This cassette was played before me and found blank.

The cassette was inserted in the recording system connected with tape recording device with speaker so that all present could hear the conversation. Thereafter, Shri Rajiv Menon (PW 3) was asked to talk to Shri S.K. Gupta (appellant/ accused). The cassette was then rewinded and replayed. It contained the aforesaid voices of the witnesses and conversation between Shri Rajiv Menon and the appellant/accused, Shri S.K. Gupta. The conversation of which was also recorded in hand writing as per Annexure-1 to the Pre-Trap Memorandum. At the end the voices as under were recorded by the witnesses:

I am Shri Gilbert Sohtun. The aforesaid recording was done in my presence.

I am Shri Jangkholal Gangte. The aforesaid recording was done in my presence.

A copy of the aforesaid conversation was obtained in a separate cassette for day to day investigation. The cassette (T-series HQ-90 audio tape) was signed by all and kept in an envelope which was sealed and signed by all.

2.7. As per their conversation, Shri S.K. Gupta (accused/appellant) had required Shri Rajiv Menon (PW 3) to come to Delhi Mistan Bhandar within 10(ten) minutes, the trap team left for the place immediately at about 13:40 hrs. The said contents of the Pre-Trap Memorandum were read over to all and it has been signed by all present The specimen of the seal with which the aforesaid exhibits were sealed was given at the margin. The aforesaid trap team reached at Delhi Mistan Bhandar, Police Bazar at about 13:50 hrs. Shri Jayanta Kumar Dhar, Senior Project Manager of PPPL, could not accompany as he was not felling well. Shri Rajiv Menon (PW 3) took a seat facing the entrance of the said restaurant on the ground floor. The other members took the seats nearby inside the restaurant so that Shri Rajiv Menon (PW 3) could remain in view of all. But Shri S.K. Gupta (appellant/accused) did not turn up till 14:15 hrs. Shri V.L. Hriata came out of the restaurant and informed others that a man in blue shirt was standing outside as if waiting for someone. Accordingly, Shri Rajiv Menon (PW 3) was asked to check if the said person was Shri S.K. Gupta (appellant/accused). Thereafter, Shri Rajiv Menon (PW 3) came out Shri V.L. Hriata, Inspector, Shri Ng. Khamrang, Inspector (PW 18) and the witnesses came out closely following Shri Rajiv Menon (PW 3) so that the conversation could be overheard. After seeing Rajiv Menon (PW 3), Shri S.K. Gupta (appellant/accused) came towards him and said, he had been waiting outside for quite sometime and Shri Rajiv Menon said to him that he had also been waiting for the appellant/accused inside the restaurant because with this much money in his pocket, he could not walk on the road freely. Thereafter, both of them walked towards the right side of the restaurant and they were followed by the witnesses and the other team members closely. Shri S.K. Gupta (appellant/accused) asked Shri Rajiv Menon (PW 3) "where is the money, is it in the car? Shri Rajiv Menon (PW 3) replied that the money was in his pocket. Shri S.K. Gupta (appellant/accused) took Shri Rajiv Menon (PW 3) towards right side and turning towards the car parking area in Police Bazar, Shillong. Shri S.K. Gupta (appellant/accused) asked for the money by saying O.K. give. Thereafter, Shri Rajiv Menon (PW 3) took out the money from his left pocket of his jean pant with right hand and gave it to Shri S.K. Gupta (PW 3). Shri S.K. Gupta (appellant/accused) accepted with his right hand and transferred to his left hand and kept the same in his left pant front side pocket and thereafter, at about 14:25 hrs, Shri Rajiv Menon (PW 3) rubbed his face with his right hand as per prearranged signal. Thereupon, Shri V.L. Hriata and Shri Ng. Khamrang alongwith other members rushed and challenged Shri S.K. Gupta (appellant/accused) after disclosing their identities for having demanded and accepted an illegal gratification of Rs. 25,000/- from Shri Rajiv Menon (PW 3). At this, Shri S.K. Gupta (appellant/accused) turned pale, perplexed and could not offer any explanation for the same. Both the hands of Shri S.K. Gupta (appellant/accused) were held at his writs. As it was a public place and immediately, the people around started crowding around, it was not possible to continue further proceedings at the spot. Shri S.K. Gupta (appellant/accused) was immediately taken into the vehicle of CBI and brought to CBI Office at Oakland, Shillong at about 14:30 hrs.

2.8. After reaching CBI, Office, Shri S.K. Gupta (appellant/accused) was again asked about the demand and acceptance of illegal gratification by him. Still Shri S.K. Gupta (appellant/accused) could not reply anything. Thereafter, a solution of sodium carbonate was prepared by Shri K.R. Kabui, Sub-Inspector in a clean glass of water and Shri S.K. Gupta (appellant/accused) was asked to dip his left hand fingers in the solution which Shri S.K. Gupta (appellant/accused) did. Upon his doing so, the solution turned pink, which was witnessed by all present. This pink solution was transferred into a clean glass bottle which was sealed and signed by all and marked "Left Hand" for the purpose of identification. Thereafter, another solution of sodium carbonate was prepared in a separate clean glass of water by Shri K.R. Kabui, Sub-Inspector and Shri S.K. Gupta (appellant/accused) was asked to dip his right hand fingers in the water. Shri S.K. Gupta (appellant/accused) did so and the solution immediately turned pink. This solution was also transferred to a clean glass bottle which was sealed and signed by all and marked as "Right Hand" for identification. Thereafter, Shri S.K. Gupta (appellant/accused) was asked as to where did he keep the money. Shri S.K. Gupta (appellant/accused) replied that it was kept in his left hand side pocket of the pant he was wearing. Witness Shri Gilbert Sohtun (PW 13) was asked to check the said pocket. Shri Gilbert Sohtun (PW 13) accordingly, checked the pocket of Shri S.K. Gupta (appellant/accused) and took out the G.S. notes out of Shri S.K. Gupta (appellant/accused) pocket in presence of all the members. Witness Shri Gilbert Sohtun (PW 13) and Shri Jangkholal Gangte (PW 14) were asked to check the denominations and the numbers of the recovered G.C. notes and whether they tallied with the denominations and numbers mentioned in the Pre-Trap Memo. Both the witnesses confirmed that the denominations and numbers of the G.C. notes tallied fully with that mentioned in the Pre-Trap Memo. These G.C. notes were kept in an envelope sealed and signed by all present and it was marked "Tainted Bribe Money Rs. 25,000/-." Thereafter, Shri S.K. Gupta (appellant/accused) was asked to take off his pant which he did. He was offered a chadar (cloth) to put around his waist. A fresh solution of sodium carbonate was prepared by Shri Kabui, Sub-Inspector in another clean glass of water. The left hand pocket of the pant of Shri S.K. Gupta (appellant/accused) was washed in the said solution and the solution instantly turned pink. This pink solution was transferred to another clean glass bottle which was sealed and signed by all and marked as "Left Pocket Washed of Pant" for identification. The pant of Shri S.K. Gupta (appellant/accused) was also taken into Police possession which was kept in an envelope sealed and signed by all and marked Pant of Shri S.K. Gupta (appellant/accused) for the purpose of identification.

2.9. Shri S.K. Gupta (appellant/accused) could not offer any explanation regarding demand and acceptance of Rs. 25,000/- from Shri Rajiv Menon (PW 3). As such, he was arrested at 16:00 hrs. A separate personal search memo and arrest memo were prepared. The wife of Shri S.K. Gupta (appellant/accused) namely Smt. Sunita Gupta was intimated over telephone. In the meantime, Deputy Manager of HSCC, Shillong came to CBI Office and he was also intimated about the arrest of Shri S.K. Gupta (appellant/accused). Inspector Shri Ng. Khamrang (PW 18) was deputed to conduct searches the residence of Shri S.K. Gupta (appellant/accused). A fresh pant was sent from the house of Shri S.K. Gupta (appellant/accused) for wearing which was given to Shri S.K. Gupta (appellant/accused). Immediately after arrest, Shri S.K. Gupta (appellant/accused) was sent for medical examination through Shri Amal Chakraborty, PC to Civil Hospital, Shillong. A rough sketch map of the place of occurrence was also drawn by Shri K.R. Kabui indicating the various positions of the trap team members including the two independent witnesses i.e. Shri Gilbert Sohtun (PW 13) and Shri Jangkholal Gangte (PW 14). The Post Trap Memorandum was prepared containing the above facts and read over to all and signed by all present. Specimen of the seal with which the various exhibits are sealed as mentioned in Memo was given in the Post Trap Memo. Sanction order for prosecution being No. HSCC/Vig(I)/0157 dated 14.07.2005 was accorded u/s 19(i)(C) of the Prevention of Corruption Act, 1988 for prosecution of the appellant/accused Shri S.K. Gupta for the aforesaid offences punishable u/s 7 and Section 13(2) r/w Section 13(i)(d) of the P.C. Act, 1988 and any other offences for the fact mentioned in the sanction order and also for taking cognizance by a Court of competent jurisdiction. After completing the investigation, charge sheet was submitted before the Special Judge (CBI), Shillong, who framed the charges after perusal of the charge sheet as well as after hearing the parties. The charges, so framed, against the appellant/accused read as follows:-

Special Case No. 4/2004 CHARGE

I, Shri Sudip Ranjan Sen, Special Judge CBI, Shillong do hereby charge you Shri S.K. Gupta, Senior Manager, HSCC India Ltd. as follows:-

Firstly, that you on 04.08.2004 a complaint was lodged against you to CBI by Shri Jayanta Dhar, Senior Manager M/s. Parekh Premier Private Limited that you had illegally demanded bribe for 60% of the payment received by P.P.P.L. against excavation of Hard Rock, amounting to Rs. 1.25 lakhs, and on request by the complainant you agreed to receive the bribe money in installment basis and first installment was fixed at Rs. 25,000/- through one Shri Rajiv Menon. And on 05.08.2004 you were caught red handed after accepting the illegal gratification of Rs. 25,000/- and the said bribe money consist of Rs. 500/- and Rs. 100/- denomination notes were recovered from your possession in presence of independent witnesses and thereby you have committed offence punishable u/s 7 of the P.C. Act within the cognizance of this court.

AND

Secondly, you being a public servant misusing your official status demanded and accepted bribe for your personal gain which amount to criminal misconduct and thereby you have committed an offence punishable u/s 13(1)(d) read with Section 13(2) of P.C. Act within the cognizance of this court.

I hereby directed that you to be tried by this court for the above said charges.

Sd/- Shri Sudip Rn. Sen, Special Judge (CBI), Shillong.

The charges, so framed, against the appellant/accused were explained and read over to him, which he pleaded not guilty and claimed to be tried.

3. To bring home the charges against the appellant/accused, the prosecution had examined as many as 18 witnesses, namely, (1) Shri Jayanta Kumar Dhar (PW 1), (2) Shri Sanjiv Sood (PW 2), (3) Shri Rajiv Menon, (4) Shri Pramod Kumar, (5) Shri Omeka R. Marak, (6) Shri S.K. Sinha, (7) Shri Suraj Sewa, (8) Shri Susovan Samanta, (9) Shri Ashi Kumar Mitra, (10) Shri Ametaleh Pathak, (11) Shri Pawan Kumar Jaipusiar, (12) Shri G. Babu Rao, (13) Shri Gilbert Sohtun, (14) Shri Jankholal Gante, (15) Shri Joshin E. Myrthong, (16) Shri R.L. Moses, (17) Shri Bimal Chandra Purkait and (18) Shri Ng. Khamrang and also exhibited 29 documents, 8 Nos. of paper marks and 11 Nos. of Mt. Ext. Defence also exhibited 4 Nos. of Exhibits during cross examination of PWs as Ext. A, Ext. 7/A, paper mark 1 and Ext. B. The statement of the appellant/accused Shri S.K. Gupta was recorded u/s 313 of the Cr. P.C. No Defence witnesses were examined by the Defence. When the statement of the appellant/accused was recorded u/s 313 of the Cr.P.C., the appellant/accused Shri S.K. Gupta had admitted that the bribe amount of Rs. 25,000/- was recovered from his possession i.e. from the pocket of his pant and also that the bribe money of Rs. 25,000/- were tainted with phenolphthalene powder. He took out the tainted bride money from his pocket and he also admitted that his hand when dipped

into the sodium carbonate solution, it turned into pink. There was no explanation after admitting the recovery of the bribe money from his pocket and also both his hands when dipped into sodium carbonate solution, it turned into pink, except that one person from the trap team put something in his pocket.

4. As stated above, the appellant/accused did not produce any defence/evidence nor had he filed any criminal case against any members of the trap party either to the Police or to the CBI for the said alleged illegal act that one of the members of the trap party forcibly inserted something inside his pocket. Had there be really, the said illegal act of one of the members of the trap party, as it was alleged to have been happened in the broad daylight, the appellant/accused would know what was the object inserted in his pocket. The said vague explanation from the side of the appellant/accused in the given case is not acceptable. The relevant portions of the statements of the appellant/accused Shri S.K. Gupta recorded u/s 313 of the Cr.P.C., read as follows:-

Q. 8. PW 3 also deposed that after reaching CBI Office your both hands were dipped in a solution which turned pink, then hand wash solution poured in two bottles and packed and sealed. What have you to say?

Ans. It is correct.

Q. 9. PW No. 3 also deposed that thereafter, independent witness Mr. Gilbert Sohtun searched you and recovered the money from your left front pocket of the pant and after ascertaining the numbers of the currency notes with pre-trap memorandum, it was seized, packed and sealed. What have you to say?

Ans. I do not know.

Q. 10. PW No. 3 also deposed that your left front side pocket of the pant was washed in a solution which turned into pink and the said solution was put inside a bottle and was packed and sealed. What have you to say?

Ans. It is correct.

Q. 12. PW No. 11 Shri P.K. Jaipusiar deposed that you were posted to NEIGRIMS Project Shillong and joined on 3/12/2001 as Senior Manager Civil at NEIGRIMS Project Shillong and you were responsible for supervision, quality control, measurement etc for the work of package 3 (EPIL). What have you to say?

Ans. It is correct.

Q. 13. PW No. 12 Shri G. Babu Rao deposed that work order exhibit-1 is in favour of M/s. Parekh Premier Pvt. Ltd. by EPIUL for construction of 200 beds hospital and general procedure contractor to submit R/B Bill on monthly basis for the work done for payment at EPIL Shillong and EPIL to submit the bill to HSCC for payment. What have you to say?

Ans. I have no personal knowledge about Ext. 1, and I have no knowledge about the bill of Parekh Premier Pvt. Ltd.

Q. 21. PW No. 13 also deposed that he took out the money from your pocket as asked by the CBI. Thereafter, the money was counted and checked the currency notes with numbers which tallied with pre trap memorandum exhibit-8 which was then packed and sealed which was material exhibit 7 the envelope and material exhibit 8 the currency notes. What have you to say?

Ans. I do not know.

Q. 22. PW No. 13 also deposed that then your left front pocket of the pant was washed in a solution and solution turned pinkish which was preserved in a bottle, packed and sealed which was material exhibit-9. Then your pant was also packed and sealed in a packet which is material exhibit-10. What have you to say?

Ans. It is correct.

Q. 27. PW 14 also deposed that at CBI office your both hands were dipped in a solution which turned to be pink and preserved in separate two bottles which are material exhibits 5 and 6. What have you to say?

Ans. It is correct.

Q. 28. PW No. 14 also deposed that currency notes was recovered by other independent witness Mr. Sohtun from your pocket, then it was verified and checked with pre trap memorandum and found to be correct then packed and sealed in an envelope which is material exhibit-7 and currency notes recovered from your pocket is material exhibit-8. What have you to say?

Ans. I do not know.

Q. 29. PW 14 also deposed that your pant pocket from which money was recovered was also washed in a solution which also turned pinkish and preserved, packed and sealed in a bottle which is material exhibit-9. What have you to say?

Ans. It is correct the solution turned pinkish, but I have no idea of recovery of money.

Q. 30. PW No. 15 Shri Joslin E Myrthong deposed that the mobile phone No. 9863064673 belongs to you. What have you to say?

Ans. It is correct.

Q. 35. PW 18 also deposed when your both hands were dipped in a solution by which you accepted and put the money in your pant pocket it turned to be pinkish which kept and preserved in a separate bottle which are material exhibits 5 and 6. What have you to say?

Ans. It is correct that solution turn pinkish, but I had never accepted the money.

Q. 36. PW 18 also deposed that your pant pockets from which money was recovered was washed in a solution which turned to be pinkish and the solution was kept in separate bottle which are material exhibit 9 respectively. What have you to say?

Ans. It is correct that solution turned pinkish, but I have no knowledge about recovery of money.

Q. 37. PW 18 also deposed that currency notes after recovery from your pant pocket by independent witness verified and compared with pre trap memorandum exhibit 8 and found to be correct. Then it was packed and sealed in an envelope material exhibit 7 is the envelope and material exhibit is the currency notes. What have you to say?

Ans. I do not know.

Q. 38. Do you want to say anything more?

Ans. First time I met Mr. Rajiv Menon PW 3 at parking lot, Police Bazar on 5/8/04, who asked a lift from me to go to NEIGRIMS site, as there was a taxi strike on that day, in the meantime, 4/5 persons over power me and forcefully put me in a vehicle, and one of the persons forcefully put something in my pocket, and I could not resist them as they hold my both hands and took me to a unknown room. Later on I do know Parekh Premier Pvt. Ltd. implicated me falsely to avoid penalty as their works were very poor.

Sd./ (Signature or mark of the accused) Sd./- (Signature of the Presiding Officer)

5. Mt. Ext. 2 i.e. the cassette which contains the conversation between the appellant/accused and Shri Rajiv Menon (PW 3) regarding the demand of the said illegal gratification by the appellant/accused and also for payment by Shri Rajiv Menon (PW 3) for PPPL was played in the open court and found to be audible and also Mt. Ext. 2 was also having signature of the witnesses on the body of the cassette. The learned trial court in whose presence, Mt. Ext. 2 was played in the open court made a clear findings that "on perusal of the cross examination, nothing rebuttal is noticed pertaining to reopening of the cassette Mt. Ext. 2 at CBI Office on 05.11.2004 in his presence and PW 8, and then played in a tape recorder, where PW 8 identified the voice of the appellant/accused Shri S.K. Gupta and contents of the conversation in writing in Ext. 7 tallied and matched with the conversation already recorded in Mt. Ext. 2. So, from the statement of PW 10, it is clear that the audio cassette Mt. Ext. 2 was found in a sealed packet which was reopened on 05.11.2004 for the purpose of identification of the voice of the accused/appellant by PW 8, who was the colleague of the appellant/ accused and who identified the voice of the accused and the conversation reduced in writing in Ext. 7 which tallied with the conversation recorded in the cassette Mt. Ext. 2 when played before him.

6. The learned trial court, who himself recorded the statement of the PWs, in whose presence, Mt. Ext. 2 Audio cassette was played, carefully appreciated the evidence of the prosecution and for the reasons recorded in the impugned judgment and order, had come to the findings that:

On perusal of Ext. 7 at inner page 9 at the bottom it is found mentioned during telephonic conversation, that the accused Shri SK Gupta asking Shri Rajiv Menon ''Kitna Hai'' and Shri Rajiv Menon replied that ''Ho Tho Mare Ko Pata Nahin Sir Gena Nahin Ha'' that also indicates that there was a demand. In regard to re-opening the cassette Mt. Ext. 2 on 5.11.2004 from the evidence of PW No. 8, PW No. 10 as well as the memorandum Ext. 21, 22, it is clear that it was reopened for the purpose of identification of the voice of the accused by PW 8 the colleague of the accused and analyzing the evidence I did not find any reason to record to re-open the cassette by the I/O with any intention to tamper or improve the case.

Hon''ble Supreme Court in the case of

Kishan Chand vs. State of Rajasthan reported in : AIR 1982 SC 1511 at Para 11

was pleased to observe that - "A fact may be proved either by direct testimony or by circumstantial evidence. If the appellant did not visit the Factory of Rejendra Dutt on Nov. 20, 1974, and made no overtures demanding the bribe, on what rational hypothesis can one explain the visit of Rajendra Dutt to the office of Dy. SP, ACD on Nov. 22, 1974; his producing currency notes worth Rs. 150/-; a superior officer like the Dy. SP, ACD, making all arrangements for the trap and the raiding party going to the house of the accused on Nov. 22, 1974? The visit of Rajendra Dutt soon followed by the raiding party at the house of the accused on Nov. 22, 1974 is admitted. Coupled with this, the fact that Keshar Mal, PW 2 in his evidence stated that after Rajendra Dutt entered the room in which appellant was sitting. Rajendra Dutt on entering the room asked the appellant, "Hallo, how do you do". He further stated that the appellant replied, "I am sick and suffering from cold". He deposed that thereafter the appellant asked, ''Have you brought the money,'' where upon complainant Rajendra Dutt replied, ''Yes, I have brought the money''. He further stated that thereafter Rajendra Dutt took out the amount of currency notes from his diary and gave the same to the appellant who took the amount and kept it under the pillow on the cot. If there was no prior demand the subsequent events remain unexplained as also the demand as deposed to by PW 2 keshar Mal. But Mr. Anthony urged that this part of the evidence of Keshar Mal cannot be accepted because he has not stated this fact in his statement recorded in the course of investigation. Simultaneously it was pointed out that the other Motbir Ram babu is totally silent in his evidence about the conversation between the appellant and the complainant. Undoubtedly, the omission in the police statement of Keshar Mal and non-mentioning all these facts by the co-motbir would raise some doubt in the mind of the Court about this conversation but as pointed out earlier there are tell-tale circumstances which do indicate that there must have been a demand and, therefore, these circumstances as herein before set out will render support to the statement of Keshar Mal that the demand at the time of visit of Rajendra Dutt must be pursuant to earlier demand by the appellant. Therefore, it is not proper to say that there is no evidence of the demand of bribe as on Nov. 22,

1974. AIR 1982 SC 1514.

Where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the fact and circumstances of another case the Court may unhesitatingly accept the evidence of such an Officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any presidential guidance.

: AIR 1980 SC 873

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In this instant case in hand, there may be certain minor contradiction in the evidence, but such minor contradiction definitely did not prejudice the accused or render benefit to him.

But in this instant case from the facts, circumstances and evidence discussed above, it is clear and evident that the accused Shri S.K. Gupta had demanded money and accepted the same, for the reasons of which this court find him guilty of receiving illegal gratification. And accordingly, he is convicted u/s 7 of PC Act 1988 as well as found guilty of receiving money in illegal and corrupt means u/s 13(I)(d)(i) of PC Act and convicted u/s 13(2) PC Act, 1988.

7. PW 1, Shri Jayanta Kumar Dhar (Complainant), PW 3 Shri Rajiv Menon, PW 13 Shri Gilbert Sohtun, PW 14 Shri Jangkholal Gangte and PW 18 Shri Ng. Khamrang made the graphic statements of the demand of gratification by the appellant/accused Shri S.K. Gupta, Pre-Trap Memorandum, catching the appellant/accused red handed while demanding and accepting bribe and also subjecting the appellant/accused to the test of Phenolphtalene power and sodium carbonate solution. It is a settled law in a trial, it is not number of witnesses but the quality of their evidence formed the basis of conviction.

8. Justice Thakkar, J., (as his Lordship then was) observed that:

human goodness has limits-human depravity has none. The need of the hour however, is not exasperation.

Ref:

Bhaarwada Bhoginbhai Hirjibhai Vs. State of Gujarat (1983) 3 SCC 217)

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9. Justice R.C. Lahoti J., (as his Lordship then was) in

State of Rajasthan Vs. N.K. The accused (2000) 5 SCC 30

, observed that

It is true the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of the acquittal by giving weigh to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females.

10. Further only because of the failure of prosecution to examine the independent witnesses, the prosecution case could not be thrown out on that ground alone. Reference Appabei & Anr. Vs. State of Rajasthan reported in AIR 1986 SC 896. It is also well settled law that the Court while appreciating evidence must not attach undue importance to minor discrepancies. Regarding this point we may refer to the decision of the Apex Court in

Sukhdev Yadav & Ors. Vs. State of Bihar reported in (2001) 8 SCC 86

. Para 3 and 15 of the SCC in Sukhdev Yadav & Ors. (supra) are quoted hereunder:

3. It is indeed necessary, however, to note that there would hardly be a witness whose evidence does not contain some amount of exaggeration or embellishment - sometimes there would be a deliberate attempt to offer the same and sometimes the witnesses in their over anxiety to do better from the witness box detail out an exaggerated account. In

Appabhai Vs. State of Gujarat reported in : 1988 Supp. SCC 241 : 1988 SCC (Cri.) 559

this Court in par 13 of the report observed (SCC petitioner. 246-47)

The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception of observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into and its vast experience of men and matters in difference cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such facts, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The Court, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

15. True, as noticed above, there are lapses, but the question that arises for consideration is whether any prejudice has been caused by reason of such lapse; if the answer thereto is in the affirmative, obviously it have a serious impact on the trial but if in the event, however, it is in the negative, no prejudice can be said to have been caused and correspondingly question of the trial being vitiated would not arise. The eyewitnesses account as available on record cannot but be termed to be trustworthy and by reason thereof, the lapses stand overshadowed by the testimony of the eyewitnesses. The observation above obtain support from the decision of appellant/accused to the test of Phenolphthalene power and sodium of Bihar reported in

(1997) 7 SCC 219 : 1997 SCC (Crl.) 1042 : AIR 1997 SC 3471

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11. This Court is not oblivious that being the first appellate court has to observe and re-appreciate the statements of the PWs and exhibited documents, more particularly, when we cannot pursue ourselves to concur the findings of the trial court. In the present case, this Court is in complete agreement with the findings of the trial court in the impugned judgment and order dated 23.06.2009 passed in Special (CBI) Case No. 4/2004. Regarding this point, reference may be made to the decision of the Apex Court in

Ramakant Rai Vs. Madan Rai & Ors (2003) 12 SCC 395

, wherein the Apex Court held that "when the appellate Court concurs with the views of the trial court the necessity for elaborately dealing with various aspects may not always be necessary. But when a view contrary to that of the trial court is expressed, it is imperative that reasons therefore should be clearly indicated. There is no scope for any departure from this basic requirement. As stated above, this Court happily concurs with the view of the trial court in the impugned judgment and order dated 23.06.2009 passed in Special (CBI) Case No. 4/2004.

12. PW 1, Shri Jayanta Kumar Dhar states that the contract work for construction of 200 bedded hospital expansion and services was awarded to the EPIL by the HSCC and the EPIL sub-contracted the portion of the said work to the PPPL under the work order marked as Ext. 1. The portions of the Work subcontracted to the PPPL were for construction of hospital block for 200 bedded hospital expansion and services project of NEIGRIHMS at Shillong. The contract amount was Rs. 2,41,52.959. The hospital block is a four storied building and the scope of work consist of excavation, superstructure and other finishing items. The said contract

with the EPIL is on back to back basis as they are having terms and conditions with the HSCC. The PPPL submitted the bill to the EPIL and the EPIL released the payment to the PPPL after they get payment from the HSCC for those particular items as mentioned in the bill by the PPPL. Actually, the EPIL bill was being certified for releasing payment by the appellant/accused Shri S.K. Gupta, the then Senior Manager Technical HSCC, Shillong. The EPIL got the contract from the HSCC and the EPIL gave the PPPL sub-contract for the said works. The PPPL submitted the 14th R/A Bill (Ext. 5) to the EPIL for the work done from 01.03.2004 to 31.03.2004. The said 14th R/A Bill of the PPPL include the amount of Rs. 4,40,689.80 for the excavation of 1159.71 cubic meters of hard rock @ Rs. 380/- per cubic meters. There is a difference of rate for the hard rock and the ordinary rock. The rate for excavation for ordinary rock is only Rs. 230/- per cubic meters. PW 1 further stated that the difference in balance payment between the hard rock and the ordinary rock for the said amount of work i.e. 1159.71 cubic meters is Rs. 2,66,733.30. The said 14th R/A Bill submitted to the EPIL, who in its turn again submitted to the HSCC under the 18th R/A Bill which includes not only the said 14th R/A Bill of the PPPL and also other work. R/A Bill 18th which includes the R/A Bill 14th was exhibited as Ext. 14. The said Ext. 14 was certified by the appellant/accused.

13. Immediately, after getting the payment of the said bills i.e. Ext. 5 from the EPIL, PPPL started getting reminders from the appellant/accused for paying him 60% of the difference in payment between hard rock and ordinary rock. The appellant/accused demanded payment of 60% of the difference between hard rock and ordinary rock on the plea that the PPPL got the said payment on his certificate that the PPPL had excavated the hard rock of 1159.71 cubic meters. On 28.07.2004, he contacted the appellant/accused Shri S.K. Gupta over telephone from Kolkatta to discuss some official matters at his residence in Shillong. The appellant/accused Shri S.K. Gupta in course of his discussion asked him why payment was not made to him as asked by him and he also further asked him to pay Rs. 1,25,000/-. In reply, he informed him that it is not possible but he (appellant/accused) was insisting him for the said amount. Since the appellant/accused was insisting for payment, he (PW 1) told him that the PPPL will pay to him the said amount by way of installments. Initially, the appellant/accused refused to accept the said illegal gratification by way of installments but on his repeated discussion, he (appellant/accused) agreed to receive the said amount in installment and thereafter, much discussion, the first installment was fixed at Rs. 25,000/-. It was also decided over telephonic discussion between the PW 1 and the appellant/accused that the said amount of Rs. 25,000/- will be paid to him through site accountant of the PPPL Shri Rajiv Menon (PW 3) at Shillong. It was also decided that the rest demanded amount will be paid to him against receipt of subsequent bills. But the PPPL did not agree to make any payment and the Company decided to refer the matter to the CBI for necessary action. Thereafter, on 04.08.2004, PW 1 lodged a complaint (Ext. 6).

14. PW 1 further stated that after lodging the said complaint with the

Superintendent of Police, CBI, Guwahati, he asked him to contact the in-charge of CBI, Shillong Unit. On 05.08.2004 early in the morning, he reached Shillong and contacted the CBI Office, Shillong at 11:45 am and met the CBI in-charge Shillong Unit. The CBI in-charge Shillong Unit called other CBI officials and two civilians (independent witnesses) namely, Shri Gilbert Sohtun (PW 13) and Shri Jangkholal Gangte (PW 14). Shri Rajiv Menon (PW 3) was with him when he went to the CBI Office, Shillong Unit. In the presence of CBI officials and witnesses, he narrated the complaint and pleaded for necessary action against the appellant/ accused. Thereafter, a decision was taken in the CBI Office that a trap will be laid against the appellant/accused Shri S.K. Gupta. In presence of the CBI Officials and the said two civilians, Shri Rajiv Menon (PW 3) produced the currency notes for the sum of Rs. 25,000/- to be paid as bribe money. The said amount of Rs. 25,000/- consisting of 42 Nos. of Rs. 500/- denomination notes and 40 Nos. of 100 denomination notes. Thereafter, the CBI personnel noted down the Nos. of the currency notes and the currency notes were tainted with phenolphthalene powder for the demonstration purpose. After treatment of the said notes for the purpose of demonstration one note was given to Shri Jangkholal Gangte (PW 14) for touching with his fingers of the said tainted note and thereafter, he was asked to put his fingers in a solution of sodium carbonate and immediately that solution turned into pink. Thereafter, the pink solution of sodium carbonate was put inside a bottle which was packed and sealed in his presence and witnesses. Mt. Ext. 1 is the said bottle containing pink solution.

15. Thereafter, the treated notes of Rs. 25,000/- were handed over to Shri Rajiv Menon (PW 3) for making payment as demanded by the appellant/accused. Shri Rajiv Menon (PW 3) kept the said amount in the front pocket of his pant. Shri Rajiv Menon (PW 3) was also told by the CBI officials that the payment of the said tainted notes are to be made only on demand by the appellant/accused. Witness Shri Gilbert Sohtun (PW 13) was also instructed to follow Shri Rajiv Menon (PW 3) closely so that he (PW 13) can hear the conversation between the appellant/accused and Shri Rajiv Menon (PW 3) and also to see the transaction, if any, between them. Shri Rajiv Menon (PW 3) was also instructed to give signal by way of rubbing his face, immediately after handed over the tainted money as an illegal gratification to the appellant/accused Shri S.K. Gupta. Thereafter, Shri Rajiv Menon (PW 3) gave a ring to the mobile of the appellant/accused Shri S.K. Gupta from the CBI Office. Prior to that a blank cassette was demonstrated in the presence of witnesses and on being satisfied with the blank cassette, it was inserted in the recording machine to record the conversation between Shri Rajiv Menon (PW 3) and the appellant/accused Shri S.K. Gupta in presence of all and accordingly, the conversation between Shri Rajiv Menon (PW 3) and the appellant/accused Shri S.K. Gupta was recorded. The conversation was translated and recorded in a piece of paper. The CBI produced one cassette under seal cover with wax seal bearing five signatures of witnesses and written on the top of envelope No. 16/2004 No. 199/2004(3) containing one cassette "recorded cassette voice of Shri S.K. Gupta(appellant/accused) and Shri Rajiv

Menon (PW 3)". The envelope containing the said cassette with the permission of the Court in presence of public prosecutor Shri Komal Giri and defence counsel Shri S.P. Mahanta and appellant/accused Shri S.K. Gupta, was opened by In-charge CBI Shillong Unit Ng. Khamrang to play the cassette before the court to determine whether it is audible or not. The cassette is the brand of T-Series HQ 90, audio tape also bears the signatures of witnesses. The cassette was played in a tape recorder brought by the CBI in the open court in presence of the prosecution counsel, defence counsel and the appellant/accused. It was found that inside the envelope, the cassette was further wrapped in a white paper cloth. The said cassette was played by the CBI in the open court and was found to be audible. PW 1 also exhibited the Pre-Trap Memorandum containing six pages which is exhibited as Ext. 8. The audio cassette played by the prosecution in the open court, PW 1 recognized the voice of Shri S.K. Gupta (appellant/ accused) and that of Shri Rajiv Menon (PW 3). The statement of PW 1 inspite of subjecting him to a lengthy cross examination could not be demolished. PW 1 stated in his cross examination that "it is not mentioned in the agreement that after receipt of the payment from HSCC, the EPIL will release the payment to the PPPL. It is a fact that the EPIL used to submit the bills to the HSCC for their work including their bills. The bills submitted by the EPIL are to be scrutinized by the officers of the HSCC."

16. PW 3 Shri Rajiv Menon states that the PPPL had a contract with the EPIL, Shillong for expansion of the hospital block at NEIGRIMS, Mawdiangdiang, Shillong and the EPIL had a contract with the HSCC. The PPPL had a sub-contract from EPIL on back to back basis however, that was not mentioned in the contract document, as the main contract was between HSCC and EPIL. PPPL used to submit the bill to the EPIL, the EPIL used to forward the bill to the HSCC. The bills were certified by the appellant/accused Shri S.K. Gupta, the then Senior Manager Technical of the HSCC. Ext. 5 i.e. 14th R/A Bill for hard rock certified by the appellant/accused was for excavation of 1159.71 cubic meters @ Rs. 380/- per cubic meters. The bill was released in the month of April, 2004 by the EPIL. There was a difference of payment between the hard rock and the ordinary rock. The difference of payment between hard rock and the ordinary rock was for a sum of Rs. 2,76,000/-. The payment was released in the month of April, 2004 in regard to the difference of ordinary rock and hard rock i.e. Rs. 2,76,000/-. The appellant/accused Shri S.K. Gupta demanding 60% of Rs. 2,76,000/- after releasing the said amount, the demand was for Rs. 1,75,000/-. Shri S.K. Gupta (appellant/accused) demanded 60% of the amount released from him and his senior officer Shri Jayanta Kumar Dhar (PW 1). The appellant/accused was demanding money and since he did not get the money, he started creating problem to their Company and in some occasions, he demanded money from him when he met him at the site. Thereafter, the PPPL decided to lodge a complaint with the CBI against the appellant/accused Shri S.K. Gupta. A verbal agreement arrived between the PW 1 and the appellant/accused that the demanded brine money will be paid in installments for Rs. 25,000/- each. A complaint Ext. 6 was

lodged with the CBI, Guwahati by Shri Jayanta Kumar Dhar (PW 1). He further stated that he was told by the management to give bribe money of Rs. 25,000/- to the appellant/accused Shri S.K. Gupta. On 05.08.2004, he went to the CBI Office, Shillong at about 11:00 am and met the CBI officials, namely, Shri Haryiat and Shri Khamrang (PW 18), beside him, PW 1 and two independent witnesses, namely, Shri Gilbert Sohtun (PW 13) and Shri Jangkholal Gangte (PW 14) were present in the CBI office. CBI officials instructed them how the money to be paid to the appellant/accused. Thereafter, he placed Rs. 25,000/-, which he had brought from the Bank under the instruction from his Company (PPPL) at Kolkatta. The said Rs. 25,000/- includes 42 Nos. of 500/- denomination notes and the rest in 100 denomination notes. The number of the said notes were written in apiece of paper and the notes were treated with phenolphthalene powder. PW 14 with his right hand touched the tainted notes. Thereafter, Shri Jangkholal Gangte (PW 14) dipped his fingers in a sodium carbonate which turned into pink colour. The said solution was put inside a bottle and was packed and sealed in their presence. He put his signature on the body of the bottle. Mt. Ext. 1 is the said bottle, Mt. Ext. 1/1 is his signature.

17. Thereafter, he was searched physical by the CBI officials as well as by the said two independent witnesses and thereafter, only the tainted notes of Rs. 25,000/- are handed over to him. Thereafter, the tainted notes of Rs. 25,000/- were kept in the left side of his front pant pocket. Further he was instructed by the CBI officials to give the money to the appellant/accused only on demand of bribe and further, he had been instructed to give signal by rubbing his right side of his cheek only when money was handed over to the appellant/accused on demand. The independent witness Shri Gilbert Sohtun (PW 13) was also instructed by the CBI officials to follow him (PW 3) closely to overhear the conversation between the PW 3 and the appellant/accused and to observe the transaction, if any, between the PW 3 and the appellant/accused. PW 3 further stated that he was asked by the CBI officials to give ring to Shri S.K. Gupta (appellant/accused) to ascertain where he desired to take the money i.e. illegal gratification. Before contacting the appellant/accused over the mobile phone, the CBI officials played a blank cassette in front of the independent witnesses. Thereafter, the cassette was fixed in the tape recorder and one speaker was also attached with the telephone. He spoke and contacted the appellant/accused from his mobile phone from the CBI office through their landline telephone and the conversation was recorded accordingly in the said blank cassette. After recording, the conversation was also reduced in writing. Ext. 7 is the contents of the said conversation which bears the signature of the witnesses. In the CBI office, Pre-Trap Memorandum was prepared regarding the said proceeding which is exhibited as Ext. 8, which bears their signatures. In the CBI office all the persons washed their hands with soap and water. The said cassette in which the conversation was recorded was packed and sealed in a separate envelope in presence of all the persons present in the CBI office at the time of preparation of the Pre-Trap Memorandum. After preparation of the Pre-Trap Memorandum, they

left the CBI office and visited Delhi Mistan Bhandar at Police Bazar, Shillong. After reaching Delhi Mistan Bhandar, he sat inside the restaurant along with CBI officials occupied the surrounding seats along with the other two independent witnesses. After 10-15 minutes, the appellant/accused did not turn up there and after sometime, he saw the appellant/accused standing outside the Delhi Mistan Bhandar. Shri Hariyadha CBI, Inspector instructed him to go where Shri S.K. Gupta (appellant/accused) was standing, then he paid Delhi Mistan Bhandar bill and moved towards Police Point where the appellant/accused first demanded the said money. He told him that he cannot move around with this money, for this, he sat inside Delhi Mistan Bhandar.

18. Then the appellant/accused asked where is the money and he told him that the money is with him, so the appellant/accused asked him to pay the money and also said that the vehicle of the appellant/accused was parked in a parking lot at Police Bazar. Then PW 3 and the appellant/accused moved towards the parking lot where Shri Gilbert Sohtun (PW 13) was keeping a close watch to them along with other CBI officials. After reaching the parking lot, the appellant/ accused again demanded the money. He took out the money from his left front pant pocket with his right hand and handed over the same to the appellant/ accused. The appellant/accused accepted the money with his right hand and transferred it to his left hand and put the money in his left front pocket of his trouser. Thereafter, he gave pre-arrange signal by rubbing his cheek, then the CBI officials came towards them and caught his both hands after identifying themselves. CBI officers asked the appellant/accused why he accepted bribe. Thereafter, CBI officials took the appellant/accused to CBI office for further interrogation. In CBI office both hands of the appellant/accused were dipped in separate solution of sodium carbonate which turned into pink. The said solution were transferred in two separate bottles, packed and sealed by me (PW 3) and others. Shri Gilbert Sohtun (PW 13) was asked to search the appellant/accused and in course of search, PW 13 recovered the said bribe money from the left front pocket of the pant of the appellant/accused. Thereafter, the said recovered money was compared with the numbers and denominations mentioned in the Pre-Trap Memorandum (Ext. 8) and found to be tallied. The said notes were packed and sealed in an envelope in his presence and he signed on the body of the said envelope. Mt. Ext. 7 is the money inside the envelope. PW 3 further stated that the left front side pocket of the pant of the appellant/accused was dipped in a separate solution of sodium carbonate and the solution turned pink. The said solution was also put inside the bottle and was packed and sealed in his presence. Ext. 9 is the said bottle. The pant of the appellant/accused was also seized and packed and sealed in a separate packet which was marked as Mt. Ext. 10. Mt. Ext. 10/1 is his signature.

19. PW 13 Shri Gilbert Sohtun states that during August, 2004, he was posted and functioning as Inspector of Income Tax in the office of the Addl. Commissioner of Income Tax, Shillong. On the instruction of the Commissioner of Income Tax, Shillong, he attended the CBI office, Shillong on 05.08.2004 at

about 11:30 am. He met the CBI Inspector and went inside the room at CBI office. One witness Shri Jangkholal Gangte (PW 14) was also present there. There were some persons also. Then the CBI official told them about the some secret operation. The CBI official explained to them how and what is to be done. Thereafter, one written complaint was given to him and the said complaint (Ext. 6), and he read out the contents of the said complaint in front of all the persons present there. Thereafter, demonstration was made as to how the phenolphalaene powder was to be applied in the currency notes brought by Shri Rajiv Menon(PW 3). The currency notes brought by PW 3 was an amount of Rs. 25,000/- which consists of 500/- and 100/- denominations notes and 500 notes were 42 in Nos. and 100 notes 40 in Nos. The numbers of the currency notes were noted in a piece of paper. After application of phenolphalaene powder in the currency notes, were handed over to Shri Rajiv Menon (PW 3). Before handing over the said notes to Shri Rajiv Menon (PW 3), Mr. Jangkholal Gangte (PW 14) was allowed to touch it with his right hand. The right hand fingers of PW 14 was dipped in a solution of sodium carbonate, which turned to pink. Shri Rajiv Menon (PW 3) was instructed to hand over the said tainted notes to the appellant/ accused only on demand and not otherwise and he (PW 13) was instructed by the CBI to remain close with Rajiv menon (PW 3) and to hear the conversation between the PW 3 and the appellant/accused and also to see or observe the transaction, if any, between the PW 3 and the appellant/accused. Shri Rajiv Menon (PW 3) was also been instructed by the CBI officials, if the appellant/ accused demand and takes the money, then Shri Rajiv Menon (PW 3) was to give signal by rubbing his face with right hand. Thereafter, in the CBI office, CBI personnel brought a tape recorder and blank sealed audio cassette which was played before them and found to be blank. Shri Rajiv Menon (PW 3) contacted the appellant/accused over telephone and their conversation was recorded in the said blank audio cassette. The conversation recorded in the cassette was also reduced in writing in a piece of paper in Hindi. PW 13 further stated that a Pre-Trap Memorandum (Ext. 8) was also prepared.

20. PW 13 further stated that after preparation of the Pre-Trap Memorandum (Ext. 8) and other formalities, they proceeded to Police Bazar and entered a restaurant called Delhi Mistan Bhanda and while waiting for the appellant/ accused, he ordered for a cup of tea. They waited about 10/15 minutes but the appellant/accused did not turn up. One of the CBI officials waited outside the restaurant and came back and informed Shri Rajiv Menon (PW 3) that one person is waiting outside the restaurant. Listening this, Shri Rajiv Menon (PW 3) went outside the restaurant and they followed him from behind and saw that he had started talking with a person and the said person who was waiting outside the restaurant started walking towards the Police Point. Shri Rajiv Menon (PW 3) started talking with a person (the witness identified as appellant/accused Shri S.K. Gupta) and he also heard the conversation between Shri Rajiv Menon (PW 3) and the appellant/accused Shri S.K. Gupta. The appellant/accused asked Rajiv Menon (PW 3) that he supposed to get the money from Shri Jayanta Kumar Dhar

(PW 1). Thereafter, the appellant/accused asked Shri Rajiv Menon (PW 3) "where is the money? Is it inside the car", PW 3 replied that the money was in his pocket. Thereafter, PW 3 and the appellant/accused proceeded towards Police Bazar parking lot. PW 3 further stated that on reaching the parking lot (MUD A Complex) both of them came to a halt and the appellant/accused asked PW 3 to give the money to him. Accordingly, Shri Rajiv Menon (PW 3) gave the money to the appellant/accused which he was carrying on the left front pocket of his pant. The appellant/accused accepted the said money. PW 13 also had seen that the appellant/accused received the money by his right hand and thereafter, he transferred it to his left hand and put it inside his left front pant pocket. Immediately, after the transaction, Shri Rajiv Menon (PW 3) gave pre-arrange signal by rubbing his face with his right hand. Immediately, the CBI officials held both hands of the appellant/accused after disclosing their identity and took him to the CBI office, Shillong by a vehicle. On reaching the CBI office again a solution of sodium carbonate was prepared and the appellant/accused was asked to dip his left hand on the said solution and the solution turned to be pinkish in colour. Another sodium carbonate was also prepared similarly asked the appellant/accused Shri S.K. Gupta to dip his right hand which turned to be pinkish in colour. Thereafter, right hand wash solution of the appellant/accused was poured in a clean bottle and was packed and sealed in their presence. The said solution was marked as Mt. Ext. 6.

21. PW 13 further stated that the CBI officials asked the appellant/accused where he kept the money and he replied that he kept the money in the left hand side of the pocket of his pant. Thereafter, the CBI personnel asked to take out the money from his pocket and accordingly, the appellant/accused took out the money from his left hand pocket. Thereafter, he and the CBI officials counted the money and checked the currency notes and found tallied with the currency notes mentioned in the Pre-Trap Memorandum. Thereafter, the recovery notes was packed and sealed in a packet. The appellant/accused was asked to take out his pant and he had been given a cloth to cover himself and accordingly, he took out his pant and another solution was prepared and thereafter, left hand side pocket of the pant of the appellant/accused from where the money was recovered was dipped in a solution i.e. sodium carbonate solution and turned to pinkish in colour and transferred a solution in a clean bottle which was packed and sealed. Finally another Post Trap Memorandum was prepared mentioning all the incident after the preparation of the Pre-Trap Memorandum. He also signed on the Post Trap Memorandum i.e. Ext. 12. The statement of PW 13 could not be demolished inspite of subjecting him to a lengthy cross examination by the defence counsel.

22. PW 14 Shri Jangkholal Gangte states that during August, 2004, he was posted and functioning as Programme Executive in All India Radio, Shillong. On 05.08.2004, he was picked up by the CBI officers from his residence for undisclosed mission. When we reached the CBI office, Shillong, the CBI officials narrated the purpose for which he had been called for and there also he met one person called Rajiv Menon (PW 3), who stated before him that one Shri S.K.

Gupta (appellant/accused) working in an organization i.e. HSCC for constructing the building at NEIGHRIMS asked money as bribe. There were CBI officials and one Shri Jayanta Kumar Dhar (PW 1) and another independent witness Shri Gilbert Sohtun (PW 13) were also present there. After narrating the mission, the CBI officials brought some powder and informed him that if this powder is touched by a person and dip in a solution it will turn into different colours. Thereafter, some money was brought by Shri Rajiv Menon (PW 3) and the said powder was applied over the currency notes. After applying the powder on the said currency notes, the said tainted notes was packed in a paper and handed over to Shri Rajiv Menon (PW 3). Shri Rajiv Menon (PW 3) was asked to contact the appellant/accused and to hand over the money to him. He was also further instructed by the CBI officials that when the appellant/accused taken the money from him, he should give signal to the CBI officials by rubbing his face. Thereafter, the CBI officials brought the tape recorder and also a blank audio cassette, which was verified by them and found to be blank. Then PW 3 contacted the appellant/accused over telephone from the CBI office and thereafter, the conversation between the appellant/accused and the PW 3 was recorded in the said blank audio cassette in their presence. The conversation recorded in the audio cassette was played before them. The contents of the conversation were also reduced in writing (Ext. 7) and the officials also prepared a Pre-Trap Memorandum which he and others signed the Memorandum (Ext. 8). With the permission of the court in presence of prosecution, defence counsel, the appellant/accused, the packet of Mt. Ext. 2 was reopened for the purpose of taking out the audio cassette where the conversation was recorded for the purpose of playing the same in the court room. Mt. Ext. 2 also bears his signature.

23. On reaching Delhi Mistan Bhandar, Police Bazar they were waiting along with Shri Rajiv Menon (PW 3) for the appellant/accused Shri S.K. Gupta, who did not enter the Delhi Mistan Bhandar, Shillong. After sometime, Rajiv Menon (PW 3) noticed Shri S.K. Gupta (appellant/accused) was waiting outside the Delhi Mistan Bhandar and Shri Rajiv Menon (PW 3) followed Shri S.K. Gupta (appellant/accused) and they also followed both the PW 3 and the appellant/accused towards the parking lot, Police Bazar. Shri Jangkholal Gangte (PW 14) followed Shri S.K. Gupta (appellant/accused) and Shri Rajiv Menon (PW 3), there was a distance between him as such, and he could not hear the conversation between the appellant/accused and the PW 3. PW 14 further stated that there were tussled between the appellant/accused and the CBI officials and thereafter, the appellant/accused was taken to CBI office and also he heard before reaching the spot at parking lot that transaction took place. After reaching the CBI office, the appellant accused Shri S.K. Gupta was asked to take out the money from his pocket and thereafter, his hand was dipped into a solution which turned pink in a different colours as demonstrated before laying the trap and the hand of the appellant/accused was washed with a solution and the solution were kept in two bottles which were packed and sealed. He identified those bottles on production

as Mt. Ext. 5 and 6 respectively. He also identified his signature on the Mt. Ext. 5 and 6 respectively. The currency notes were removed from the pocket of the appellant/accused and verified and found to be tallied with the numbers of denominations mentioned in the Pre-Trap Memorandum (Ext. 8). The said notes were also packed and sealed.

24. With the permission of the court in presence of the prosecution, defence counsel and appellant/accused, he reopened the packet of Mt. Ext. 7 for the purpose of identification. On opening of the packet, he found the envelope in which the currency notes was packed. He further stated that the pant pocket of the appellant/accused from which the money was recovered was dipped in a solution which turned in different colours. The pocket pant solution was also packed and sealed in a bottle which was marked as Mt. Ext. 9. He also identified his signature. He further stated that the audio cassette was played in the open court and he confirmed the said conversation recorded in a blank cassette in his presence and in the present of other independent witness, namely, Shri Gilbert Sohtun (PW 13). He also further confirmed that the said conversation on telephone between the appellant/accused and the PW 3 and the said conversation was recorded on 05.08.2004. On 05.11.2004 in the CBI office in presence of four other persons, the cassette Mt. Ext. 2 was opened and played for the purpose of identification of the voice of the appellant/accused. The cassette was packed and resealed. He also further stated that that the Post Memorandum was also prepared. Later on, PW 14 was declared hostile on the prayer of the prosecution.

25. The Apex Court in

Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, : AIR 2000 SC 210

held that the evidence of the hostile witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence. By Section 9 of the Criminal Law (Amendment) Act, 2005 (Act No. 2 of 2006) sub-section (2) has been inserted to Section 154 of the Evidence Act. Section 9 of the Criminal Law (Amendment) Act, 2005 (No. 2 of 2006) read as follows:-

CHAPTER-IV AMENDMENT OF THE INDIAN EVIDENCE ACT, 1872.

9. Amendment of Section 154 of Act 1 of 1872 - In the Indian Evidence Act, 1982, Section 154 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

26. The Apex Court in

Prithi Vs. State of Haryana (2010) 8 SCC 536

, held that the testimony of hostile witness is useful to the extent to which it supports the prosecution case. When a witness is declared hostile and cross-examined with permission of court, his evidence remains admissible and there is no legal bar to record a conviction upon his testimony, if corroborated by other reliable evidence. Paras 24, 25, 26 and 27 of the SCC in Prithi''s case (supra) read as follows:-

24. As regards the evidence of PW 6, it was vehemently contended by the learned senior counsel for the appellant that his evidence should be either accepted as it is or rejected in its entirety. PW 6 had deposed that he lodged the FIR; he was injured in the incident; he saw a White Gypsy at the place of the incident and that some persons came out of ambush and fired shots as a result of which he sustained injuries and Ami Lal died. It is true that he did not name the assailants. The fact that an incident occurred in which he sustained injuries and Ami Lal died is amply established by his evidence as well. That PW 6 sustained injuries is also established from the evidence of Dr. Ajay Kumar (PW 1) who medically examined him immediately after the incident. Merely because he did not name the assailants, his evidence cannot be thrown overboard in its entirety.

25. Section 154 of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Some High Court had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether. However, this view has not found acceptance in later decisions. As a matter of fact, the decisions of this court are to the contrary. In

Khujji v. State of M.P. (1991) 3 SCC 627 : 1991 SCC (Cri.) 916

, a three-Judge bench of this Court relying upon earlier decisions of this Court in

Bhagwan Singh v. State of Haryana (1976)1 SCC 389 : 1976 SCC (Cri.) 7

,

Rabindra Kumar Dey v. State of Orissa (1976) 4 SCC 233 : 1976 SCC (Cri.) 566

and

Syad Akbar v. State of Kamataka (1980) 1 SCC 30 : 1980 SCC (Cri.) 59

reiterated the legal position that (

Khujji case (1991) 3 SCC 627 : 1991 SCC (Cri.) 916, SCC p. 635, para 6

)

6.........the evidence of a prosecution witness cannot be rejected in too merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof.

26. In

Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624 : 2000 SCC (Cri.) 13

, this Court again reiterated that testimony of a hostile witness is useful to the extent to which it supports the prosecution case. It is worth noticing that in Bhagwan Singh this Court held that when a witness is declared hostile and cross-examined with the permission of the court, his evidence remains admissible and there is no legal bar to have a conviction upon his testimony, if corroborated by other reliable evidence.

27. The submission of the learned Senior Counsel for the appellant that the testimony of PW 6 should be either accepted as it is or rejected in its entirety, thus, cannot be accepted in view of the settled legal position as noticed above.

27. The Apex Court also reiterated in

Mrinal Das & Ors. Vs. State of Tripura (2011) 9 SCC 479

, held that the evidence of hostile witness need not be rejected in its entirety but may be relied on for corroboration. Further reiterated, credible evidence of even hostile witnesses can form basis for conviction. In matter of appreciation of evidence of witnesses it is not the number of witnesses but quality of their evidence that is important. Paras 67, 68, 69, 70 and 71 of the SCC in Mrinal Das''s case (Supra) read as follows:-

67. It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find our whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find or as to what extent he has supported the case of the prosecution.

68. In our case, the eyewitnesses including the hostile witnesses, firmly established the prosecution version. Five eyewitnesses, namely, PW 1, PW 4, PW 6, PW 7 and PW 8 clearly identified two convicts, appellants Tapan Das (A-5) and

Gautam Das (A-11). PWs 1, 4, 7 and 9 identified accused Pradip Das (A-9). PWs 1 and 7 identified accused Somesh Das (A-7). PWs 1 and 4 identified Mrinal Das (A-4). PWs 4 and 8 identified Anil Das (A-1). It is clear that 6 accused persons including two convicts/appellants had been identified by more than one eyewitnesses. It is also clear that 6 accused could have been identified by the eyewitnesses though all of them could not have been identified by the same assailants. However, it is clear that two of more than two eyewitnesses could identify one or more than one assailants. The general principle of appreciating evidence of eyewitnesses in such a case is that where a large number of offenders are involved, it is necessary for the court to seek corroboration, at least, from two or more witnesses as a measure of caution. Likewise, it is the quality and not the quantity of evidence to be the rule for conviction even where the number of eyewitnesses is less man two.

69. It is well settled that in a criminal trial, credible evidence of even hostile witnesses can form the basis of conviction. In other words, in the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence.

70. As rightly observed by the High Court, there are only six accused persons, namely, Tapan Das (A-5), Gautam Das (A-11), Pradip Das (A-9), Mrinal Das (A-4), Somesh Das (A-7) and Anil Das (A-1) identified by two or more eyewitnesses while Tapan Das (A-5) and Gautam Das (A-11) were recognized by PWs 11, 4, 7 and 8 corroborated by PW 6 (approver). Somesh Das (A-7) was recognized by PWs 1 and 7, Mrinal Das (A-4) by PWs 1 and 4 and Anil Das (A-1) by PWs 4 and 8, all of them being corroborated by PW 6 (approver). If PW 6 (approver) is included, there are three eyewitnesses who could identify six offenders including two convicts/appellants. Inasmuch as we were taken through the entire evidence of the abovementioned witnesses, we fully endorse the view expressed by the High Court.

71. Now we have to find out whether the High Court is justified in interfering with the order of acquittal insofar as accused Anil Das (A-1), Mrinal Das (A-4), Somesh Das (A-7) and Pradip Das (A-9) are concerned, in the light of the principles which we have explained in the earlier part of our judgment. The trial court, after finding that the factum of conspiracy as disclosed by the approver remains unsubstantiated for want of independent corroborating evidence, acquitted them. Since the High Court has reversed the said decision of acquittal and convicted the accused persons relying on Section 34 IPC, let us find our whether the High Court is justified in upsetting the order of acquittal into conviction.

28. It is the case of the prosecution that since the appellant/accused in his statement recorded u/s 313 Cr.P.C., 1973, admitted that the tainted currency notes were recovered from his pant pockets and also when his hands touched with the tainted currency notes were dipped in a solution of sodium carbonate, it turned to pink, there should be a presumption that the appellant/accused had

accepted the gratification other than legal remuneration. Mr. Jindal, learned senior counsel further contended that the appellant/accused had utterly failed to give any explanation as to how the said tainted currency notes were in his pocket. Therefore, there should be a presumption as provided u/s 20 of the P.C. Act, 1988. It will be profitable to reproduce Section 20 of the P.C. Act, 1988 which reads as follows:-

20. Presumption where public servant accepts gratification other than legal remuneration-

(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of section 13 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 (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be Inadequate.

(2) Where in any trial of an offence punishable u/s 12 or under clause (b) of Section 14 , it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 , or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

29. It is the case of the appellant/accused that being the Senior Manager (Tech) of the HSCC, he had nothing to do with the bills for the work executed by the PPPL submitted to the EPIL for the reason that:

(i) EPIL is responsible for the work subcontracted to the PPPL;

(ii) EPIL is responsible for verifying the work executed by the subcontractor i.e. PPPL; and

(iii) HSCC only verified the bills submitted by the EPIL to the HSCC.

30. PW 4 Shri Pramod Kumar, PW 9 Shri Ashi Kumar Mitra, PW 11 Shri Pawan Kumar Jaipusiar and PW 12 Shri G. Babu Rao stated that the bills for the work submitted by the PPPL to the EPIL, who in its turn submitted to the HSCC, were certified by Shri S.K. Gupta (appellant/accused) and thereafter, the bills were

paid. In the present case, the 14th R/A Bill which contains the bill for excavation for the hard rock was submitted by the PPPL to the EPIL and the EPIL in its turn submitted as 18th R/A Bill of the EPIL to the HSCC. Senior Manager (Tech) of the HSCC, Shri S.K. Gupta (appellant/accused) certified the 18th R/A Bill of the EPIL.

31. PW 4 Shri Pramod Kumar states that the NEIGRIMS Project was divided into four packages, namely, (i) Housing (ii) 300 bed hospital (iii) 200 bed hospital expansion and (iv) Nursing college, Auditorium etc. The package No. 1 contract work was awarded to Ansal Build Well Ltd. and the value of the project is approximately 30 crores. Package No. 2 contract was awarded to L & T and the value was approximately 59 crores. Package No. 3 contract work was awarded to the EPIL and approximate value was 62 crores. Package No. 4 contract work was awarded to Unity Infra Project and the value was approximately 27 crores.

Accused Shri S.K. Gupta was in-charged for package 1 and 3. As an in-charge his duty was overall supervision of work viz., overall quality check, checking measurement, processing and recommending the bills submitted by the contractors and progress monitoring and co-ordination. And he was assisted by subordinate staff. Bills usually submitted by the contractors monthly on the basis of the actual work done.

After checking the measurement by subordinate staff, Shri S.K. Gupta further checked the measurement and further processed the bills which was also test checked by Project In-charge and after that Shri S.K. Gupta prepared the payment certificate dated 31st March, 2004 and for release of Rs. 51 lacs 43 thousand seven hundred seventy, the bill was also forwarded to Deputy General Manager (P) Shillong and thereafter to Head Office. The statement of PW 4 could not be dismantled by the defence in the cross examination.

32. The statement of PW 4 is also corroborated by the PW 9 (Shri Shri Ashi Kumar Mitra) who states that at present, he was serving as Deputy General Manager, EPIL, Chennai. From November, 2001 to August, 2005, he served under EPIL, Shillong as Senior Manager (Finance) and as DGM respectively. Their firm was awarded contract for construction of 200 bedded hospital expansion and services at NEIGRIHMS, Shillong by HSCC. EPIL has given subcontract to M/s. Parekh Premier Pvt. Ltd., Kolkatta for construction of Hostel Block at NEIGRIHMS, Shillong for an amount of Rs. 2,41,82,959/-.

Ext. 1 is the work order of EPIL to M/s. Parekh Premier Pvt. Ltd. EPIL submits the bills to HSCC on monthly basis as per the work done, the measurement of the work is done by EPIL Engineers and thereafter, HSCC checked the bills. And thereafter, the bills are certified by HSCC and finally payments are made. Ext. 14/1 is the 18 R/A Bill submitted by M/s. EPIL to HSCC for the month of March, 2004 a total amount of Rs. 2,33,17,222.98 gross was claimed in the bill and the net value is Rs. 19,14,377/- subject to deduction on interest and advance. The excavation rate for cubic meter of hard rock is Rs. 411/-.

The total amount claimed in the bill was for excavation of hard rock of 1159.71

cubic meters for the hostel block. The excavation rate for cubic meter claimed by EPIL from HSCC was Rs. 490853.19 for the excavation of hard rock. The R/A bill submitted by EPIL were recommended for payment by Shri S.K. Gupta, and he was well acquainted with his signature as Shri S.K. Gupta used to make several correspondences with their office in due official course of business. Ext. 14/2 is the signature of accused Shri S.K. Gupta.

Ext. 5 is the 14 R/A bill for the month of March, 2004 submitted by M/s. Parekh Premier Pvt. Ltd. to M/s. EPIL. In this bill a total amount of Rs. 787520.75 was claimed by Parekh Premier Pvt. Ltd. In this bill M/s. PPPL has claimed Rs. 440689.80 for excavation of hard rock comprising of area 1159.71 cubic meters at the rate of Rs. 380/- cubic meter. All the bills submitted by the EPIL to HSCC are measured by concerned Engineers of EPIL and thereafter, the bill process by HSCC after verifying the same.

33. PW 11 Shri Pawan Kumar Jaipusiar states that he was posted and functioning as Deputy General Manger Project & General Manager Project between August 2000 to December 2005 in HSCC India Limited at Shillong. HSCC India Limited was engaged to provide project management consultancy for setting up, NEIGRIHMS project at Mawdiangdiang. The main function of HSCC was to provide Architectural and a structural design, drawings, appointing contractors, supervising construction and completing the entire construction. The entire work was divided into four packages for construction. EPIL was entrusted Package No. 3 consisting of 200 bed hospital expansion and external services works. With approximate cost of rupees sixty two crores.

Ext. 20 is the Agreement between the NEIGRIHMS represented by HSCC and EPIL for construction of 200 beds, hospital expansion and services for NEIGRIHMS at Shillong. The inner page 7 to 9 of 20 is the Letter of Award to EPIL issued by C.S. Kataria, Executive Director (Project) HSCC India Ltd. Paper Mark I is the said letter of Award. The letter of Award has been issued to M/s. Engineering Project India Ltd. (EPIL) for construction of 200 beds, hospital expansion and services at NEIGRIHMS Shillong. The time of completion as per Paper Mark 2 is 36 months from the date of issue of order to commence the work.

Mr. S.K. Gupta, Senior Manager Civil of HSCC Shillong Office was responsible for supervision, quality control, measurement etc, for the work of Package No. 3 (EPIL). EPIL bills were checked by designated Junior Engineers of various disciplines and process for submission to Mr. S.K. Gupta who would in turn forwarded it to corporate office for certification and payment. Mr. S.K. Gupta checked the measurement of executed works after being hundred percent checked by the Junior Engineers working under him before forwarding to him. He was required to perform test check on the ten percent of the measurement randomly and forward to corporate office for certification and payment.

34. PW 12 Shri G. Babu Rao states that he was posted and functioning as Deputy General Manager in Engineering Project India Ltd. (EPIL) at Shillong during

February 2003 to December 2006. Ext. 20 is the Agreement between HSCC and EPIL for construction of 200 beds hospital expansion and services at Shillong. Paper Mark 3 is the Agreement between HSCC and EPIL dated 2nd January 2002 for construction of 200 beds hospital expansion and services.

The procedure for submitting the bill and payment is that the contractor will submit the R/A bill on monthly basis for the work done for payment to the EPIL Shillong. EPIL will submit the bill to HSCC for payment. Junior Engineers of HSCC used to supervise the work executed by EPIL and subcontractors and overall supervision used to be conducted by senior official of HSCC. The overall supervision was done by Mr. S.K. Gupta since he was the head of the supervision of the package. The bill submitted by EPIL to HSCC was for excavation of rock which comes under civil work. Ext. 17 is the R/A bill No. 14 of M/s. Parekh Premier Pvt. Ltd. As per this bill M/s. Parekh Premier Pvt. Ltd has claimed Rs. 7,87,520.75 out of which Rs. 4,40,689.80 is for hard rock excavation under item No. 1.02 b for a quantity of 1159.71 cubic metre which has been mentioned on page 44 of Ext. 17.

35. The appellant accused was examined u/s of 313 Cr.P.C. for seeking his explanation to the materials and statements of PWs against him. The appellant accused in his statement u/s 313 Cr.P.C. admitted that his hands touched the tainted currency notes taken out from his pant pocket and when dipped in the sodium carbonate solution, it turned to pink colour. The confession of the accused in his statement u/s 313 Cr.P.C. can also be treated as a confession; and it can be used not only for appreciation of statement of PWs but also for ascertaining the truthfulness of the prosecution case. The question is as to whether such a statement of the accused recorded u/s 313 Cr.P.C. can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why; Sub-Section (4) of Section 313 of the Cr.P.C. clearly states that answer given by the accused may be taken into consideration in such inquiry or trial for any other offence which such answer tend to show he has committed.

36. The Apex Court in

State of Maharashtra through CBI Vs. Sukhdeo Singh & Anr : AIR 1992 SC 2100

held that:

Thus the answers given by the accused in response to his examination u/s 313 can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, Sub-section (4) permits that it may be taken into consideration in the said inquiry or trial.

See

State of Maharashtra V. R.B. Chowdhari : 1968 Cri. L.J. 95

. The Apex Court in the case of

Hate Singh V. State of Madhya Bharat : 1953 Crl. L.J. 1993

held that an answer given by an accused u/s 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness.

37. In

Narian Singh Vs. State of Punjab (1963) 3 SCR 678

the Apex Court held that if the accused confesses to the commission of the offence with which he is charged the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three Judges Bench answered the question it would be advantageous to reproduce the relevant observations as pages 684-685:

Under Section 342 of the Code of the Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing, in the evidence against him. Examination u/s 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation if any, of the incident which forms the subject-matter of the charge and his defence. By Sub-section (3), the answers given by the accused may be ''taken into consideration'' at the enquiry or the trial. If the accused person in his examination u/s 342 confesses to the commission of the offence charged against him the court may, relying upon that confession proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he had committed no offence, the statement of the accused can only be taken into consideration in its entirety.

(Emphasis supplied)

Sub-section (1) of Section 313 corresponds to Sub-Section (1) of Section 342 of the old Code except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with his examination under Clause (b) may also be dispensed with. Sub-section (2) of Section 313 reproduces the old Sub-section (4) and the present Sub-section (3) corresponds to the old Sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present Sub-section (4) with which we are concerned is a verbatim reproduction of the old Sub-section (3) Therefore, the aforestated observations apply with equal force.

38. The Apex Court in

Hazari Lal Vs. The State (Delhi Admn.) : AIR 1980 SC 873

, held that in a trap arranged for giving bribe, it is not necessary that the passing of money should be proved by circumstantial evidence. The events which followed in quick succession in a given case may lead to the only inference that the money was obtained as bribe by the accused. Presumption is of course rebuttable. In that case, the accused in his statement recorded u/s 313 Cr.P.C. had admitted that handkerchief which was taken out from his right side pocket of his trouser from were the currency notes tainted with Phenolphthalein powder had been taken out and thrown away was subjected to colour test and indicated the presence of Phenolphthalein powder on that handkerchief. In that given fact, the court held that there should be a presumption as provided u/s 20 of the P.C. Act, 1988/Section 4(1) of the P.C. Act, 1947. Para 9 of the SCC in Hazari Lal''s case (supra) which reads as follows:-

9. From the evidence of P.W. 8 and that of P.W. 4 we may take the following facts as established: P.W. 3 made a report to P.W. 8. He produced six currency notes of the denomination of ten rupees whose numbers were noted and which were treated with phenolphthalein powder. Thereafter the notes were handed over to P.W. 3. P.W. 3, PW. 6 and Kewal Krishan went inside the Police Station. After sometime P.W. 6 and Kewal Krishan came out and gave a signal. P.W. 8 then went inside the Police Station. On seeing him the accused who was inside the Police Station with P.W. 3 took out some currency notes from the right side pocket of his trousers and threw them across the partition wall into the adjoining room. The notes which were so thrown out by the accused, were found to be the same notes which had been treated with phenolphthalein and handed over to P.W. 3 before the raid. The handkerchief which was taken out of the right side pocket of the trouser of the accused as well as the right side pocket itself were subjected to a test which showed that they too had come into contact with phenolphthalein powder. It may be noted that the circumstance that the handkerchief (Ex. P-4) recovered from the right side pocket of the pant on the person of the accused was subjected to the colour test which indicated the presence of phenolphthalein powder on that handkerchief was put to the appellant in his examination u/s 313 , Criminal Procedure Code. Instead of giving any explanation as to how this phenolphthalein powder came on the handkerchief lying in his pocket, the appellant replied. "I know nothing about it." From these facts the irresistible inference must follow, in the absence of any explanation from the accused, that currency notes were obtained by the accused from P.W. 3. It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from P.W. 3. Under s. 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to s. 114 of the Evidence Act is that the Court may presume that a person, who is in possession of the stolen

goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from P.W. 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from P.W. 3, the presumption u/s 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the Courts below.

39. The Apex Court in

Kishan Chand Mangal Vs. State of Rajasthan : AIR 1982 SC 1511

, held that there should be a presumption as provided under Section 4(1) of the P.C. Act, 1941 in the absence of materials to support the explanation of the accused that the tainted notes were thrust in his pocket. Para 21 of the AIR in Kishan Chand Mangal''s case (supra) reads as follows:-

21. Lastly it was urged that the court would not be justified in raising a presumption under S. 4(1) of the Prevention of Corruption Act, 1947. In the facts of this case and in the absence of presumption even if Rajendra Dutt gave some money to the appellant that by itself would not establish the offence and the case must fail. Reliance was placed on Bansi Lal Yadav v. State of Bihar (2). In that case the defence of the accused was that currency notes were thrust in his pocket. Taking cue from this statement, the court held that the acceptance of an amount other than legal remuneration having been admitted the presumption would arise under S. 4(1) and the burden would shift to the accused. It is in this context that this court held that where the accused says that involuntarily the amount was thrust in his pocket he could not be said to have accepted or obtained for himself any gratification other than legal remuneration which alone permits the presumption to be raised-Facts in this case being a demand and voluntarily acceptance, the presumption would squarely arise and has been rightly raised.

The Apex Court in

Subbu Singh Vs. State (2009) 6 SCC 462

, held that once there is a presumption as contemplated u/s 20 of the P.C. Act, 1988, it is for the accused to establish that the amount was not received as bribe. In that case, the Apex Court further held that there should be a feasible explanation by the accused when his statement was recorded u/s 313 Cr.P.C. Paras 20, 21 and 22 of the SCC in Subbu Singh''s case (supra) which read as follows:-

20. So far as the stand that money was kept for the purpose of falsely implicating A-1, the same is without substance. The accused was a police officer

who knew the consequences of the bribe. He had not explained as to why he took up the money in his examination u/s 313 of the Code. The accused stated that PW 2 took the money because the Inspector asked him to do so. The normal conduct would have been to take action against PW 2 for offering bribe. Additionally, if the matter was closed there was no need for going to the field.

21. It is to be noted that the appellant was alone in his room for sometime holding the currency notes before PW 26 and other officer entered into the house. Therefore, as rightly observed by the High Court, the possibility of the appellant counting the money with the help of right hand cannot be ruled out. Once it is proved by the prosecution that the money was demanded as bribe and the same was received from PW 2, Section 20 of the Act comes into play. Once there is a presumption as contemplated u/s 20 , it is for the accused to establish that the amount was not received as bribe.

22. Since minimum sentence has been imposed there is no scope for interference with the same. Above being the position there is no merit in this appeal which is dismissed. The appellant shall surrender to custody forthwith to serve the remainder of the sentence, if any.

The Apex Court in

M. Narsinga Rao Vs. State of A.P. (2001) 1 SCC 691

, held that where receipt of gratification was proved, the court was under legal obligation to presume that such gratification was accepted as a reward. Paras 24 and 25 of the SCC in M. Narsinga Rao''s case (Supra) read as follows:-

24. Regarding the second limb of the contention advanced by Shri Nageshwar Rao, learned counsel for the appellant (that it was not gratification which the appellant has received) we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide

Madhukar Bhaskarrao Joshi vs. State of Maharashtra (2000) 8 SCC 571 : JT 2000 Suppl. (2) SC 458

. The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (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 the 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.

25. We, therefore, agree with the finding of the trial court as well as the High Court that prosecution has proved that appellant has received gratification from PW 1. In such a situation the court is under a legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing the public duty. Of course, the appellant made a serious endeavour to rebut the said presumption through two modes. One is to make PW 1 and PW 2 speak to the version of the appellant and the other is by examining two witnesses on the defence side. True PW 1 and PW 2 obliged the appellant. The two defence witnesses gave evidence to the effect that the appellant was not present at the station on the date when the alleged demand was made by PW 1. But the trial court and the High Court have held their evidence unreliable and such a finding is supported by sound and formidable reasoning. The concurrent finding made by the two courts does not require any interference by this Court.

40. For the foregoing discussions and reasons, this Court concurs the findings in the impugned judgment and order. Accordingly, there is no material for interfering with the impugned judgment and order dated 23.06.2009 and the present appeal is dismissed. Bail bond and surety bond of the appellant/accused are hereby cancelled and he shall be taken to custody within 4(four) weeks'' from today to serve out the sentence imposed upon him.