

R. Rajesh vs State of Kerala

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Court : Kerala

Decided On : Sep-24-2020

Judge : Honourable Mr. Justice Sunil Thomas

Appeal No. : CRL.A/408/2017

Appellant : R. Rajesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
THURSDAY, THE 24TH DAY OF SEPTEMBER 2020 / 2ND ASWINA,
1942 CRL.A.No.408 OF 2017 AGAINST THE JUDGMENT IN CC
39/2016 OF COURT OF ENQUIRY COMMISSIONER & SPECIAL
JUDGE, EKM AT MUVATTUPUZHA CRIME NO.4/2009 OF VACB,
IDUKKI

APPELLANT/ACCUSED NO.1: R. RAJESH AGED 46 YEARS,
S/O.RAGHAVAN, OLEDATHU HOUSE, MANAKKAD P.O.,
THODUPUZHA, IDUKKI DISTRICT (FORMERLY VILLAGE OFFICER,
MANNAMKANDAM) BY ADVS. SRI.P.N.SUKUMARAN SRI.AKHIL

S.VISHNU RESPONDENT/STATE/COMPLAINANT: STATE OF KERALA REP.BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-682031 (V.C.4/2009/V.A.C.B/IDUKKI) OTHER PRESENT: SRI.GOPALAKRISHNA KURUP.K (SR) FOR THE PETITIONER, SPL.GP SRI.A.RAJESH THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2020, ALONG WITH CRL.A.412/2017, CRL.A.418/2017, THE COURT ON 24-09-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS THURSDAY, THE 24TH DAY OF SEPTEMBER 2020 / 2ND ASWINA, 1942 CRL.A.No.412 OF 2017 AGAINST THE ORDER/JUDGMENT IN CC 39/2016 OF COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, EKM AT MUVATTUPUZHA CRIME NO.4/2009 OF VACB, IDUKKI APPELLANT/ACCUSED NO.2: ANIRUDHAN N.K AGED 44 YEARS, S/O KITTU, NADUKKUDI HOUSE, VADASSERY, KOTTAPPADY, KOTHAMANGALAM, ERNAKULAM. BY ADV. SRI.IEANS.C.CHAMAKKALA RESPONDENTS/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE DY.S.P, VIGILANCE AND ANTI-CORRUPTION BEURO, IDUKKI, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. SPECIAL GOVERNMENT PLEADER : SRI A RAJESH THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2020, ALONG WITH CRL.A.408/2017, CRL.A.418/2017, THE COURT ON 24-092020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS THURSDAY, THE 24TH DAY OF SEPTEMBER 2020 / 2ND ASWINA, 1942 CRL.A.No.418 OF 2017 AGAINST THE ORDER/JUDGMENT IN CC 39/2016 DATED 22-04-2017 OF COURT OF ENQUIRY

COMMISSIONER & SPECIAL JUDGE, EKM AT MUVATTUPUZHA
CRIME NO.4/2009 OF VACB, IDUKKI APPELLANT/3rd ACCUSED:
JOSSEY JOSEPH AGED 39 YEARS, S/O.JOSEPH, FORMERLY LDC,
COLLECTORATE, IDUKKI, (RESIDING AT AZHAMCHIRA HOUSE,
VALIYATHOVALA, PAMPADUMPARA) BY ADVS.
SRI.LIJI.J.VADAKEDOM SMT.REXY ELIZABETH THOMAS
SRI.RAJEEV JYOTHISH GEORGE SRI.TOM E. JACOB
RESPONDENT/STATE/COMPLAINANT: STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM. SPL.GP SRI.A.RAJESH THIS CRIMINAL
APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2020, ALONG
WITH CRL.A.408/2017, CRL.A.412/2017, THE COURT ON 24-092020
DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

===== Dated this the 24th day of
September, 2020

JUDGMENT

These appeals arise from the judgment, conviction and sentence in C.C.No.39 of 2016 of the Enquiry Commissioner and Special Judge, Muvattupuzha, for offences punishable under sections 7, 13(1)(d)

(i) r/w 13(2) of the PC Act and Sections 120B of the Indian Penal Code. The appellants are accused Nos.1 to 3 respectively.

2. The prosecution allegation was that, first accused who was the

village officer of Mannamkandam Village, second accused the Village Assistant of the above village and third accused who was the LDC of the Collectorate, Idukki had conspired together to obtain illegal gratification from the landowners who had received compensation for the acquisition of their properties for the Thottiyar Hydro Electric Project and that in furtherance of the above conspiracy, they

demanded illegal gratification

at the rate of Rs.1,000/- per 1 lakh received as compensation. It was alleged that, after the compensation amount was received by the beneficiaries, the above accused repeatedly demanded bribe from them, claiming that higher compensation was paid due to their efforts. Since it was not paid, first and second accused withheld the application for mutation of the properties purchased by the defacto complainant and few

others utilizing the compensation received by them. The accused allegedly gave an ultimatum to pay the bribe on or before 25/7/2009. On 25.07.2009, PW1 approached the Dy SP, VACB, Idukki and laid a complaint. A trap was arranged and on 25.07.2009, PW1 was entrusted with currency notes for Rs.10,000/- smeared with Phenolphthalein to be

given as bribe to accused 1 to 3. In the meanwhile, second accused informed that, he was busy and was sending his friend to collect the cash. The friend reached the spot along with his friend as directed by the second accused. PW1 refused to give cash to the friend and demanded second accused to come personally to the spot. He reached the spot. Accordingly, a portion of the cash was paid to the second accused at a place near Adimali. After receiving the cash, it was handed over by him to his friend. Both were caught red-handed and after initial formalities, including the phenolphthalein test, they were arrested and cash was

recovered. The friend was arrayed as the fourth accused. In the meanwhile, the third accused informed that, he was proceeding to Adimali. Thereupon, the defacto complainant and vigilance party reached the spot. PW1 delivered the remaining cash to him. He was caught red-handed by the vigilance. After completion of the Phenolphthalein test and initial formalities, he was also arrested.

3. PW23, who registered the crime, conducted the initial investigation. PW20, Land Revenue Commissioner granted sanction for prosecution of accused Nos.1 to 3 by Exts.P26 and 37 orders. PW22, the Dy SP of VACB verified the records and deleted fourth accused from the party array. After completion of investigation, final report was laid against the first three accused only.

4. Pursuant to the final report, cognizance was taken and summons was issued to the accused. They appeared, denied the charges

and pleaded not guilty. On the side of the prosecution, PWs.1 to 23 were examined and Exts.P1 to P14 were marked. MOS. 1 to 15 were identified. After the closing of evidence, since the evidence on record did not justify an acquittal, accused was questioned under section 313 Cr.P.C.and were called upon to enter on their defence. On the side of the second accused, DW1 was examined and on the side of the third accused, DW2 was examined. Exts.D1 to D7 were marked.

5. The Court below, on a evaluation of the entire evidence, found

the accused guilty and convicted accused Nos.1 to 3 for offences punishable under sections 120(B), 13(1)(d)(i) r/w 13(2) of the PC Act and sentenced them to undergo rigorous imprisonment for one year under section 120(B)(I) of IPC. They were sentenced to undergo RI for one year and fine of Rs.50,000/- each for the offence under section 7 of the PC Act and another term of one year and fine of Rs.50,000/- each for offences

under section 13(2) of the PC Act. In default of payment, they were directed to undergo imprisonment for three months under each count. It was directed that the sentences shall run one after the other.

6. Aggrieved by the above conviction and sentence, accused have

preferred this appeal. Heard the learned senior counsel appearing for the first accused, learned counsel for accused Nos.2 and 3 and the learned Public Prosecutor. Perused the records.

7. Prosecution essentially relied on the oral testimony of PWs.1,

2, 3, 4, 5 and PW21 who were claimed to be the crucial witnesses to the above incident. Prosecution also relied on the evidence of PWs.8 to 11, who were persons who received enhanced compensation and to whom allegedly demand for bribe were made directly or indirectly. They also deposed that, they have pooled the money and handed over to PW1, for

being paid to the accused. Prosecution also relied on the contemporaneous documents, which included the arrest memo of accused Nos.2, 3 and 4, mahazar and the various recovery mahazars. Prosecution also relied on MOs.2 to 10 to evidence that the Phenolphthalein test was successfully conducted on all the accused.

8. Ext.P1 is the FI statement of PW1 recorded by PW23 on 25.07.2009. According to the FI statement, 1 Acre 80 cents of land of the PW1 was acquired by KSEB. He received Rs.51 lakhs as compensation in

January 2019. About 20 other persons also got compensation for the lands belonging to them acquired by the KSEB for the above project. It was alleged in Ext.P1 that, ever since the receipt of compensation, accused Nos.1 to 3 have been demanding bribe at the rate of Rs.1,000/- for each 1 lakh rupees received. The demands were made directly and

also through mobile phone. It was alleged that the second accused had called PW1 about 100 times and third accused had called him about 50 times. The mobile numbers used by both the above accused were also mentioned in the FIS. Defacto complainant had purchased two plots of 1.12 acres and 15 cents with the compensation money received. He had applied for transfer of registry of the above two plots. Few other persons who had also received compensation had purchased separate properties and applications were submitted for transfer of registry. It was alleged that, accused had threatened them to delay the applications unless the share of compensation were not paid as bribe and PW1 was asked to pool the bribe amount and to deliver it to them.

9. It was stated that, accordingly the beneficiaries decided to pool the amount, hand it over to accused and to complain to the vigilance

department. Accordingly, PW1 had collected Rs.10,000/-, which was tendered to the DYSP vigilance. According to him, Rs.5,000/- was payable to the first accused, Rs.3,000/- to the second accused and Rs.2,000/- to the third accused.

10. There are certain admitted or established facts which are essential to be considered while analyzing the entire evidence. It is an admitted fact that the land was acquired for the above hydro electric project and the beneficiaries were paid compensation during the period Of 2019 January. First accused was the Village Officer of the relevant panchayath, second accused was the village assistant and third accused

was employed in the collectorate during the relevant period and thus, involved in the acquisition proceedings. It was also on record that village officer had recommended compensation @Rs.1,000/- per cent. There were protests by the landowners against the revenue department alleging that, they had recommended only very low compensation. Ultimately, compensation amount was finalized in a committee constituted by the District Collector and the agreed amount was around Rs.25,000/- per cent and compensation was paid. It is also an admitted fact that, PW1 and few others had purchased lands with the compensation amount. PW1 had submitted application for transfer of registry in relation to the properties which he had purchased. There is evidence to indicate that, few other land owners had also submitted applications for change of registry. It is

also on record that, accused No.2 and accused No.4 had reached Irumpupalam on the date of incident and were arrested from the spot. Phenolphthalein test was conducted on both of them at the spot. It is also on record that, first accused did not come to the spot, whereas, third accused had turned up later in the day at Adimali and he was also intercepted and Phenolphthalein test was conducted. He was also arrested at the spot.

11. Specific contention set up by the first accused was that, he

was absolutely innocent and he had not made any demand either individually or in combination with other accused. He had not instructed the second or third accused to collect any amount as bribe from the

beneficiaries. He had not directly or indirectly accepted any money from accused Nos.2 and 3. He had not called PW1 or any other beneficiary demanding bribe. It was contended that, every piece of oral evidence given by PW1 in court, touching

on him were either not stated in the FI statement or were not disclosed to the investigation officer while recording statement under section 161 Cr.PC and were embellishments made at the time of giving oral evidence. He has not withheld or delayed the application for change of Registry.

12. The contention of the second accused was that, he was

innocent and has been wrongly implicated. He came to the spot to meet DW1 for some other purpose. He had neither called PW1 nor had asked him to come to Irumpupalam. While he was talking to DW1, PW1 came to the spot and attempted to hand over an envelope. Thereafter, it seems to have been given to one young person who was standing there. He was arrested along with the young person and arrayed as the second and fourth accused. He had not asked the above persons or his friend to

receive money. Both of them were found at the spot talking to PW1. They were not known to him nor he had instructed them to collect any money for him. The lime water in which his fingers were dipped did not change its colour. The call data reports relating to PW1 and the accused were not produced. The mobile phones were also not checked to verify whether PW1 had contacted 2nd accused or he had contacted PW1 at any point of time. The second accused contended that, no evidence was let in

to show that, he had talked to PW5 and PW21 or that, he had any connection with the above witnesses.

13. According to the third accused, he had not made any demand. He had not conspired with the co-accused and had not accepted any money voluntarily from PW1 or any of the petitioners. He had also not

entrusted the second accused to receive any money for him. He also contended that the call reports and mobile phones were not produced, examined or checked to confirm that the witnesses had contacted him or he had demanded any money by calling them.

14. It was commonly contended by all the accused that, it was

highly unbelievable that the demand for bribe would be made long after the acquisition proceedings were completed, compensation paid and alternative properties were purchased by the beneficiaries. It was also contended that, PW1 and other beneficiaries maintained enmity towards accused Nos.1 to 3 for having recommended very low price for the lands acquired. They had even conducted protests against revenue officers for recommending low amounts. Hence, the accused were trapped into the

above incident to wreak vengeance. It was also contended that, there was absolutely no evidence to indicate that the application for change of registry submitted by any of the beneficiaries was purposefully delayed.

15. PW1 is the defacto complainant as well as a crucial witness projected by the prosecution to establish the allegation that accused Nos.1 to 3 had demanded bribe from the defacto complainant and others on various occasions and that, he had promised to collect the money from

the beneficiaries and to give it to them. He was also examined to establish that, he had complained to the vigilance, trap was laid and that money was paid to accused Nos.2 and 3.

16. PW1 in his evidence identified Ext.P1 as the complaint given to the Dy.S.P vigilance on 25.07.2009. He deposed that, he had two items of properties in Mannamkandam village which were acquired for the

hydro electric project. Other properties were also acquired. They got compensation by cheque in January 2009. Ever since then, accused Nos.1 to 3 had been demanding bribe at the rate of Rs.1,000/- per 1 lakh rupees. It was alleged that, third accused had specifically asked him to collect the money from all the beneficiaries and to give it to him. On the other hand, first accused had stated that, if money was given to the third accused,

second accused and himself will not get the share and hence bribe should be paid directly to him. He asserted that, accused Nos.2 and 3 had called him on telephone on several occasions demanding money. Similar demands were made

to other beneficiaries also. He had purchased two other items of properties with the compensation received. When the application for change of registry of these two properties were submitted, first accused withheld it. They gave an ultimatum to pay the money on or before 25.07.2009. He agreed to pay a portion of the amount on that day. A complaint was given to the VACB and Rs.10,000/- was tendered before the DYSP for giving as bribe. Rs.5,000/- was payable to the first accused, Rs.3,000/- to the second accused and Rs.2,000/- to the third accused. Complaint was taken down in the presence of gazetted officers. The Dy SP got the Phenolphthalein test demonstrated in their presence and instructions were given. The currency notes were

smeared with Phenolphthalein powder. Currency notes were for

voluntarily retracted immediately and said that the cash was put in his pocket. 17. Thereafter PWs.1, 3 and police party proceeded to Valara. On the way, he called the first accused who informed that, he was busy with other work and will call after 4 O' clock. At about 2.50p.m., third accused called him and informed that, he was proceeding to

Adimali. He promised to call PW1 after reaching Adimali. By about 3.50p.m., he again called first accused who said that, he was busy and he can call him after some time. At 4.59p.m. second accused called him and informed that, himself and first accused will come to Irumpupalam and requested PW1 to proceed to that place. Thereafter, he along with police party proceeded to that place. In the meanwhile, he was informed by the second accused that, he was still busy with other work, that two persons are deputed to Irumpupalam and money shall be handed over to them. After sometime, two youngsters came to the spot and introduced

themselves as the persons sent by second accused. However, PW1 declined to pay the money to youngsters and asked them to call the

second accused. Second accused was called by one among them, w

minutes, second accused reached the spot and demanded money. PW1 handed over Rs.7,000/- to him. Second accused thereafter handed over the money to

fourth accused. In the meanwhile, signal was given to the vigilance party who rushed to the spot and introduced themselves. They enquired with the second accused whether money has been received by him. He admitted that, he has handed it over to the fourth accused. They were apprehended and thereafter taken to the nearby vigilance office. There, Phenolphthalein test was successfully conducted on second and fourth accused. When the right hand of second accused was dipped in lime water, it turned pink. Left hand was also dipped in lime water, which turned pink. Both the hands of the fourth accused were dipped in lime

water, which also turned pink. The corner of the currency notes were dipped in lime water; it also turned pink. Thereafter, fourth accused was directed to remove his dress. He was given another dress. The pocket of the pants worn by him was dipped in lime water which also turned pink. Mahazar was prepared.

18. In the meanwhile, third accused called at 7.40p.m. and informed that, he has reached Adimali. PW1 and vigilance party along with witnesses proceeded to Adimali. Money was handed over to the third accused. He complained that PW1 had promised to pay substantial

amount and alleged that, PW1 was trying to cheat him. Ultimately, he agreed to receive Rs.3,000/- on condition that the balance amount will be paid within a short time. Immediately after receipt of money, signal was passed on to vigilance party, who reached the spot, caught the accused and confirmed the receipt of money. He was taken to the nearby village

office and Phenolphthalein test was conducted. On dipping his right hand, the lime water turned pink. Cash recovered from him was also checked and mahazar (Ext.P7) was prepared. He identified accused standing on the dock.

19. PW2 was another independent witness who was examined by

the prosecution to establish that, PW1 had called the second accused, that, money was recovered from the fourth accused (PW21) and the conducting of Phenolphthalein test on second and fourth accused. PW3 was another beneficiary, who was examined to establish the payment made, acceptance of bribe by the

second accused and handing it over to the fourth accused. He did not witness the Phenolphthalein test being

conducted on them. PW21 who originally was the 4th accused was examined to establish that, on the date of incident, PW1 had contacted the second accused, that, he along with PW5 proceeded to Irumpupalam and that the bribe was received by the second accused. He also deposed about the entrustment of cash to the fourth accused and also about the Phenolphthalein test conducted on the second accused. PW5 was a friend of PW21 who was examined to establish that, second accused had

requested PW21 to proceed to Irumpupalam and to receive something handed over by PW1. He accompanied PW21 to the place. He also deposed that, he had seen cash being handed over by PW1 to the second accused who in turn handed it over to the fourth accused. Regarding the allegations against the third accused, prosecution relied on the oral testimony of PW1, the recovery from the third accused and the Phenolphthalein test conducted on him.

20. Learned senior counsel contended that, though the prosecution tried heavily to incriminate the first accused into the allegations, there was no legal evidence to establish that, there was demand from the first accused and acceptance of bribe from PW1. As mentioned earlier, the allegation against first accused was sought to be established through the

oral testimony of PW1 and partly through PW3. No other witness has referred to the alleged role of the first accused. PW3 in his evidence only stated that the first accused had demanded money from him. He did not explain when, where and how the demand was made. On the crucial day, when PW1 called first accused, first accused is stated to have informed that, he was busy with work and they will meet after 4 O' clock. This part of the version is not supported by the earlier version of PW1, who never stated that the first accused had promised to meet him on that day. On the other hand, the version of PW1 was that, first accused had stated that, he was busy with the work and he may call the first accused after 4 O' clock.

Even though PWs.5 and 21 stated that, they were sent by the second accused, they did not speak anything connecting the first accused. PW3 had no case that, PW5 and PW21 stated anything connecting the first accused and they only said that, they were sent by the second accused.

21. PW1 had mentioned repeatedly about the demand made by

the first accused. According to the learned senior counsel, each and every portion of the version of PW1 touching on the first accused were embellishments, which were absent in the FI statement and in his previous statement. It is true that, PW1 had stated that the first accused had demanded money. He did not specifically mention as to whom the demand was made and the manner in which it was made. He stated that the third accused had demanded money and informed PW1 that, he has to give the money to accused Nos.1 and 2. He directed PW1 to collect the money and to pay him on behalf of accused Nos.1 and 2. It is pertinent to note that, in the FIS, though he generally stated that the first accused had demanded money, there is no other details regarding demand by him. On the other hand, regarding accused Nos.2 and 3, he alleged that, they had called him repeatedly, the second accused having called 100 times and

third accused about 50 times. He had also mentioned about the telephone calls made by the above accused and the telephone number of the first accused. Nowhere in the statement of PW1, it is stated that the first accused had informed that, accused Nos.2 and 3 will collect the money on his behalf. In fact, accused Nos.2 and 3 also had also no case at the time of receiving the money that it was being collected as directed by the first accused. In fact, in the chief examination itself, the specific version of PW1 was that the first accused had warned against handing over his portion to third accused, since he apprehended that, if money was given to the third accused, accused Nos.1 and 2 will not get their share. It is clear that, even if there is any evidence regarding the acceptance of money by accused Nos.2 and 3, there is nothing to hold that, it was collected on behalf of the first accused.

22. It was deposed by PW1 that, second accused had confided

that, he was receiving the money on behalf of the first accused. However, this version was not spoken to, by him while his statement under section 161 Cr.P.C was recorded. This is conspicuously absent in the previous statement as brought out in the cross examination. It was pointed out to him that, he had not stated that, second accused received the money on behalf of the first accused. Further, in the chief examination, PW1 did not state that, second accused had represented that he was receiving the

money on behalf of the first accused. When PW1 was confronted with this, he could not give any valid explanation.

23. Another crucial deposition of PW1 was that, he had stated in

the FI statement that, on Monday preceding the date of complaint, he had gone to the village office and was told by the first accused to pay the money before 25th. In the cross examination, it was suggested to him that the first accused was on leave on that Monday. The witness immediately shifted his version and asserted that, he had gone to the village office on

that day but, it was informed by the village officer over telephone that the money should be given on 25/07/2009. He further improved his version, when he was again asked whether such representation was made by the first accused on his call, he said that, he cannot assert since he himself had called the first accused and had directed PW1 to give the money on

examination by stating that, it was the first accused who had called him on the telephone and directed to pay the money on 25 th. His further version was that, since he could not meet the village officer on Monday,

he had called the village officer. When he was asked to give the telephone number of the village officer, he stated that, he had not saved the phone number. Evidently, regarding this crucial aspect, PW1 had a thoroughly inconsistent version. It is pertinent to note that, in the FI statement, though he had given the telephone numbers of accused 2 and 3, he had not mentioned the telephone number of the first accused. Attempt of PW1 to rope in the first accused is evident.

In other words, the demand allegedly made by the first accused is not convincingly established.

24. As mentioned earlier, there is absolutely no convincing

evidence to show that the first accused had received the money. There is no convincing evidence to show that, first accused had asked PW1 to pay his share either to second accused or to third accused. In fact, even according to PW1, first accused had warned against giving the money to

third accused since first accused and second accused may not get their share. PW1 has no case that, at any point of time, second accused had informed him that he was receiving the money on behalf of first accused also. Though he tried to rope in the first accused also, in the course of cross examination, he had not stated so, either in the chief examination or in his statement under section 161 Cr.P.C. Hence, in the absence of any convincing evidence regarding the demand or acceptance of the bribe by first accused or on his behalf, I feel that, finding of the court below convicting first accused is not legally sustainable.

25. The prosecution relied on the oral testimony of PWs.8, 9, 10 and 11 to corroborate the version of PW1 as against accused Nos. 2 and

3. It is admitted that, all of them were beneficiaries of the land

acquisition and received their money in 2009. They have generally spoken that, accused Nos.1 to 3 had demanded bribe. According to them, all the three accused individually had asked for share of the enhanced amount. They asserted that the money had been pooled by them and entrusted to PW1. According to PW9, accused Nos.1 to 3 had demanded money. However he admitted that, in the statement given to the police, there was no statement that, accused Nos.1 and 2 had demanded bribe. Evidently, it was an embellishment. PW10 had only stated that, accused Nos.2 and 3 had demanded bribe from PW1. PW1 gave evidence that, accused Nos.1 to 3 had demanded money directly but, none of the above witnesses could assert the date, time and place when such a demand was made.

26. Challenging the version of the witnesses, learned counsel for

the second and third accused contended that, there was no convincing evidence regarding the demand and acceptance. It was contended by the learned counsel that, in the absence of any evidence of demand and acceptance of the amount of illegal gratification, mere receipt of money by the accused was not sufficient to establish the guilt. It was further contended that, if from the versions of independent witnesses, two views are possible. the view in favour of the accused should be favoured.

27. To substantiate the above contention, learned counsel relied

on the decision of the Supreme Court in T.Subramanian v. State (2006 KHC 42). Learned counsel relied on the decision of the Supreme Court in Sukumaran C. v. State of Kerala (2015 KHC 4062) to contend that, in the absence of any demand of illegal gratification, there could not be an acceptance, and the demand should be proved to sustain the charge of

criminal misconduct. Learned counsel for the second accused further relied on the decision reported in Rakesh Kapoor v. State of Himachal Pradesh (2012 KHC 4684) to support his above contention that the prosecution has to establish the demand and acceptance of bribe. Learned counsel for the third accused to substantiate his contention that, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused relied on the decision of the

Supreme Court in Suraj Mal v. State (Delhi Administration) (1979 KHC 737). He further relied on the decision of the Supreme Court in Ramesh Kumar T.K. v. State through Police Inspector, Bangalore (2015 KHC 5552) to contend that, to establish the offence under the PC Act, demand of illegal money has to be established and in the absence of

mere recovery of tainted money, conviction was not sustainable. This view was reiterated in Sejappa V. v. State by Police Inspector Lokayukta, Chitradurga (2016 KHC 6295).

28. Answering this, learned Public Prosecutor contended that,

rejecting the evidence of complainant simply on the premise that the complainant was aggrieved against the bribe taker would only help corrupt officials getting insulated from legal consequences. To buttress this contention, learned Public Prosecutor relied on the decision of the

Supreme Court in *State of U.P. v. Zakaullah* (1998 KHC 680). Learned Public Prosecutor contended that , once it was established that a public servant had received illegal gratification, the presumption under section 20 of the PC Act can be drawn as held by the learned Judge of this Court in *Parameswaran Pillai R. v. State of Kerala* (2011(4) KHC

411). Relying on the decision in *State Represented by Inspector of Police, Pudukottal, T.N. v. A.Parthiban* ((2006)11 SCC 473) , learned Public Prosecutor pointed out that, it was held that, every acceptance of illegal gratification whether preceded by a demand or not would be covered by section 7 of the Act. But, if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constituted an offence under section 7 and section 13(1)(d) of the Act, it was contended.

29. Answering the contention of the learned counsel for the

accused that, there were contradictions in the versions of the crucial witnesses, learned Public Prosecutor relied on the decision in *Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi)* ((2020)2 SCC 88). It was held by the Supreme Court that, given the time gap of 5 to 6 years, minor contradictions on some details are bound to occur and are natural. It was held that the witnesses were not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. In the present case, incident happened in 2009. The witnesses were examined in 2019, after a gap of 10 years. Hence minor contradictions are bound to occur. Even the contradictions pointed out by the learned counsel were on minor aspects and not in relation to any fact which constituted the substratum of the case.

30. One of the contention set up by the learned counsel for the accused 2 and 3 was that, evidence on record indicated that, the lime water contained in all the MOS did not turn pink. It was pointed out that,

at the time of cross examination, PW2 had deposed that only MO8 & MO9 were pink in colour and MO2 to 7 were colourless. MOs were also not sent for chemical analysis to establish the successful completion of Phenolphthalein test. In the absence of it, the accused are entitled for an acquittal, it was contended. But the version of PW2 is inconsistent with Ext.P5 and Ext.P7 mahazar. Ext.P5 and P7 indicate that MOs.2 to 10 had turned to pink colour.

31. In *Mukhtiar Singh v. State of Punjab* (AIR 2016 SC 3100)

it was held that the objection that reliability of trap was impaired as solution collected in phial was not sent to chemical examiner was not sustainable, especially when demand and acceptance and recovery of incriminating currency notes from the accused was sufficiently proved. In *Sukumaran C. v. State of Kerala* (supra), lime solution in which the appellants hands were dipped in, did not show pink colour at the time of

evidence. The reason assigned by the Trial Court was that the colour could have faded by lapse of time. It was held by the Supreme Court that the said explanation of the Trial Court cannot be accepted in view of the fact that colour of the other samples taken by the investigation officer in the course of the trap laid against the appellant, had continued to retain the pink colour even during cross examination. However, it was held that, Phenolphthalein test cannot be stated to be a conclusive proof against the

accused. Other samples were pink and remained so throughout. It is pertinent to note that, conducting of the Phenolphthalein test was only one of the method by which the prosecution attempts to establish their case.

32. The learned Public Prosecutor relied on the decision in *Joseph*

James alias Jose v. State of Keral (2010 CRI.L.J.3551) to contend that, the conduct of the accused in opening his table drawer and taking out the marked

currency notes when he was asked as to where he had kept money and the evidence of trap witness that he saw defacto complainant handing over money to accused and latter accepting money with his right hand and putting the same in his drawer was enough to establish the acceptance of tainted money. Learned Single Judge relied on the decision of the Supreme Court in *Girish Babu v. CBI, Cochin* (2009(3) SCC 779) wherein it was held that, mere recovery of tainted money itself, in the absence of evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be

bribe, may not be enough. However, the evidence of impartial and

reliable witnesses can be acted upon without any corroboration. In *A.Sasidharan v. State of Kerala* (2007(4) KHC 774) a Single Judge of this Court held that, absence of Phenolphthalein powder on the hands of the accused does not militate against the prosecution case that the witnesses had given marked notes by way of bribe pursuant to a demand

by the accused. It was held that the passing of money should not necessarily be proved by direct evidence, it can be proved by circumstantial evidence also. It was held that, proof does not mean that proof of rigid mathematical exactitude which was a virtual impossibility. It was held that, proof can only mean that such evidence as would induce a reasonable man to come to a particular conclusion. Law gives absolute discretion to the court to presume the existence of any fact which was likely to have happened.

33. Applying the above decisions to the facts of the case, in the light of the evidence adduced by the prosecution, it can be seen that PW1 has given consistent evidence touching on the complicity of accused 2 and

3. The version of PW1 on crucial facts is sufficiently corroborated by the

other crucial witnesses. The learned counsel for the second accused contended that, PW5 and PW21 were strangers to him. Prosecution did not establish that he had taught them in a college and the CDR was not produced to establish that he had telephonic contact with them. PW1 has deposed that the second accused

informed him that he had sent a person to the spot. PW21 met PW1 at the spot and introduced himself as the person deputed by PW1. PW21 was present when money was handed

over. The version of PW21 is corroborated by PW5. The role of the second accused is specifically spoken by PWs.5 and 21. Both had stated that the second accused had asked them to proceed to Valara and to receive the item delivered by PW1. In the light of the above specific oral evidence, which could not be demolished in the cross examination, I am

not inclined to accept the contention of the learned counsel for the accused that the prosecution failed to prove the acquaintance of the second accused with the above youngsters and that the prosecution did not establish with CDR that, second accused had contacted PWs.5 and 21.

34. The version spoken by PW1 was sufficiently corroborated by PWs.2 and 3 and could not be demolished in the cross examination. Their versions are free from embellishments and they corroborated each other

and supported the version of PW1 in its entirety. Ext.P5 is the contemporaneous document in relation to accused Nos.2 and 4. Ext.P5 mahazar gives the details of the entire incident that took place at Valara. The Phenolphthalein test also established the complicity of accused Nos.2 and 3.

35. One of the defence set up by the second accused was that, he

had reached the spot to meet DW1. DW1 had given evidence in support of that version. However, the version of PW1, 5 and 21 were consistent that, second accused had deputed PWs.5 and 21. In the light of the above versions, I am not inclined to accept the above defence. Both the accused could not explain cogently their presence at the respective places, far away from their office and residence. They have no explanation that they were present at that place in connection with some official work.

36. While deposing about the pre-trap procedures, PW1 had

mentioned that after smearing the currency notes with Phenolphthalein, they were separated into three sets, one set of Rs.5,000/-, other set of Rs.3,000/- and third one of Rs.2,000/- meant to be given to accused 1 to 3 respectively. He deposed that, thereafter it was put in an envelope. Immediately he corrected himself voluntarily and stated that cash was put in his pocket. Court has specifically indicated that it was voluntarily corrected by him. Both the counsel for accused Nos.2 and 3 heavily harped on this version and contended that if the explanation of PW1 that cash was put in an envelop was believed, the allegation of the voluntary and conscious acceptance of bribe by the accused and the conduct of Phenolphthalein test becomes doubtful. The premise on which this contention was set up was that, if the currency notes smeared with phenolphthalein was kept in an envelope and delivered, the recipient may not be aware of the contents. Further, there was no chance of the accused coming into contact with phenolphthalein. I am not at all attracted by this contention. Prosecution has no case that the cash was put in an envelope. The sequence of deposition by PW1 and the later part of his oral testimony clearly shows that while asserting that currency

notes smeared with phenolphthalein was put in his

crucial witnesses clearly indicate that cash was kept in the pocket and not in an envelope. This contention also militates against other facts. Evidently, if currency notes were kept in the envelope, there would have been less chance of PW1 taking out Rs.7,000/- from the bundle and handing it over to the second accused. If cash was given in an envelope, there was also no chance of second accused, third accused, fourth

accused and dress of the fourth accused getting in contact with Phenolphthalein. It is seen that, when both the fingers of accused 2 and 4 were dipped in lime water, it turned pink. Hence, I am not inclined to accept the above contention. Both the accused have no case that they had any connection with PW1. They had no case that money was legally

due them from PW1. Hence, if recovery of money is established, necessarily, it can be presumed in the above circumstances that the money was paid as bribe.

37. Another contention set up by the accused was that,

prosecution allegation that the first accused purposefully delayed the application for the transfer of registry was absolutely false. It was contended by the counsel that there was no evidence to show the date when application for transfer of registry was submitted by PW1. It was contended that the first accused had approved the application on 20.07.2009 and the fee was deposited on 25.07.2009. The transfer was

effected on 16.09.12009. It was contended that the applications submitted by PW1 did not show the date of application and hence it cannot be ascertained whether there was any delay. Hence, it cannot be said that the accused had purposefully delayed the transfer of registry to pressurize the claimants to pay bribe, it was argued.

38. PW6 was the special village officer in Mannamkandam in

2009. Ext.P1 file discloses that the application was submitted on 12.02.2009. PW6 admitted that, on 25.07.2009 at 9 a.m. accused 1 and 2 had gone for inspection of Thottiyar project. She also admitted that the first accused had suggested Rs.5,000/- per cent for the lands proposed to be acquired. There were protests against the village officer for recommending very low price. PW1 also asserted that he had submitted the application in February 2009. This was not disputed by cross examination.

39. PW7 was the village man of the above village office.

According to him, 240 applications were entrusted on 29.05.2009 for making entries. He had also stated that, there were huge backlog in the Mannamkandam village office and it was one of the biggest villages in the district. PWs.13 Village Assistant had stated that fee was remitted by PW1 and basic tax receipt prepared by him on 29.07.2009 . He also admitted that there was huge work load in that office.

40. In the light of above materials, there is no reliable evidence to hold that the first accused had purposefully delayed the consideration of the registry application.

41. Having appreciated the above facts, it is evident that,

prosecution had succeeded in proving the complicity of accused 2 and 3 and that, there was convincing evidence regarding demand of bribe and acceptance of it. However, there was no sufficient evidence against first accused to convict him for any offence under the Act. He is entitled for an acquittal. At the same time the evidence is insufficient to hold that accused 2 and 3 have entered into criminal conspiracy. Hence, they are

only liable for offences under section 7 and section 13(1)(d)(i) read with section 13 (2) of the PC Act.

42. Regarding the sentence, it is seen that court below has

awarded the minimum, sentence contemplated under the Act . Considering the entire facts, there is no reason why the sentences should run one after another. Hence, all substantive sentences shall run concurrently. Though I do not hold the view that substantive sentence is excessive, I feel that, fine portion imposed by the Court can be avoided considering the entire facts of the case, the age of accused and also the fact that accused have been defending the case since long.

In the result, appeal No.408 of 2017 stands allowed. First accused is acquitted. Bail bond executed by him stands discharged. Crl.Appeal.Nos.412 of 2017 and 418 of 2017 are allowed in part. While confirming the substantive sentence, fine imposed by the court below stands set aside. They are sentenced to undergo RI for six months for

offences punishable under section 7 and RI for one year for o

executed by them stands cancelled. Sd/- SUNIL THOMAS Sbna JUDGE

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