

**Jadunath Khatua Vs. the State**

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**Court :** Orissa

**Decided On :** Nov-17-1981

**Reported in :** 1982CriLJ954

**Judge :** B.K. Behera, J.

**Appellant :** Jadunath Khatua

**Respondent :** The State

**Judgement :**

**B.K. Behera, J.**

1. The appellant has been convicted Under Section 161 of the Indian Penal Code (hereinafter called the Code) and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947(hereinafter called the Act) and sentenced to undergo rigorous imprisonment for a period of one year for each of the two offences with a direction that the sentences would run concurrently.

2. Briefly stated, the case of the prosecution was that on 19-5-1970, the appellant, then serving as Revenue Inspector of the Nagram Circle in the Tahsil of Balasore, accepted on demand Rs, 50/- (fifty) from Prosanna Kumar Jena (P.W. 6) as illegal gratification as a motive for expediting a report called for from him (appellant) by the Tahsildar & Revenue Officer, Balasore, in Orissa Land Reforms Case No. 4 of 1975 which had been started by the father of P.W. 6. After it was agreed on 17-5-

1976 that P.W. 6 would pay Rs. 50/- on 19-5-1976, the latter made a report (Ext. 11) to the Deputy Superintendent of Police, Vigilance, stationed at Balasore and as authorised by the Superintendent of Police, Vigilance, Cut-tack, the Inspector of Vigilance (P. W-121 took up the investigation of the case with the assistance of another Inspector of Vigilance (P.W. 9) deputed from Cuttack. On 19-5-1976, P.W. 12 made preparation for laying a trap and the preparation report (Ext. 13) was drawn up in the presence of P. Ws. 6 and 8(Executive Magistrate) besides others and P.W. 9 made a demonstration as to how the sodium carbonate solution in contact with phenolphthalein powder would turn pink in colour. His hand-wash was collected in a bottle (M, O. II). The marked five Government currency notes of the denomination of rupees ten (M. O. I series) were processed with phenolphthalein powder, put inside an envelope and were kept inside the chest pocket of P.W. 6 who was instructed to hand over the money to the appellant on his demand and the over-hearing witness (P.W. 7) was instructed to hear the conversation between P.W. 6 and the appellant, watch the payment and signal the acceptance of bribe. Then all the members of the trap party proceeded to Nagam. the headquarters of the appellant and on learning that he had gone to the Tahsil Office at Balasore, the members of the trap party proceeded to that office at Balasore. P. Ws. 6 and 7 went ahead to the Tahsil Office and the other witnesses, namely, P. Ws. 8, 9 and 12 took positions at different places. P.W. 6 met the appellant on the Verandah of the Tehsil Office near the Nizarat and handed over M. O. I series to the appellant on his demand. Some time thereafter, the members of the trap party reached that place and on their demand for production of the money received from P.W. 6, the appellant, after some hesitation, brought out M. O. I series from inside his right pant pocket and dropped on the ground. M. O. I series were picked up by P.W. 8, the Executive Magistrate, who compared the numbers of the notes previously recorded in the preparation report (Ext. 13) and the numbers tallied. The hand-wash of the appellant, his pant pocket wash and the hand-wash of the Executive Magistrate, who compared the numbers of the currency notes were collected in three bottles (M. Os. III to V, The detection report (Ext. 18) was prepared by P.W. 12. In the course of the investigation, P.W. 12 examined the witnesses and after obtaining sanction from the Collector and District Magistrate, Balasore, as per Ext. 21, the sanction order, placed a charge-

sheet against the appellant who stood trial being charged with the aforesaid offences.

3. At the trial, the prosecution examined twelve witnesses. Of them, P.W. 6, as already indicated, was the complainant and P.W. 7 was the overhearing witness. The latter turned hostile, did not support the case of the prosecution and was put leading questions Under Section 154 of the Evidence Act. P.W. 8 was the Executive Magistrate and P. Ws. 9 and 12 were Inspectors of Vigilance, The Collector and District Magistrate was examined as P.W. 10. P.W. 11 was the Nazir of the Tahsil Office at Balasore. p. Ws. 1 to 5 were formal witnesses and their evidence was not of much consequence.

4. The appellant admitted that at the relevant time, he was functioning as the Revenue Inspector at Nagram in the Balasore Tahsil and that he had been asked by the Tahsildar to submit a report in Orissa Land Reforms Case No. 4 of 1975. He had, however, denied to have received illegal gratification from P.W. 6 for expediting the submission of the report. His defence was that P.W. 11, the Nazir of Tahsil Office, had borrowed some money previously from him and had asked him to come to the Tahsil Office on 19-5-1976 to receive the money from him. Accordingly, the appellant came to the Tahsil Office at Balasore on 19-5-1976 and received Rs. 50/- (M. O. I series) from the Nazir and this amount was recovered from him by the Vigilance Officers. The further case of the appellant was that he had taken 110 rent receipt books from the Tahsil Office for the year 1973-74 when the Nazir was in charge of these receipt books and after March, 1974, he had returned 9 unused receipt books and some time after 101 used books of which one book was cyclostyled and not printed. P.W. 11 had endorsed in the register (R. 11) to have received 101 used books and had asked the appellant to bring the register to him to effect necessary corrections therein regarding the receipt of the used books in order to avoid future audit objections. As P.W. 11 had asked him repeatedly to bring the register, he (appellant) had requested P.W. 11 to repay the loan taken from him. P.W. 11 had insisted that the appellant should first bring the register to him for corrections and he sent words repeatedly to him to get the register. Two or three days prior to 19-5-1976, P.W. 11 had asked him to meet him in the office to receive his loan amount. It was also the case of the appellant that

P.W. 11 and P.W. 3. a clerk in the Tahsil Office, had requested the appellant to expedite the report in the Orissa Land Reforms Case in which the father of P.W. 6 was concerned. The appellant had asserted that both P. Ws. 6 and 11 had joined hands to falsely implicate him in the case. The appellant had not examined any witness on his behalf,

5. On a consideration of the evidence, the learned special judge found that both the charges had been established.

6. The learned Counsel for the appellant has taken me through the relevant evidence and has submitted that neither of the two charges had been established and it would be clear that P. Ws. 6 and 11 had joined hands and involved the appellant falsely in the case. It has also been submitted on his behalf that the case put forward by the appellant was reasonably true. The learned Additional Standing Counsel has submitted that there are no iustifi-able reasons to discard the evidence of P, W. 6 and the other official witnesses and both the charges had been brought home to the appellant beyond reasonable doubt.

7. It admits of no doubt and it has not been disputed that in the Orissa Land Reforms Case No. 4 of 1975 started by the father of P.W. 6, a report had been called for from the appellant and it would be clear from the evidence of P.W. 6 that he had met the appellant several times to expedite his report. The evidence of P.W. 6 that on 14-5-1976 he had written a letter to the appellant that he was prepared to pay him necessary expenses and that he requested the appellant to expedite the matter would find ample corroboration from the recovery of that letter (Ext. 12) from the possession of the appellant at the time of detection of the offence on 19-5-1976 which was seized by P.W. 12. the Inspector of Vigilance, as per the seizure list, Ext. 19. As rightly-noticed by the learned special Judge in paragraph 5 of his judgment, the recovery of the five currency notes of the denomination of rupees ten (M. O. I series) with a paper slip (Ext. 22) attached to it from the possession of the appellant on 19-5-1976 has satisfactorily been established and this aspect has also been admitted by the appellant, The main question for consideration is as to whether on demand made by the appellant, P.W. 6 gave the currency notes to the appellant as illegal gratification. It would be

seen from the preparation report (Ext, 13) and the evidence of P. Ws. 6, 8, 9 and 12 that in the office of the Deputy Superintendent of Police, Vigilance, Balasore, the five currency notes (M. O. I series) were duly processed with chemical powder and handed over to P.W. 6 after heaping the currency notes in an envelope which were kept in chest pocket to be given to the appellant. At the stage of preparation of the trap, therefore, M. O. I series were definitely in the possession of P.W. 6. The same currency notes were later found from the possession of the appellant.

8. It would also be clear from the evidence of P. Ws. 6, 7, 8, 9 and 12 all members of the trap party, that on 19-5-1976, they first went to Nagram where the appellant had been stationed and after P. Ws. 6 and 7 went and found out that the appellant had gone to Balasore, they all proceeded to Balasore where P. Ws. 6 and 7 went to the office of the Tahsildar, Balasore, while the other members of the trap party took different positions and P.W. 7 had been instructed to give a signal after receipt of the money by the appellant. Speaking about this main part of the occurrence, P.W. 6 had stated thus :

7. The accused entered the office of the Nazir. We went there. On the verandah of the Nizarat, I met the accused. The accused asked me where I had come, and I replied that I had come to meet him as per previous arrangement. Then he enquired of me if I had brought the money, to which I replied in the affirmative. Then he asked me to hand over the money to him. I brought out the marked notes from inside the envelope and handed over to the accused. The accused took the money and handed over to the Nazir (Kailash Chandra Sahu, Then I proceeded up to some distance in the office verandah. At about this time, the Magistrate and the Vigilance people came there. I accompanied them. At that time the accused was coming out from inside the Nizarat.

8. The Vigilance Inspector Bishnu Babu then demanded production of Rs. 50/- from the accused which he had received from me. Hearing this, the accused kept quiet for some time. He then inserted his hand in the right hand pant pocket and kept quiet for some time, by which time the Magistrate and the Vigilance officers had already surrounded him. About 10 minutes thereafter, the accused brought out the money from inside his pant pocket and dropped on the ground. With the G. C.

notes a slip of paper was attached and the notes were secured in a rubber strap. The Magistrate picked up the G. C. notes bundle and kept it on the table.

9. Thereafter, both the palms of the accused were washed with a glassful of water which turned red, and that water was preserved in a bottle and the bottle was sealed. Then the accused took out the pant worn by him on the direction of Bishnu Babu and made it over to him. Thereafter, the righthand side pocket of the pant was dipped in a glassful of water and the colour of the water became red. This water was also preserved in a bottle which was sealed. Thereafter the Dy. S. P. and Khadra Babu compared the numbers of the marked notes with the previously recorded numbers, The numbers tallied. Then the personal search of the accused was taken and some papers and cash were recovered. The papers included the letter of mine dated 14-5-76 addressed to him. Ext. 12 is the said letter. Then some writings were made there.

10. M. O. I to 1/4 are the marked notes which I gave to the accused. This slip of paper tagged to the notes had the writing 'J. Khatua.

The evidence of this witness had amply been corroborated by that of P. Ws. 8, 9 and 12, besides P.W. 11. P.W. 7 turned hostile and was put leading questions Under Section 154 of the Evidence Act and confronted with his statements made to P.W. 12 in the course of investigation in which he had fully supported the prosecution case with regard to the payment of money by P.W. 6 to the appellant and his giving a signal and also with regard to the recovery and seizure of M. O. I series from the possession of the appellant. There is no reason to challenge the bona fides of the Investigating Officer (P.W. 12) who had no axe to grind against the appellant and it would appear that he had duly recorded the statement of p, W. 7. It would thus be clear that P.W. 7 had turned hostile at the stage of trial and had given a go-bye to his previous statements made in the course of investigation and had suppressed the truth with the evident intention to help the appellant in this case.

9. The evidence of P.W. 6 that after he paid the money to the appellant the latter took the money and handed it over to the Nazir (P.W. 11) had been supported by that of P.W. 11 who had testified that at about 1.10 p. m. on 19-5-1976, while he

was disbursing cash, the appellant handed over Rs. 50/- consisting of five ten rupee currency notes asking him to keep the money and telling him that he would come later and he (P.W. 11) counted the money and kept it with a slip (Ext. 22) attached to it writing the name of the appellant, lest the money might get mixed up with other currency notes and to avoid confusion with regard to the identity of the person giving the money. His evidence would further show that some time thereafter, the appellant went, collected the money from him and left the Nizarat. It would thus be clear that the appellant took the five currency notes from P.W. 11 and thereafter, the trap party reached and demanded the money and as the evidence would undoubtedly establish, M. O. 1 series were recovered from the possession of the appellant who threw the same on the ground. The evidence of P.W. 6 supported by other evidence was not to be discarded because the envelope in which the money had been kept before it was handed over to the appellant had not been seized and produced. P.W. 11 had denied the suggestion from the side of the defence that he had borrowed money from the appellant and that on 19-5-1976 he sent words to the appellant to come to the office to take the money from him and that the appellant did not give any money to him. but he gave him Rs. 50/- at the material time. He had also denied the suggestion of the defence that he was on intimate terms with P.W. 6 and that he and P.W. 6 had joined hands to put the appellant to trouble. As found by the learned special Judge, P.W. H was a man of substance and it was highly unlikely that he would borrow Rs. 50/- from the appellant. The appellant had been working as a Revenue Inspector and P.W. 11 had been working as a Nazir. There was no circumstance to indicate, even remotely, any animus on the part of P.W. 11 towards the appellant.

10. The evidence adduced from the side of the prosecution with regard to recovery of M. O. I series which, undoubtedly, had been given to the appellant by P.W. 6, was clear, cogent and consistent and the evidence of P.W. 6 supported by other evidence would show that when demand was made of the appellant to produce the money given to him by P.W. 6, he fumbled, hesitated for some time and then brought out the money from his right pant pocket and threw it on the ground. Even if the evidence of P.W. 6 with regard to appellant keeping quiet for some time before throwing the money is discarded on the ground that he had omitted to make

a statement to the Investigating Officer that the appellant had kept quiet for some time which omission would appear to be an inconsequential one, the fact remains that the appellant brought out the money from his pant pocket and threw it on the ground.

11. From the aforesaid facts, evidence and circumstances, conclusion is irresistible that on demand made by the appellant, p. W, 6 had paid Rs, 50/-to him on 19-5-1976 which the appellant had temporarily kept with the Nazir (P.W. 11) and that after he brought back the money from P.W. 11, it was recovered from his possession. As the evidence of P.W. 8, the Executive Magistrate, would show, he compared the numbers of the currency notes (M. O. I. series) recovered from the possession of the appellant with the numbers of the currency notes mentioned in the preparation report (Ext. 13) and the numbers tallied. This payment had been made, as the evidence would clearly show, in order to expedite the report in the aforesaid Land Reforms Case started by the father of P. W, 6 as in spite of several requests made by P.W. 6, the appellant had not submitted the report. The evidence of P.W. 6, besides being clear, cogent and consistent, had been corroborated by not only the evidence of the members of the trap party, but also by P.W. 11. A Court may well be -justified in acting upon the uncorroborated testimony of a trap witness if the Court is satisfied from the facts and circumstances of the case that the witness is a witness of truth : 1979 CriLJ329 Prakash Chand v. State (Delhi Administration)). Agreeing with the learned special Judge, I would hold that P.W. 6 is witness of truth and his evidence can safely be accepted.

12. As provided in Section 4(1) of the Act, where in any trial of an offence punishable Under Section 161 of the Code, 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, 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 a motive or reward such as is mentioned in the said Section 161 of the Code. This presumption, no doubt, does not apply when an accused person is prosecuted Under Section 5(1)(d) of the Act as laid down in : 1971 CriLJ1119 (R. C. Mehta v.

State of Punjab) and : 1975 CriLJ776 (V. K. Sharma v. State (Delhi Administration)). But in the instant case, the appellant stood prosecuted, besides for the offence of misconduct punishable Under Section 5(2) read with Section 5(1)(d) of the Act, Under Section 161 of the Code. In view of the positive proof that the appellant had accepted Rs, 50/- from P.W. 6, it would be presumed, unless the contrary is proved, that he accepted this gratification as a motive or reward such as is mentioned in Section 161 of the Code. As has been laid down in a recent decision of the Supreme Court reported in : 1980 CriLJ564 (Hazari Lal v. The State (Delhi Administration), where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received the gratification from some person, the court would certainly be entitled to draw the presumption Under Section 4(1) of the Act, It was therefore, for the appellant to prove the contrary in order to rebut the presumption to be drawn against him and the burden of proof in this regard rested on and had to be discharged by him in order to get over the legal presumption. It has been laid down in AIR 1968 SC 1292:1968 Cri LJ 1484 Sailendranath Bose v. State of Bihar) that the words "unless the contrary is proved" occurring in Section 4(1) of the Act make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. The burden resting on the accused would be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary for him to establish his case by the test of proof beyond reasonable doubt. In other words, the nature of the burden placed on him is not the same as that placed on the prosecution which must not only prove its case, but prove it beyond reasonable doubt. It has been laid down in AIR 1976 SC 1497:1976 Cri LJ 1180)(Chaturdas Bhagwandas Patel v. State of Gujarat) that when a public servant accepts a gratification which is not his legal remuneration, the statutory presumption Under Section 4(1) of the Act is attracted in full force and the burden shifts on to the accused to show that he had not accepted the money as a motive or reward such as is mentioned in Section 161 of the Code. Their Lordships observed (Para 23):.It is true that the burden which rests on an accused to displace this presumption is not as onerous as that cast on the prosecution to prove its case. Nevertheless, this burden on the accused is to be discharged by bringing on record evidence, circumstantial or direct, which establishes with

reasonable probability, that the money was accepted by the accused, other than as a motive or reward such as is referred to in Section 161....

In yet another decision of the Supreme Court reported in : 1979 CriLJ1118 (Man Singh v. Delhi Administration, while dealing with the question of presumption Under Section 4 of the Act. it has been laid down that the accused is not required to prove his defence by the strict standard of proof beyond reasonable doubt, but it is sufficient if he offers an explanation or defence which is probable and once this is done, the presumption Under Section 4 stands rebutted,

13. In the instant case, judged by the aforesaid principles with regard to the discharge of the burden lying upon an accused person in a case where payment of money other than legal remuneration has been established, it would be clear, for the reasons to follow, that the appellant had failed to displace .this legal presumption against him. As already stated, the evidence of P. Ws. 6 and 11, besides the other evidence, would negative his case that the money recovered from his possession had been given to him by P. .W. 11 towards the repayment of the loan taken by him from the appellant. As rightly noticed by the learned special Judge, if the defence plea was to be accepted, it had to be accepted as a fact that the money recovered from the appellant had come from the hands of P.W. 6 to P.W. 11 and that P.W. 11 gave that money to the appellant which eventually was recovered from him. But such a case had not only been negated by the evidence of P. Ws. 6 and 11, but had not even been suggested to P.W. 6, although such a suggestion made to P.W. 11 had been denied by him. There was no justifiable reason to come to a finding that p. Ws. 6 and 11 would be hand-in-glove to put the appellant to trouble and involve him in such a case. A very salient feature appearing in the evidence was that as originally planned, the money was to be paid by P.W. 6 to the appellant at his headquarters station, namely Nag-ram and. therefore, P.W. 6 along with other members of the trap party had proceeded to that place. It was not known to them that the appellant had been away from Nagram and it was only after P. Ws. 6 and 7 went to the Office of the appellant and enquired about the appellant when it could be known that he had gone to Balasore. Had the appellant been at Nagram, money would have been paid by P.W. 6 at Nagram and P.W. 11 would have nothing to do with it. It was only by a

coincidence of events that the trap party had to go to Balasore where the money was paid and P.W. 11, the Nazir, came into the picture after the appellant handed over M. O. I. series to him to keep it for some time. This would be an important circumstance to belie the theory of the defence that P. Ws. 6 and 11 had joined hands to falsely implicate the appellant. The conduct of the appellant at the time of recovery of M. O. I series would also falsify his plea. If the recovered money had been given to the appellant by P.W. 11, on the demand for the money from him by the officials of the trap party, he would not, in the normal course of events, produce the money from his pant pocket and throw it on the ground. On the other hand, the normal conduct of a person would be to immediately take the members of the trap party to P. W, 11 for a confrontation to show that it was, in fact P.W. 11 who had given the money. The learned special Judge, for good reasons, did not accept the appellant's case that P.W. 11 had taken a loan from him. The appellant's case that as he had been asked repeatedly by P.W. 11 to bring one register, he requested P.W. 11 to repay the loan taken by him after which he would get the register and for which money was paid to him on 19-5-1976, seems to be too unreal and fantastic to be accepted and is belied by the evidence already referred to.

14. For the aforesaid reasons, it would be clear that the appellant had accepted M, O. I series as illegal gratification from P.W. 6 and had accepted this money as motive or reward to expedite the report in the Orissa Land Reforms Case. The appellant was undoubtedly a public servant at the time he received this amount and by abusing his position had obtained pecuniary advantage for himself by corrupt and illegal means. Both the charges had been brought home to him beyond reasonable doubt and the appellant had rightly been convicted in respect of both the offences by the learned special Judge. The sentences passed against the appellant cannot be said to be severe in the circumstances of the case.

15. In the result, the appeal fails and the same is dismissed. The order of conviction and sentences passed against the appellant Under Section 161 of the Code and Section 5(2) read with Section 5(1)(d) of the Act is maintained.