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Subhash Chand Chauhan Vs. C.B.i.

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Court : Delhi

Decided On : Jan-04-2005

Reported in : 117(2005)DLT187; 2005(79)DRJ644

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code (IPC) - Sections 7 and 120B; [Prevention of Corruption Act, 1988](#) - Sections 13(1) and 13(2); Narcotic Drugs and Psychotropic Substances Act - Sections 20

Appeal No. : Crl. A. Nos. 462 and 467/2002

Appellant : Subhash Chand Chauhan;kanti Kumar

Respondent : C.B.i.;state (Through C.B.i.)

Advocate for Def. : Neelam Grover, Adv.

Advocate for Pet/Ap. : Siddharth Aggarwal and; Smriti Sinha, Adv. in Crl. A. 467/2002 and;

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. Appellants, Subhash Chand Chauhan and Kanti Kumar were working as Junior Engineer and Khalasi respectively with the DDA. In December 1988, both were posted in Rohini Project Division IX, DDA. Adesh Mittal (PW-3) had purchased shop No. S-2/5, Block B, Shopping Centre, Prashant Vihar from DDA, which block fell within the area of Division-IX. On a complaint by PW-3, CBI laid a trap. Appellants were allegedly caught accepting bribe from PW-3. Case was registered under Section 120B IPC and Section 7 as also Section 13(2) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#). They were sent to trial in the Court of Special Judge, CBI which was registered as Sessions Case No. 73/93(90).

2. Vide judgment dated 3.6.2002, appellants were convicted on all counts. Vide order dated 4.6.2002, sentence of R.I for 4 years and fine of Rs. 500/- each, was inflicted upon the appellants for offences under Section 120B IPC, Section 7 and Section 13(2) read with Section 13(2) of the [Prevention of Corruption Act, 1988](#). Sentences were to run concurrently. In default of payment of fine, appellants were to undergo R.I for 3 months on each count.

3. Charge sheet submitted in Court gave the contours of the case of the prosecution. Charge sheet reads as under:-

'This case was registered on 14.12.88 on a written complaint of Sh. Adesh Mittal alleging that Sh. Adesh Mittal purchased a shop at B-Block Market, Prashant Vihar Delhi from DDA in an open auction during 1988 and took the possession of the same in September, 1988. It is alleged that Sh. Adesh Mittal was constructing the stair-case in his shop and on 13.12.88 Shri Subhash Chand Chauhan, Junior Engineer Rohini Project Division 9, DDA and Kanti Kumar Khalasi, Rohini Project Division 9, DDA visited his shop and they demanded Rs. 500/- from Shri Adesh Mittal for allowing him the construction of said stair-case in his shop. It was further alleged that Sh. Subhash Chand Chauhan and Kanti Kumar threatened Sh. Adesh Mittal that if their demand is not met by 15.12.88 they will harass him and will report the matter to police etc. A case was registered and investigation of the case was entrusted to Shri R.S. Manku, Inspector CBI. Shri R.S. Manku arranged two independent witnesses S/Shri Y.K. Pandey Asstt. and U.K. Mishra Asstt. Director both working in Directorate of Estate, Ministry of Urban Development, Nirman

Bhavan, New Delhi. The numbers of G.C. notes of Rs. 500/- produced by the complainant were recorded in the handing over memo and these G.C. notes were treated with the phenolphthalein powder. Thereafter these G.C. notes were given to Sh. Adesh Mittal, complainant with the directions to give the same to the accused on their demand. A micro cassette recorder duly fitted with a blank micro cassette was also handed over to Sh. Adesh Mittal with the direction to record the conversation that may take place between him and the accused. After completion of all legal formalities Sh. R.S. Manku laid a trap on 15.12.88. All members of the trap party took suitable position in the market and complainant, Adesh Mittal remained closed to his shop No. 5 Along with shadow witness Shri Y.K. Pandey.

Investigation has further revealed that around 10.50 A.M Sh. Subhash Chand Chauhan appeared in the market and approached Adesh Mittal and had a talk with Adesh Mittal which was duly recorded in the blank micro cassette by Sh. Adesh Mittal. During the conversation Sh. Subhash Chand Chauhan demanded Rs. 500/- from Adesh Mittal and Sh. Kanti Kumar also joined them and on the direction of Subhash Chand Chauhan Sh. Kanti Kumar accepted the tainted money of Rs. 500/- from Sh. Adesh Mittal as illegal gratification.

Investigation revealed that on receiving appointed signal Sh. R.S. Manku Along with other members of the trap party apprehended Sh. Subhash Chand Chauhan and Kanti Kumar. Sh. Kanti Kumar disclosed before the members of the trap party and independent witness Sh. Y.K. Pandey and V.K. Mishra that he had concealed the bribe money in the office of Shri Subhash Chand Chauhan after receiving the same from Sh. Adesh Mittal. The tainted money of Rs. 500/- was recovered from the office of Sh. Subhash Chand Chauhan on the pointing out of Sh. Kanti Kumar. The numbers of the G.C. Notes so recovered were compared with the numbers of G.C. notes recorded in the handing memo which tallied. The hand-washes of both the accused were taken and all other legal formalities were completed on the spot. The micro cassette containing conversation between Adesh Mittal, Subhash Chand and Kanti Kumar was played and members of the trap party found clear demand and acceptance of bribe by Sh. Subhash Chand and Kanti Kumar. Both the accused were arrested and were later on released by the court on bail.'

3. Learned counsel for the appellants did not make any submissions pertaining to sanction granted by the competent authority for prosecution of the appellants, who undoubtedly were public servants. No submissions were made pertaining to formalities conducted in office of CBI on the day of the trap and therefore, I would be taking note of the evidence of the witnesses as to what was narrated by them pertaining to the version of the prosecution on the allegations of receipt of bribe money, its recovery and hand wash of the appellants.

4. Complainant Adesh Mittal who was examined as PW-3, deposed that he had purchased shop No. S-25, Block B, Shopping Centre, Prashant Vihar, New Delhi from DDA and accused Subhash Chand Chauhan had delivered possession to him on 1.9.1988. He wanted to construct a staircase within the shop and commenced construction on 11.12.1988. On 12.12.1988, Subhash Chand Chauhan visited the shop and demanded bribe of Rs. 500/- to permit him to construct the stair case. He was threatened that if bribe was not paid construction would not be permitted. On 13.12.1988 Subhash Chand and Kanti Kumar visited the shop and told him that bribe has to be paid latest by 15.12.1988. He lodged a complaint (Ex. PW-3/A) with CBI. He deposed that on 15.12.1988 he reached CBI office at about 8.30 A.M. Two public witnesses Sh. V.K. Mishra (PW-4) and Sh. Y.K. Pandey (PW-2) were present in the office of Inspector Manku (PW-7). Witness deposed thereafter to the demonstration given by CBI officials as to how trap would be worked out. He deposed that he gave a sum of Rs. 500/-; 4 currency notes of Rs. 100/- denomination and 2 currency notes of Rs. 50/- denomination. He deposed that Y.K. Pandey (PW-2) was directed to remain present with him so that he could overhear his conversation with the accused. He deposed that PW-2 was instructed to signal the CBI officers by scratching his head in event of accused accepting the bribe. He deposed that one micro cassettes was handed over to him. It was played to ensure that there was no pre-recorded conversation. They left for B Block Market, Prashant Vihar thereafter. As per him, they reached Prashant Vihar at about 10. a.m.

5. Deposing as to what happened at site, PW-3 stated that he Along with PW-2 went to his shop and other members of the raiding party took positions in the market. There was a site office of accused, Subhash Chand in the market.

Subhash Chand arrived in his office and after 4 to 5 minutes came to his shop. On reaching his shop, Subhash Chand took him aside and enquired whether needful was being done. At that, he i.e., PW-2 switched on the cassette to record the conversation. PW-2 followed them. He deposed that he took out the tainted Rs. 500/- and handed over the same to Subhash Chand who accepted the money in his right hand, but thereafter handed back the currency notes stating that arrival of accused Kanti Kumar be awaited with further instructions to hand over amount to Kanti Kumar. He deposed that at about 11.15 a.m., accused Kanti Kumar arrived and asked 'Paise Laye Ho'. At that he handed over the tainted money to Kanti Kumar who accepted the money in his right hand. Witness deposed that PW-2 was standing near them when money was handed over to Kanti Kumar. After receiving the money, Kanti Kumar went to the site office. PW.3 further stated that he gave a signal about acceptance of the money. He stated that at that point of time, PW-2 incidentally changed his position. On receipt of signal, CBI officers reached the spot and apprehended Subash Chand and Kanti Kumar. Kanti Kumar informed that he had kept the bribe money in a newspaper lying at the mezzanine floor of the site office. All went to the site office from where newspaper containing bribe money was recovered. On tallying the numbers already noted down on the handing over memo, number of the currency notes tallied. Thereafter a glass of water was fetched and sodium carbonate was dissolved.

6. Witness thereafter deposed about hand wash of accused persons and solution turning pink and the pink solution being separately put in bottles and sealed. He deposed that the newspaper from which the money was recovered was Indian Express dated 2.9.1988 and that the tainted money was recovered from the 10th page of the newspaper.

7. During deposition of this witness, the micro cassette was desealed. Witness identified his voice, that of Subhash Chand and of Kanti Kumar.

8. In cross-examination, witness admitted that his shop was located at the rear side of a restaurant. He stated on 15.12.1988 he did not go to the restaurant along with accused Subhash Chand and that accused Kanti Kumar never came to the restaurant. He admitted that the distance of the site office of DDA was 10/20 yards

from the place where bribe was allegedly handed over. He also admitted that Kanti Kumar did not have any newspaper in his hand when he allegedly came to the spot. He categorically stated in cross-examination that accused Kanti Kumar led the trap party to the site office and pointed out towards the newspaper kept on the mezzanine floor where bribe money was kept. He admitted that the mezzanine was about 10 feet above the ground level and a wooden staircase led up to the mezzanine. Witness admitted that he was a complainant in another trap case against one Sh. Gulab Tulsiani. He also admitted that he was arrested in FIR 122/87 under Section 20, NDPS Act. He admitted that allegation against him in the aforesaid case was being in possession of 2 kg. charas. He admitted that in the said case, trial court rejected his bail application. He admitted that his bail application was allowed by this Court. He further admitted that this was due to the reason that the DIG, CBI submitted a report favorable to him in the High Court. Witness denied that he was a stock complainant of CBI and was very thick with CBI officers.

9. PW-2, Y.K. Pandey who to keep company with PW-3 deposed that after completing pre-trap formalities they left CBI office at about 9.15 a.m. and reached Prashant Vihar Market, Rohini at 10 a.m. On reaching the market, PW-3, went to his shop and he took position in a dry cleaner's shop adjacent to the shop of the complainant. Other members of the trap party took suitable positions. Half an hour later, accused, Subhash Chand came to his office located in the same market and after 10-15 minutes visited the shop of PW-3. Thereafter, PW-3 and Subhash Chand came out of the shop and started taking round of the market. He followed them at some distance. Accused, Subhash Chand seemed to be suspicious. They took several round of the market. In the meanwhile, accused Kanti Kumar joined them. Complainant, Subhash Chand and Kanti Kumar stopped in front of the site office of the Junior Engineer. He stated that he noticed something being handed over to accused Kanti Kumar but could not see what was delivered. He stated that thereafter Kanti Kumar proceeded towards the site office of the Junior Engineer. PW-3 gave signal by placing his hand on his hair. He went out of the market and gave signal to the trap party which rushed to the spot and apprehended the accused. He deposed that Kanti Kumar informed CBI officers that he had concealed the tainted money in the newspaper which was kept in the mezzanine

floor. He was directed by CBI Inspectors to climb the mezzanine and take out the newspaper. He saw the newspaper and recovered Rs. 500/- from a newspaper, dated 2.9.1988. Numbers on the notes were tallied and were found to be the same as entered in the handing over memo. Witness thereafter deposed about hand wash of the accused and the sodium carbonate solution turning pink. He deposed that he and Y.K. Mishra, PW-4 signed the cloth wrappers as well as labels of the respective washes kept in bottles. When shown the labels of the bottles, he deposed that they did not bear his signatures. He stated that when Kanti Kumar was interrogated, disclosure statement regarding concealment of money was not recorded. He stated that the place from where the accused were apprehended was at a distance of 40-50 paces from the office of the Junior Engineer. He stated that no pointing out memo pertaining to the mezzanine and newspaper was prepared. He deposed that he was employed as an Eviction Inspector in the Directorate of Estate and had received orders from his office to go to the CBI office.

10. PW-4, Sh. Y.K. Mishra stated that he was employed as an Under Secretary in the Ministry of Urban Affairs and Employment. He reached CBI office in the morning of 15.12.1988 as on 14.12.88 his Additional Director told him to go to CBI office. He deposed about the pre-trap formalities and stated that the raiding party reached Prashant Vihar Market at about 10 a.m. He stated that PW-2 & PW-3 proceeded to the shop of PW-3. Remaining members of the raiding party remained positioned at some distance. He deposed that after 5-10 minutes, accused Subhash Chand was seen by him talking to the complainant near a shop and while talking both went inside a restaurant. He stated that PW-2 was standing outside the restaurant. After some time, Kanti Kumar went inside the restaurant and after half a minute came out of the restaurant and went to the site office. PW-2 gave signal by scratching his head. CBI team rushed into the restaurant and apprehended Subhash Chand Chauhan. In the meantime, Kanti Kumar came back to the restaurant and was apprehended. Witness narrated facts about the hand wash. He deposed that on interrogation, Kanti Kumar disclosed that he had kept the bribe money in the site office at the mezzanine floor within a newspaper. All went to the site office. Inspector of CBI told PW-2 to check the mezzanine floor. PW-2 went up and brought the newspaper containing the bribe money. He

deposed that that the number on the notes tallied with the number noted down in the handing over memo. He stated that on 31.1.1989 he was called to CBI office and in his presence, sealed audio cassettes were opened and duplicate copy was prepared. In cross-examination witness stated that label of the bottled containing the hand wash was signed by him but stated that the bottles shown to him in Court do not bear his signatures.

11. CBI Inspector, R.S. Manku who was examined as PW-7 deposed that on 14.12.1988 he was posted as Inspector in the Anti Corruption Branch of CBI. Complaint was received from PW-3 on 14.12.1988 and it was decided to lay a trap. He requisitioned two independent witnesses to join the trap which was to be laid in the morning of 15.12.1988. He deposed about the pre- trap formalities on 15.12.1988.

12. Depositing as to what happened in Prashant Vihar market on 15.12.1988, he stated that on reaching the market, PW-2 was directed to accompany PW-3 to go to the DDA site office. He deposed that PW-2 and PW-3 went to the DDA site office and came out. After 15-20 minutes accused Subhash Chand and Kanti Kumar were noticed by him talking to the complainant outside the shop of the complainant. After talking for 5-10 minutes with the complainant, both the accused went to the site office. After half an hour, both came back from the site office and took the complainant from the front of his shop to the back of the site office of DDA. Shadow witness, PW-2 followed them. Sometime thereafter, PW-2 gave the signal. CBI officers rushed to the spot and surrounded both the accused persons. Initially both accused kept mum but later on accused, Kanti disclosed having accepted the bribe money at the instance of accused Subhash Chand Chauhan. On being enquired where the bribe money was, witness stated that Kanti Kumar took them to the site office and pointed towards a newspaper lying on the mezzanine floor. At his direction, PW-2 brought the newspaper from which the tainted money was recovered. Witness deposed about taking of the hand wash of the accused persons. He stated that he never recorded the specimen voice of the complainant or the accused persons. He stated that he did not move any application in any court for holding proceedings for identification of voices. Witness admitted that he did not record any disclosure statement made by accused Kanti

Kumar nor did he prepare any pointing out memo. Witness admitted that the transcript of the audio recording was not prepared by him.

13. PW-5, Sh. V.S. Bisaria, retired Senior Scientific Officer, C.F.S.L proved his Chemical analysis report (Ex. PW-5/A). He proved that the hand wash samples sent to C.F.S.L contained phenolphthlene. However, in cross-examination, he admitted that he had marked the samples to his assistant for analysis and that he had checked the work-sheets and that analysis was not conducted in his presence.

14, PW-6, Sh. N.N. Puri, Director Land Management, DDA stated that as per rules, any R.C.C stair-case, if required to be constructed had to be after permission and that for shop No. S-2/5, Prashant Vihar, no such permission was sought. He further stated that in the absence of a permission, construction was unauthorised and that no report of unauthorised construction in the premises was received.

15. The learned Additional Sessions Judge, on an appraisal of the evidence has held that PW-2 to PW-4 and PW-7, had substantially corroborated each other and that the report of PW-5 independently corroborated receipt of bribe money by the accused persons. The learned Additional Sessions Judge has further held that the tape-recorded conversation proved that the accused persons demanded and accepted bribe. The learned Additional Sessions Judge held that the identification of voices by PW-3 established what was spoken by the accused persons. On the variation in the testimony of PW-2 to PW-4 pertaining to the place where bribe was accepted, learned Additional Sessions Judge has held it to be a case of minor variation and explainable on the evidence of the three witnesses. It has been held that as per the testimony of the three eye witnesses who were a party to the trap, accused and the complainant had moved around and therefore, possibility of the three witnesses being at variance on said issue was explainable and was not a case of material contradiction.

16. Ms. Rebecca M. John and Mr. Siddharth Aggarwal who argued for the appellants urged that case of the prosecution against the appellants was primarily based on :-

- i) Recovery of tainted currency notes from the mezzanine floor of the site office of the Junior Engineer at the instance of Kanti Kumar;
- ii) Tape recorded conversation allegedly taken place between PW-3 and the accused;
- iii) hand wash samples of the hands of the accused showing presence of phenolphthaleine;
- iv) Testimony of PW-2 to PW-4 and PW-7.

17. It has to be noted that PW-2 and PW-4 denied that the signatures on the bottles containing hand wash were theirs. They categorically deposed that when hand wash samples were sealed after being put in bottles, they had signed on the label. The fact that the bottles produced in Court as being the ones which contained the hand wash samples did not bear the signatures of the two independent panch witnesses casts a doubt in one's mind.

18. On the issue of recovery of the notes from the mezzanine floor, it has to be noted that no disclosure statement of Kanti Kumar was recorded and no pointing out memo was prepared. The sum in question was Rs. 500/-. It consisted of 4 notes of Rs. 100/- each and 2 notes of Rs. 50/- each. The amount was not a bundle of notes and one would not reasonably expect that somebody who would receive Rs. 500/- would put it inside a newspaper.

19. Not only was the alleged disclosure statement of Kanti Kumar not reduced in writing and not only was no pointing out memo prepared, PW-2 to PW-4 have given a different version of how the tainted money was recovered. PW-3 states that after confessing, Kanti Kumar took the raiding party to the site office and pointed towards the newspaper kept on the mezzanine floor. PW-2 stated that when Kanti Kumar told that the tainted money was kept by him in the mezzanine floor of the site office of the Junior Engineer, he climbed the mezzanine floor with the help of a portable stair where he saw newspapers lying and he brought down the newspapers, containing the currency notes. PW-4 deposed that when Kanti Kumar disclosed that he had kept the bribe money in the site office at the

mezzanine with newspapers, on the asking of PW-7, PW-2 climbed on to the mezzanine floor after standing on a chair or a stool and came down with the newspaper containing the tainted notes. How, the bribe money allegedly reached the mezzanine floor after it left PW-3 may also be noted.

20. PW-3, categorically deposed that accused Subhash Chand came to his shop and took him aside and enquired whether he had brought the money. Stating yes, PW-3, claims to have handed over the tainted money to accused Subhash Chand. As per his testimony, Subhash Chand handed back the money to him stating that arrival of accused Kanti Kumar be awaited. He deposed that Kanti Kumar came later on and on the asking of accused Subhash Chand took the money and went to the site office. He stated that when all this was happening, PW-2 was standing at a nearby place. As per testimony of PW-2, PW-3 was in his shop and he i.e. PW-2 took position in a dry cleaner's shop, adjacent to the shop of PW-3. PW-2 categorically deposed that when accused Subhash Chand came to the shop, he was alone. Subhash Chand and PW-3 took rounds of the market. He followed them. Accused Kanti Kumar joined. They stopped in front of the site office of the Junior Engineer and he saw something being handed over to accused Kanti Kumar. Thereafter, Kanti Kumar went inside the office of the Junior Engineer. PW-2 claims to have trailed PW-3 and accused Subhash Chand. He did not depose that accused Subhash Chand firstly received the money but handed it back as stated by PW-3. Testimony of PW-4 gives another version that Subhash Chand came to the shop of PW-3 and both went inside a restaurant nearby. PW-2 was standing outside the restaurant. After some time, Kanti Kumar went insider the restaurant and after half a minute came out and went to the site office. It has to be noted that in his cross-examination, PW-3 categorically denied having gone inside any restaurant.

21. It is not a case of minor inconsistencies in the version given by PW-2 to PW-4. Each gives a different version of the incident. Place where money was handed over is also different. The contradictions are material and cast a serious doubt on the case of the prosecution. Whereas PW-3 did not pin point the exact place where he paid the bribe inasmuch as he said that accused Subhash came to his shop and took him aside. PW-2, the shadow witness stated that money was paid

near site office of the Junior Engineer. PW-4 stated that it was paid inside a restaurant. PW-3 had denied having gone inside the restaurant. Besides, witnesses gave different versions of how accused Kanti Kumar had joined.

22. The testimony of PW-2 to PW-4 suggests as if they knew that Kanti Kumar would join. Now, Kanti Kumar was a mere Khalasi. Only accused Subhash Chand was in a position to abuse his power by forbearing in not taking action against the complainant for the unauthorised construction. Normal human conduct would be to catch a culprit with alacrity. It is a highly unhuman conduct for the raiding party not to pounce immediately when money was handed over. It has to be noted in this context that the site office of the Junior Engineer was stated to be 40-50 paces away by PW-2. It was stated to be 10-20 paces away by PW-3. It is highly improbable that the raiding party rushed on getting the signal and yet Kanti Kumar walked to the office of the Junior Engineer and after putting the bribe money inside a newspaper, placed the same in the mezzanine and was arrested when he came out. It has further to be noted in this context that as per PW-2 and PW-4 the mezzanine did not have a permanent stair-case leading up to the mezzanine. PW-2, in cross-examination stated that he climbed the mezzanine with the help of a portable stair. PW-4, in his cross-examination stated that PW-2 accessed the mezzanine with the aid of a chair or a stool. This would mean that it would have taken more than the normal time for accused Kanti Kumar to have accessed the mezzanine floor.

23. The version of the prosecution as to offer and receipt of the bribe money as narrated by the prosecution witnesses does not inspire any confidence. Serious doubts arise as to the manner in which bribe was offered and received as also the place where the offer and receipt took place. The accused persons are entitled to the benefit of doubt on this score. Another point may be noted. PW-2, PW-3 and PW-7, in the cross-examination admitted that site office of the Junior Engineer was open. Their testimony establishes that the site was accessible to all and sundry. Alleged recovery loses its significance.

24. I am surprised that the learned Additional Sessions Judge has held aforesaid material contradictions as minor variations and as explainable without casting

doubt on the truthfulness of the deposition of the prosecution witnesses. The learned Additional Sessions Judge appears to have been over powered by the fact that all witnesses deposed about the hand wash of the accused showing the solution of sodium carbonate turning pink. The learned Additional Sessions Judge failed to take note of the fact that the panch witnesses categorically deposed that the hand wash samples were put in a bottle which were sealed and for identity of the bottles, they had appended their signatures on the labels put on the bottles, but the signatures on the bottles shown to them in Court were categorically denied by the two witnesses as their signatures. On this issue, I may note the observations of the Hon'ble Supreme Court in the decision : 1979 CriLJ1087 , Suraj Mal v. The State (Delhi Administration):-

'2. Mr. Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact that money had been recovered from the bush-shirt of the appellant and that by itself is sufficient for the conviction of the accused. In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.'

25. I am further surprised that the learned Additional Sessions Judge relied upon the alleged tape-recorded conversation on the testimony of PW-3 and on voice identification by PW-3. Admittedly, the prosecution did not take specimen voice samples of the accused or PW-3 and the alleged tape recorded conversation was never sent for analysis or voice spectography. No reliance could be placed on the alleged tape recorded conversation. It remained unproved evidence and hence inadmissible. I may note that in para 56 of its judgment, the learned Additional Sessions Judge has expressed reservations regarding the manner in which the seal of the cassette was broken without approval from the court.

26. The learned Additional Sessions Judge further ignored one vital fact. PW-3 admitted that he had acted as a complainant in another trap case in which one Gulab Tulsyani was apprehended. He further admitted that he was arrested in a case under Section 20 N.D.P.S and that he managed bail because D.I.G of CBI furnished to this Court, a report favorable to him. It was expected of the learned

Additional Sessions Judge to have put under a more microscopic analysis, the testimony of the prosecution witnesses because of the possibility of PW-3 being under pressure of C.B.I or in any case being in such position that he could be manipulated.

27. Needless to state that in a criminal trial, evidence of eye witnesses requires a careful assessment and evaluation for credibility. The evidence must be tested for its inherent consistency or inherent inconsistency in reference to the account as stated by one witness on being cross checked with the account as stated by the other witness. Finally, probative value of the evidence has to be put into scales for a cumulative evaluation.

28. Degree of proof cannot be stated in mathematical units, but the guiding principle that the evidence must point only towards the guilt and should exclude innocence, must never be lost sight of.

29. The jerks and jolts in the testimony of the witnesses of the prosecution in the present case, in my opinion entitles the appellants to a reversal of the impugned judgment.

30. The appeals are allowed. Impugned judgment and order of conviction dated 3.6.2002 and the order of sentence dated 4.6.2002 are set aside. Appellants are on bail. Bail bonds and surety bonds are discharged.

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