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Ajit Singh Vs. State

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Court : Madhya Pradesh

Decided On : Aug-30-2001

Reported in : 2002CriLJ2256

Judge : Arun Mishra, J.

Acts : Indian Penal Code (IPC) - Sections 161; Code of Criminal Procedure (CrPC) - Sections 107, 116, 313 and 465; Prevention of Corruption Act, 1947 - Sections 4(1), 5(1), 5(2), 6, 7 and 13(1); Prevention of Corruption (Amendment) Act, 1988 - Sections 19(3), 20, 20(1), 27 and 30(2)

Appeal No. : Crl. A. No. 646 of 1989

Appellant : Ajit Singh

Respondent : State

Advocate for Def. : G.S. Ahluwalia, Adv.

Advocate for Pet/Ap. : S.C. Datt, Adv.

Disposition : Appeal dismissed

Judgement :
ORDER

Arun Mishra, J.

1. The appellant has preferred present appeal assailing his conviction and sentence imposed on being found guilty for committing offence under Section 5(1)(d) of Prevention of Corruption Act, 1947 and under Section 161 of the IPC. He has been sentenced to undergo 1 year's R.I. and fine of Rs. 250/- on each count. In default of payment of fine to undergo R.I. for 3 months.

2. Appellant was holding post of Patwari in the Department of Revenue, State of Madhya Pradesh. As per prosecution, in order to demarcate land pursuant to order passed by Tehsildar on 24-1-1986 (Ex. P/11A) in Revenue Case No. 11-A/12-85-86, the appellant demanded from Kodu Lal S/o Godan a sum of Rs. 100/- as illegal gratification. Complaint (Ex. P/1) was lodged by KoduLal to Deputy Superintendent of Police, Lokayukta, Sagar on 22-3-1986. A trap wasLald by party consisting of PW-3 Shri R.S. Choubey, holding post of Deputy Director of Agriculture; PW/7 Shri Y.K. Saxena, Sub-Divisional Officer, Irrigation Department, PW-8 Inspector Shri M.P. Dubey and other police personnel. Inquest (Ex. P/2) with respect to Rs. 100/- and process of trap was explained Kodulal and inquest of same drawn in the office prior to proceeding for raid.

3. On 23-3-1986, trap party proceeded to the village Rahli from Sagar. Kodu Lal was to utter words 'Jai Bhole' on meeting with the accused in order that trap party may identify him. On meeting of the accused and complainant, it was decided that they will meet at 'liquor shop' at 6.00 p.m. and money shall be paid at that time. At about 6.00 p.m. accused and complainant met and were going to liquor shop'. On the way, exchange of money took place, which accused put in his upper pocket of Kurta. PW/1 Kodu Lal signalled to trap party. Accused was caught red-handed. His hands were washed in a solution of sodium carbonate, which turned pink. Spot map (Ex. P/4)., seizure memo (Ex. P/5) of two currency notes of Rs. 50/- each and seizure memo of Kurta were drawn. The letter of Tehsildar addressed to Patwari regarding demarcation of land was also seized from accused as per seizure memo (Ex. P/7). The original record of Tehsil of the revenue case pertaining to demarcation was seized as per memo (Ex. P/9). The application for demarcation is Ex. P/11 and other documents on file form B-6 is Ex. P/12, Khasra Ex. P/14. Map of land (Ex. P/16) are also placed on record. FIR (Ex. P/17) was reduced in writing by PW-8, case was registered. The packet containing phenolphthalein crystals,

sodium corbonate, bottle Article D containing hand wash of accused and Article E. bottle containing washing of pocket of Kurta belong to accused were sent to Forensic Science Laboratory, Sagar. The articles tested positive as per report Ex. P/21.

4. The sanction (Ex. P/22) was obtained from the State Govt. on 1-1-1988 in order to prosecute the accused. Principal Secretary, Department of Revenue, granted the sanction.

5. Trial Court after examining 10 witnesses including prime mover, PW-1 recorded an order of conviction under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Section 161 of the IPC and sentenced accused as aforesaid. Hence, this appeal.

6. Shri S.C. Datt, learned Senior Advocate submits that appellant has been tried and conviction is unlawful, improper as sanction was granted in an illegal manner without due application of mind, entire record was not placed before the sanctioning authority and order does not show application of mind. He further submits that conviction of appellant is bad on facts and circumstances of the case. Conduct of complainant creates doubt as to passing of illegal gratification. It has not been satisfactorily established that it was demanded or paid. The witnesses of trap are not reliable as they have not deposed that they had seen passing of consideration. Independent witnesses have not been examined by prosecution.

7. Shri G.S. Ahluwalia, learned Govt. Advocate, appearing for the State supports conviction. He contends that after conviction, sanction loses importance and invalidity of it if any looses its consequence. He contends that accused has not explained the possession of currency notes recovered from his pocket. The witnesses examined by prosecution; Deputy Director of Agriculture and PW-7 S.D.O. Irrigation are independent and respectable witnesses and the witnesses of police are also reliable. The guilt of accused has been established beyond periphery of doubt and conviction and sentence do not call for any interference in the present appeal.

8. The foremost submission of the appellant is that his prosecution lacks validity, as sanction was granted in an illegal manner, inasmuch as entire material was not placed for consideration before the sanctioning authority. There was no application of mind made by the sanctioning authority nor it has recorded the reasons for satisfaction. Sanction has been granted in an illegal manner.

9. In State of Tamil Nadu v. M.M. Rajendran 1998 SCC (Cri) 1000, a report of Vigilance Department was placed before the sanctioning authority, the Apex Court held that it cannot be held conclusively that all relevant material including statements recorded by the Investigating Officer were placed for consideration. The report of the Vigilance Department cannot be said to be complete record required to be considered for sanction on application of mind to the relevant material on records. For want of valid sanction, case could not proceed on merits.

10. In Mohd. Iqbal Ahmed v. State of Andhra Pradesh AIR 1979 SC 677 : 1979 Cri LJ 633, Apex Court held that validity of sanction should be proved either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. The grant of sanction is not an empty formality or an acrimonious, exercise but a solemn and sacrosanct act, requires strict compliance.

11. In State of Maharashtra v. Ishwar Piraji Kalpatri 1996 SCC (Cri) 150 : 1996 Cri LJ 1127, it is held that order must show that there has been application of mind and material on record has been examined by the authority, before according sanction. In Ayyasamy v. State 1996 Cri LJ 119 (Madras), Perriyasamy v. Inspector, Vigilance and Anti Corruption Department 1994 Cri LJ 753 (Mad) and D. Venkatsan v. State of Tamil Nadu 1997 Cri LJ 1287 (Mad), it has been held that reason for satisfaction must be recorded and there should be application of mind.

12. Admittedly, sanction dated 1-1-1988 (Ex. P/27) was granted by State of M.P. A bare perusal of the order indicates that authority had recorded the reasons relating to demand of bribe, it had mentioned details of revenue case, organising of trap,

its procedure, place of trap, its details, seizure of money from accused, satisfaction has been recorded by the authority giving reasons, it has applied its mind to facts and circumstances of the case. Not only the report of Up-Lokayukta was made available but entire record of criminal case was placed before the sanctioning authority and sanction order mentions that entire record was perused beside the report, the evidence collected in the case was looked into. Hence, sanction Ex. P/27 granted in the case withstands the tests of validity prescribed in. aforesaid decisions. It has not been shown by the appellant that what particular aspect was not considered by the sanctioning authority. The sanction Ex. P/27 has been proved by PW-10 Shri Rajendra Sawai, he was an Assistant in the Department of Revenue. He identified the signatue of Shri Bhave on the sanction and produced the file pertaining to sanction. He made it clear that he had placed entire record, statements of witnesses etc. before sanctioning authority. I find no legal infirmity in the sanction granted to prosecute the accused.

13. In another view of matter though sanction has been validly granted even if there is any invalidity in sanction, as the appellant has been convicted under the Prevention of Corruption Act, 1947, the legal-position is that no such conviction and sentence shall be altered or reversed merely on the ground of absence of sanction much less on the ground of competency of the authority who granted the sanction or the invalidity of sanction granted, for any reasons. In view of Section 465 of Cr.P.C. and Section 19(3)(a) of the Prevention of Corruption Act, 1988, the need for a valid sanction for prosecution incorporated in Section 6 of the Prevention of Corruption Act, 1947. The prosecution was launched in the present case under the said Act, but, by the time the judgment was passed, the Act of 1988 came into force w.e.f. 9-9-1988. The pending prosecution and trial commenced by virtue of Sub-section (2) of Section 30 of the 1988 Act. Under the 1988 Act there is special provision incorporated in Section 27. Thus powers conferred by Code of Criminal Procedure shall be 'subject to the provision' of 1988 Act. Trammel has been imposed on a Court of appeal and revision under Section 19(3)(a) of 1988 Act in addition to fetter under Section 465 Cr.P.C. Section 19(3)(a) of 1988 Act provides that:

19. (3)(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under Sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

14. It is clear that in the instant case no failure of justice has been occasioned. The Apex Court in C.B.I. v. V.K. Sehgal 1999 AIR SCW 3742 : 1999 Cri LJ 4593 observed as under :

17. It is a further inroad into the powers of the appellate Court over and above the trammel contained in Section 465 of the code which has been dealt with supra. Under Section 19(3)(a) no order of conviction and sentence can be reversed or altered by a Court of appeal or revision even 'on the ground of the absence of sanction' unless in the opinion of that Court a failure of justice has been occasioned thereby. By adding the Explanation the said embargo is further widened to the effect that even if the sanction was granted by an authority who was not strictly competent to accord such sanction, then also the appellate as well as revisional Courts are debarred from interfering with the conviction and sentence merely on that ground.

18. Thus the legal position to be followed, while dealing with the appeal filed against the conviction and sentence of any offence mentioned In 1947 Act, is that no such conviction and sentence shall be altered or reversed merely on the ground of absence of sanction, much less on the ground of want of competency of the authority who granted the sanction,

15. Crucial question in the instant case is whether accused demanded the illegal gratification and whether it has been proved that two currency notes of Rs. 50/- each were recovered from his pocket. There is overwhelming documentary evidence on record to indicate that the revenue case No. 11-A/12-1985-86 an order Ex. P/11A was passed by Tehsildar, Rehli on January 24 1986 requiring Patwari to submit demarcation report by 28-2-1986. It appears that Patwari was not complying with the directions. Hence, no demarcation was done till 28-2-1986. Next date fixed was 29-4-1986, awaiting report of demarcation from 'Patwari', Ex.

P/15A is letter issued to Patwari on 24-1-1986 requiring him to demarcate land and submit his report, the original letter dated 24-1-1986 Ex. P/8 along with envelop was recovered from possession of the accused which he handed over to raid party from pocket of his trouser, seizure memo of which is Ex. P/7. The revenue case file of Tehsil was seized as per memo Ex. P/9, its various documents are on record as Ex. P/11A to P/16A. In view of recovery of order from possession of accused, I find no substance in the submission of counsel for the appellant that accused had no knowledge of order. Accused is found to have knowledge of order requiring him to demarcate land which he was delaying for the reason best known to him. Kodu Lal's version found credence that accused was demanding Rs. 100/- in order to demarcate the land, which Kodulal did not want to pay, hence, on being advised by his father he went to police Lokayukta and lodged a written complaint Ex. P/l on 22-3-1986, pursuant to which trap wasLald on 23-3-1986 at village Rehli. It appears that trap party proceeded from Sagar Office of Special Police Establishment, Lokayukta to Rehli at 13:45 hours and reached barrier of village Rehli at 15 : 30 hours at about 6-6-30 p.m. as per the discussion of Kodulal and accused the illegal gratification was agreed to be paid. The recovery of currency notes from the pocket of appellant is stated by P.W. 1 Kodulal. PW-3 Shri R.S. Choubey, S.D.O. Agriculture, took out said currency notes from front pocket of Kurta of accused along with other slips. Accused hands were washed in a solution of sodium carbonate, which turned pink, so also the pocket of Kurta was got washed in a solution of sodium carbonate, which also turned pink. Bottles Article D and Article E containing hand & Kurta's pocket wash testes for positive for phenolphthelein test as per report of Forensic Science Laboratory Ex. P/21. PW-4 Shri Dwarka Prasad Constable who caught the accused supports the fact that currency notes were recovered from possession of accused. PW-7 Shri V.K. Saxena, S.D.O. Irrigation was also a member of trap team on being signalled by PW-1 he along with others reached the spot and caught hold of accused. PW-3 Shri R.S. Choubey took out currency notes from front pocket of accused. PW-8 Shri N.P. Dubey, Inspector, Lokayukta Police also supports the version of PW-1, PW-3 and PW-7, PW-4 Constable Dwarka Prasad's version that he was not aware of fact that money was recovered from where and by whom, is of not much value as it does not appear that he caught hold of

accused and appears to have reached after some time. The prosecution has established that the accused was found in possession of the two currency notes of Rs. 50/- each paid by PW-1 Kodulal as gratification to him. The presumption under Section 4(1) of the Prevention of Corruption Act, 1947 corresponding to Section 20 of Prevention of Corruption Act, 1988 arises Section 20(1) which is identical, is reproduced herein :

20. Presumption where public servant accepts gratification other than legal remuneration.- (1) Where, in any trial of an offence punishable under Section 7 or S.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.

16. In Madhukar Bhaskar Rao Joshi v. State of Maharashtra (2000) 8 SCC 571 in para 2 Apex Court stated that:

2. Once the prosecution established that gratification in any form - cash or kind had been paid or accepted by a public servant the Court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive or reward to do (or forbear from doing) any official act. The only exception to the said rule is, when the gratification is so trivial that no inference of corruption could in fairness be drawn on a particular fact-situation the Court has no such legal compulsion to presume. Such a presumption was introduced in the Prevention of Corruption Act, 1947 ('Act of 1947' for short) through a later amendment. The said legal presumption was carried forward into the successor enactment of 1988.

17. When accused has been found in possession of illegal gratification, burden is cast on him to explain the possession as held in Jainarayan v. State of U.P. AIR 1974 SC 226 : 1974 Cri LJ 312. The Apex Court in Sultan Ahmed v. State of Bihar

AIR 1974 SC 1828 : 1974 Cri LJ 895 Lald down that once it is established that accused had received the notes he is bound to explain the possession forthwith.

18. In Banshilal Yadav v. State of Bihar 1981 Cr LJ 741 : AIR 1981 SC 1235, Apex Court held that before presumption can be raised the burden is on the prosecution to prove that accused had accepted or obtained gratification. The voluntary act of acceptance must be established. In State by Special Police Establishment v. D. Krishnamurthy 1996 SCC (Cri) 102, it was held that abuse of position of public servant must be proved, mere obtaining of valuable thing or pecuniary advantage by some means, be they illegal or corrupt, not enough. In Smt. Meena Balwant Hemke v. State of Maharashtra AIR 2000 SC 3377 : (2000) 5 SCC 21 : 2000 Cri LJ 2273 it was held that mere recovery of currency note of Rs. 20/- denomination and that too lying on the pad on the table, by itself cannot be held to be proper or sufficient proof of the acceptance of the bribe by accused. The explanation of accused that effort was made to thrust them in her hand was accepted. In State of Tamil Nadu v. Krishnan, 2001 AIR SCW 2415, the amount of Rs. 400/- tainted money was recovered from under a pair of trouser. The accused was in bathroom when he came out raid party appeared and picked up the amount. Other persons were sitting on cot on which trouser was lying. The probability of planting was held be not ruled out and accused was acquitted. In State of U.P. v. J.S. Malhotra, 2001 AIR SCW 2392 timing of giving fitness certificate was doubted as proceedings for which it was required were over and it was held that certificate was already issued before the alleged payment of bribe. The case was held improbable on that count coupled with other circumstances.

19. In the backdrop of the legal position the evidence in the instant case as discussed points out that accused had demanded illegal gratification and had received it from PW-1 Kodulal for doing the demarcation. Thus, he was bound to explain the possession of currency notes recovered from his pocket, accused has simply denied the recovery, which denial is falsified by PW-1, PW-3, PW-5, PW-7 and PW-8 as discussed above. Prosecution has established receipt of gratification, hence, the Court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive or reward to do any official act. In Madhukar Bhaskarrao Joshi (supra) (2000) 8 SCC 571 : 2001 Cri LJ 175, in para

14 the Apex Court held that:

14. We, therefore, repel the contention of the learned counsel that the prosecution has a further duty to prove beyond the fact that PW-1 had paid the demanded money to the appellant for enabling it to lay the hand on the legal presumption employed in the Prevention of Corruption Act. We may point out that the defence did not even attempt to prove that the amount received by the appellant was not accepted as a reward or motive for the official act done by him, except the ipse dixit of the appellant, that too made at the fag end of the trial when he put in a written statement of his defence. Hence no exception can be taken to the conviction passed by the trial Court which was concurred by the High Court in respect of the offence under Section 5(2) of the Act of 1947.

20. In the instant case it was incumbent on defence to prove that the amount received by the appellant was not accepted as bribe or reward or motive for the official Act to be done by him.

21. The learned counsel for appellant next contended that PW-1 Kodulal complainant's version is not worth of acceptance as Patwari was a witness against Kodulal in a murder case. The complainant was proceeded under Section 107/116, Cr.P.C. However, it has not been shown that whether accused had appeared as eye-witness or just a routine witness of spot map which is usually prepared by him in the absence of anything more on record, it would not be proper to disblieve the case only on that ground. It is next contended that factum of demand is not corroborated. The offence is by Its nature clandestine. Man may lie but circumstances do not is the cardinal principle of evaluation of evidence. Patwari was delaying the demarcation inspite of having received order dated 24-1-1986. He was having knowledge of order. Thus, circumstance makes out that version of Kodulal of demand has ring of correctness.

22. The counsel hasLald emphasis on the fact that after trap party reached Rehli the bribe was not given at the first opportunity when accused met PW-1 Kodulal at a hotel. It was not paid when they met again in vegetable market. Thus, payment of gratification' near 'Bar becomes doubtful. The PW-1 states that on reaching Rehli alongwith raid party, he alighted from Jeep with one person, he was told to

get the Patwari identified. He found accused was sitting in 'Pathak' Hotel situated on Gurukota Road. He was being followed by shadow witness, accused asked him whether 'Dabbal' meaning there by notes were brought for demarcation or not. However, he forgot to speak 'Jai Gopal' which he was required to state by raid party so that shadow witness understands that he was talking to Patwari concerned. Patwari and PW-1 both decided that they would go to the 'Bar'. On being asked to accept money, accused told PW-1, let it be in the evening. The trap party had reached Rehli around 4 p.m. It appears that PW-1 again met accused in vegetable market and asked Patwari to accompany to 'Bar' for having liquor. Accused agreed to go to Bar after leaving vegetable at his house which he had purchased. PW-1 waited for him. Accused came back and they proceeded towards 'Bar'. When they reached in the lane accused asked for the money, near the bank building it was given, As soon as the accused had put it in his pocket, PW-1 signalled by putting his hand on his head. The accused was caught by PW-3, PW-5 and other persons of trap party. PW-7 and PW-8 also reached the spot. I find that though the gratification was not paid at hotel on first meeting, but as unfolded by the PW-1 it was decided on mutual conversation that, they would go to Bar in evening then exchange of money had to take place. The learned counsel submitted that there is possibility that PW-1 and accused had consumed liquor in Bar and taking advantage of drunken condition money had been put in the pocket of accused. This hypothesis is belied by fact that exchange of notes took place before they could reach the 'Bar'. Secondly accused did not set up this defence in his statement under Section 313, Cr.P.C. nor it has been put to witnesses of raid party that accused and PW-1 had visited Bar before handing over of notes. It was not suggested to PW-1. PW-3 was not sure whether accused had consumed liquor but suggestion that accused and PW-1 had already visited the Bar, was not put to this witness PW-3 nor to other witnesses PW-4, PW-7 and PW-8, particularly, in view of non-explanation of accused coupled with evidence of prosecution guilt stands established.

23. The counsel for the appellant submits that independent corroboration of trap witnesses is lacking in the case hence it would not safe to convict the appellant. He relies on decisions of Apex Court in Darshanlal v. Delhi Administration AIR 1974 SC 218 : 1974 Cri LJ 307. Raghbir Singh v. State of Punjab AIR 1976 SC 91

: 1976 Cri LJ 172, Ayyasamy v. State of Tamil Nadu AIR 1992 SC 644 : 1992 Cri LJ 608 and in Somprakash v. State of Punjab AIR 1992 SC 665 : 1992 Cri LJ 490. In Darshanlal (supra) notes were found lying on the ground. It was doubful who had thrown them on the ground. In the circumstances of said case corrotaoration was sought for. In Raghbir Singh (supra), Jagdish Raj allegedly paid the bribe and trap witness Arjundas was related to him. No effort was made to secure presence of independent and respectable witnesses. In Ayyasamy v. State of Tamil Nadu (supra) money was recovered from drawer. Chemical examination did not inculpate accused. It was in that background accused was acquitted. In Somprakash (supra) the witnesses of trap were such who could not be termed as independent, who could be associated with such raid. However in the instant case PW-5 Shri R.S. Choubey was holding important portfolio of Deputy Director of Agriculture and PW-7 Shri Y. K. Saxena was Sub-Divisional Officer, Irrigation. They are respectable witnesses not interested in complainant PW-1, neither related to him and are wholly independent witnesses, not shown to be inimical to accused. Importantly they could not be infuenced by the police.

24. In Prakash Chand v. State (Delhi Admn.) AIR 1979 SC 400 : 1979 Cri LJ 329 relying on State of Bihar v. Basawan Singh AIR 1958 SC 500 : 1958 Cri LJ 976 and Bhanuprasad Hariprasad Dave v. State of Gujarat 1968 SC 1323 : 1968 Cri LJ 1505 it was held that Court can act upon uncorroborated testimony of a trap witness if it is satisfied in the truthfulness of the statement. In Kishan Chand Mangal v. State of Rajasthan AIR 1982 SC 1511 : 1983 Cri LJ 1 Apex Court warned against rejection of trap witnesses in a bribery case merely because they are petty clerks when they satisfy test of truthfulness independent of police influence, a testimony of a clerk cannot be rejected merely on the ground of their humble position in society. In Ramkishan v. State of Punjab 1995 Cri LJ 2892 (Punjab & Haryana), it was held that Corrobora-tion may be by circumstances which may also support trap witnesses. On the strength of P.L. Rathi v. State of Maharashtra AIR 1979 SC 1191, it is urged that complaint is in no better position than accomplice, hence, his version requires corroboration in material particulars. However, in the case of Rathi (supra), marked notes were not recovered from appellant but from other accused.

25. The trap witness PW-3 has corroborated substantially the version of PW-1, he had signed Ex. P/1, application submitted by PW-1 and has given detailed version of instruction given to PW-1 and other proceeding of applying phenolphthelein powder and washing of hand of Mr. Tripathi and PW-1 before proceeding for raid. He has supported conduct of raid and it was he who took out 'notes' from front pocket, he lends support to washing of hands of accused in a solution of sodium carborate which turned pink. He supports seizure memo Ex. P/3 pertaining to notes and seizure of clothes. He has stated proceedings were concluded on the spot and later at rest house. PW-7 Y. K. Saxena, has also corroborated the version. He was called by Inspector at Sagar and supports in entirety the version of PW-3. The evidence of PW-3 and PW-7 is further corroborated by PW-8 Inspector, PW-4 Dwarka Prasad (Constable), PW-5 Bhagole (Constable). PW-4 also states hand wash of accused turned pink. PW-5 caught hold of the accused and also supports hand wash turning pink and recovery of money from possession of accused.

26. It is next contended that trap witnesses have not deposed that they had acutally seen passing of money. It has come in evidence that PW-3 was at quite' some distance so also PW-4. Further PW-7 and PW-8 reached after PW-3 & PW-4 had already caught hold of accused. Though shadow witness is favoured by law to state, not only to see what transpires but also overhear what happens and how it happens. In Smt. Meena Balwant Hemke v. State of Maharashtra 2000 Cri LJ 2273 (SC) (supra) witness victoria entered first and caught hold of hands of accused, was not examined by prosecution the other person who was present was cited as witness but, was not examined and was examined as DW-1 and in the peculiar circumstances of the said case accused was acquitted. In the instant case recovery of money from pocket of accused has been proved beyond doubt by PW-3, PW-5 and PW-7. PW-3 took out notes from pocket. PW-3 & PW-7 reached on being signalled by PW-1. They have thus supported what transpired. It is not born out from record that PW-3 and PW-5 positions were at such a near distance to overhear the conversation particularly when accused and PW-1 were going ori road and place of exchange where it took place was not fixed as they had not reached 'Bar' (Kalari). Thus the deposition of trap witnesses is not tainted in any manner. They appear to be truthful witnesses.

27. It is submitted that it has not been proved that land was sold by father of accused, hence, there was no reason for demarcation. However in view of the order of demarcation and filing of revenue case and also fact that demarcation was not carried out till 23-3-1986, the argument looses its orce. Moreover Kodulal had stated that certain sales were to take place with Bhagwan Singh and there were agreements also. Subsequently some sale-deeds were examined. There was necessity of demarcation, hence, application was moved in Tehsil Office. Ex. P/7 to Ex. P/17 are documents in that regard which clinches the central issue that lemarcation was refused to be done, for doing of the official act gratification was demanded and received.

28. In the circumstances of case non-examination of father of PW-1 is of no consequence. Father of PW-1 was not present at Sagar and Rehli. It is also submitted that it is unnatural conduct that for accused to have received money in market. The story unfolds that PW-1 and accused were proceeding to 'Bar' for having a drink. On the way money was passed. It cannot be said that it is improbable to pass money in the manner suggested.

29. The phenolphthelein test is also positive which links corroboration to prosecution version, presence of phenolphthelein crystals on hand of accused and inside pocket, are circumstances against him, which have gone unexplained by accused.

30. Taking overall assessment, the prosecution by its evidence has been able to satisfactorily establish guilt of accused beyond reasonable doubt. The defence has not given any explanation good, bad or otherwise of recovery made from pocket of accused. There is no option except to dismiss the present appeal.

31. As to sentence : already a minimum sentence has been imposed which is on a lenient side. Corruption has gripped the society like a tentacular octave of octopus, its grip has to be loosened only by inflicting condign punishment which may have deterrent effect. Hence, sentence calls for no deduction. It is also not being enhanced in the absence of an appeal by State for enhancement.

32. The appeal is dismissed. The appellant is on bail, his bail bonds are cancelled. He shall be taken into custody forthwith to undergo the sentence.

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