

Public Prosecutor Vs. A. Thomas

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Court : Chennai

Decided On : Apr-23-1957

Reported in : AIR1959Mad166; 1959CriLJ484

Judge : Ramaswami, J.

Acts : [Evidence Act, 1872](#) - Sections 4, 101 to 104 and 133; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367 and 417; [Prevention of Corruption Act, 1947](#) - Sections 4

Appeal No. : Criminal Appeal No. 391 of 1956

Appellant : Public Prosecutor

Respondent : A. Thomas

Advocate for Def. : K.S. Jayarama Ayyar and ;C.K. Venkatanarasimhan, Advs.

Advocate for Pet/Ap. : V.V. Radhakrishnan, Adv. for Public Prosecutor

Judgement :

1. This is an appeal preferred by the State of Madras against the acquittal by the learned Special Judge of Chingleput in C. C. No. 8 of 1955.

2. The case for the Prosecution is : The complainant Rajabadar, P.W. 2 is the owner of a tea stall in the bazaar road in Saidapet, a Suburb of the City of Madras. He has been carrying on this tea stall for the last ten years. P.W.2 is the owner of

a house in the same street bearing door No. 111, worth Rs. 5000/- P. W. 2 was getting from his tea stall business a monthly income of Rs. 100.

3. Five years ago P. W. 2 had installed a radio set in the tea shop. In fact in the City of Madras such radios which are played practically during the working hours have become the standard equipment. P. W. 2 was taking out licence for two years and was using the radio with the help of the electric connection from a neighbouring house, But later that neighbour is said to have refused to give, the electric connection and the radio also is said to have gone out of order. P. W. 2 did not apply for a licence.

4. In the month following Pongal of 1954 one Inspector came and asked on seeing the aerial as to where the radio was and where was the licence. P. W. 2 showed the old licence and also told him that the radio was in repair and he had also no electric connection and that therefore did not renew the licence. That Inspector asked him to give a letter to that effect. So a neighbour was called for reducing into writing this information as P.W. 2 is an unlettered man and can only sign his name. The neighbour wrote down the statement, read it out to P. W. 2 and it was signed by P.W. 2 and handed over to the Inspector. The letter is Ex. P-2.

5. Four months later another Inspector turned up. P. W. 2 told him the same thing and gave also a statement written down by one Mitran. It is Exhibit P-3.

6. One month later for the third time the Inspector who came first and this accused Thomas who is a wireless licencing Inspector came to P.W. 2 and asked him where the radio was. P. W. 2 took them to his house and showed the radio. Ten days later he received a cover from the post office containing 4 or 5 papers. On showing them to a friend he was told that Rs. 45/- were required to be deposited for the radio licence at the rate of Rs. 15 per year for two years with penalty of Rs. 15/-.

The letters received by P.W.2 are Exs. P-4 and P-5 of which the latter consists of four sheets. P. W. 2 sent a reply Ex. P-6. Then he received a further notice demanding the amount, Ex. P-7. Subsequently he received by Registered post Ex. P-8 and P.W.2 sent the reply Ex. P-9. Then he got a peremptory demand Ex. P-

10. P. W. 2 applied for three months' time for payment under Ex. P-11.

7. A week or 8 days thereafter the accused came to the shop of P.W-2 and told him that the Festival was approaching and that he wanted Rs. 20/- and that he would see the radio matter being closed without P. W. 2 paying any penalty. P.W.2 told the accused that he had no money and that if he had money he would have paid. Thereupon the accused left the place.

8. In the month of Pongal of 1955 on the last Thursday of the month viz., 27th according to the English, date, the accused came and adopted a minatory tone and addressed P. W. 2 saying that he was neither paying the money into the office nor the douccur for the festival to himself and that the net result would be that he (P.W.2) was going to be prosecuted. P. W. 2 appealed to him to put off the prosecution saying that he would pay him the douceur sometime later. The accused thereupon asked P.W.2 to see him near the office as it was. Saturday and half-holiday for him and come with Rs. 20/- P.W.2 agreed reluctantly.

9. P. W. 2 then went and consulted his friend Mitran about what the accused told him. That Mitran advised P.W.2 to go and inform the Special Police Establishment, Purasawalkam which has been set up for putting down offences of this kind by public officials. Unfortunately this Mitran could not be examined as he had died before the case came up for hearing in the lower Court.

P.W.2 took the advice in good part and in earnest and for which we must congratulate both that Mitran, who as a citizen with sound civic consciousness gave proper advice and P.W.2 for not complying with the illegal demand of the accused and taking the things lying down but had the courage to go and inform subsequently the Special Police Establishment notwithstanding the fact that he knew that he was heading for a very unpleasant time at the hands of accused's lawyer in Court. It is only when citizens have got the courage to withstand certain unpleasantness and discharge their duties that our welfare State can flourish.

10. On Saturday morning at about 10 A.M. P.W.2 went to the Special Establishment Police Office at Purasawalkam and met the Sub-Inspector Balasubramanian P.W. 7 in the office. P.W.7 patiently enquired P.W.2 and asked

him to reduce his information into writing and give a written complaint. This precaution has apparently been taken because it is notorious that such complainants are subsequently won over or get cold-feet and resile from their complaint and deny even having made such a complaint.

Inasmuch as this P.W.2 is an unlettered man, he got the information written down by another Sub-Inspector who was in the premises of the Court when this P.W.2 gave evidence. Then after this information was reduced into writing conformable to what P.W.2 told the Sub-Inspector, it was read over to him and admitted by him to be correct and in token thereof he has affixed his signature : Ex. P-12.

11. Ex. P-12 gives a precis of the information reproduced above and winds it up by saying that he P.W.2 consented to meet the accused on Saturday at about 1-30 P.M. and that he did not want to give the bribe and therefore informing the Sub-Inspector for taking suitable action.

12. Thereupon P. W. 7 devised a trap to catch the accused redhanded. He asked P.W.2 to bring Rs. 20 and the correspondence that passed between him and the Wire-less Department and meet him at 1 P.M., at the Mount Road Police Station. In the meantime the Sub-Inspector obtained the permission of the Chief Presidency Magistrate to investigate the case. He secured three witnesses P. Ws. 3 to 5 to be near about the Mount Road. Then he went to the Police Station where P. W. 2 was waiting with the money and papers. In the presence of the witnesses the Sub-Inspector received the money produced by P.W.2 in the shape of one ten-rupee currency note and two five rupee currency notes.

P.W.7 noted the numbers in a paper and got it attested by the witnesses, see Ex. P-13. Then he searched P.Ws. 2 and 3 to ensure that nothing was planted on them. Then he asked P.W.2 to go to the Postmaster General's Office and give the amount to the accused as and when he made the demand. P.W.3 was instructed to follow closely P.W.2 and watch the transaction and to show by signal by tying a turban over his head or by going over to him and informing him in person as soon as the money was paid to the accused. P.Ws. 4 and 5 were instructed to follow behind P.Ws. 2 and 3 and observe what went on.

13. Then as to what happened we have the evidence of P. Ws. 2 to 5 and 7. They all went to the Post Master General's Office in White's Road brandling off from the Mount Road. P. W. 2 first entered the gate followed by P. W. 3. The accused on sighting P. W. 2 made signs to him to go out and wait for him. Immediately the accused came outside and went along talking with P. W. 2. P W. 3 unknown to the accused was closely following them.

The accused naturally would have not suspected P. W. 3 at that stage and must have mistaken him for one of the usual passers by on the road. Further behind P. Ws. 4, 5 and 7 were following at a discreet distance to avoid making themselves prominent and scaring away the accused. The accused and P. W. 2 went to Woods Road and stopped near a hotel called Swami's Cafe. The accused asked P. W. 2 whether he had brought the money. Thereupon P. W. 2 gave him the currency notes which the accused saw, took and put them inside his left trouser pocket.

The accused then went to the opposite shop to purchase a cigarette and lit it. By this time P. W. 7 came near the accused and disclosed his identity and asked him to take out the money received as bribe from P. W. 2. The astonished accused at being caught so neatly and immediately had no option but to put his hand inside his left trouser pocket and take out the currency notes and give them to the Sub-Inspector.

The Sub-Inspector gave the currency notes to the witnesses whom he had arranged before hand and were shadowing this accused and who had joined the Sub-Inspector for comparing the numbers with the numbers already noted down and attested by the witnesses (Ex. P. 13). The numbers in the currency notes were found to tally with the numbers noted in Ex. P. 13. Thereafter the Sub-Inspector took the accused and the witnesses P. Ws. 2 to 5 to the Police Station and there Prepared a Mahazar for the seizure of the money from the accused.

The person of the accused was searched and a chalan was recovered and another Mahazar for seizure of the same was also prepared. After examining the witnesses and obtaining the sanction to prosecute (proved through P. W. 1) the Sub-Inspector laid a charge sheet on 10-9-1955. The various post office papers

are proved through P. W. 6, the Wireless Investigating Inspector.

14. The case for the accused is that he did not demand Rs. 20/- and did not accept the amount from P.W.2, that when he came out of the office at 2 O'clock he saw P. W. 2 near the clock tower, that P. W. 2 followed him and requested him to help in respect of the radio case, that he (accused) told him that he was unable to do anything in the matter, that in spite of that P. W. 2 was following him and that he was completely shocked when the Sub-Inspector approached him and demanded him to hand over the money and that he mechanically put his hand in his trouser pocket as demanded by the Sub-Inspector and found to his surprise some currency notes and that his conclusion is that those currency notes must have been thrust into his left trouser pocket by P. W. 2.

15. On behalf of the accused two D. Ws. were examined. D. VV. 1 was a neighbour of this accused living in No. 177 in Portuguese Church St., George Town. He has subsequently left for Bangalore. He is stated to be a mechanic. The testimony of this D. W. 1 was that he happened to be present at the psychological moment, he was coming out of Swami's Cafe, that then a tall man came near the accused and asked him to hand over the money given to the accused by the person who was on his side and who was short, that he did not know either the tall man or the short man, that the accused stated that he did not know what the tall man was talking about, that then the tall man said 'It is in your left hand pocket' that then the accused put his hand in his trouser pocket & took out currency notes and told the tall man that the short man who was coming along with him should have thrust the money, that the accused asked the tall man to enquire the witness and others who were present there, that the tall man did not accede to his request and that the accused was taken to the Police Station.

16. D. W. 2 who is stated to be an unemployed graduate of the Madras University of whom we have got a plentiful number in the city of Madras says that he also happened to be present at the psychological moment and saw a tall man whom he came to know later as the Sub-Inspector approach the accused and ask him if he had received money from the short man pointing to the person by his side, that the tall man then asked the accused to take out money from his left side trouser

packet that the accused blinked and then put his hand into his left side trouser pocket and took out money, that he (witness) could not say how much it was, that the accused said that the shortman must have thrust the money into his pocket, that the accused then said something to the Sub-Inspector pointing to the witness and that he did not hear distinctly what he stated, that the accused was then taken by the Sub-Inspector to the Police Station, that a month later the accused who knows witness for the previous two years and his friend, told him that he was citing him as a witness.

In cross-examination he made admissions showing that his happening to be present at the spot and witnessing what he had stated he witnessed are pure inventions. I find from page 35 of the printed papers that this witness has agreed,

'The accused told me one month later that he asked the short man to give money and that he thrust money and he was being prosecuted. My elder (some relative) did not get employment in the G. P. O. with the influence of the accused. It is not true that at the instance of my father and brother who are known to the accused I am deposing falsely.'

17. In short, this defence evidence can hardly be described to be helpful to the accused. In fact this is the opinion of the learned Special Judge also. He writes:

'The defence witnesses are not trustworthy. They are said to be persons known to the accused very well. When the accused was caught hold of by the Sub-Inspector of Police and the money was recovered, these persons appear to have remained at a distance and watched the transaction without asking a single question as to what was happening. When the Sub-Inspector took the accused, they did not remonstrate. Could it have been the conduct of the persons known to the accused so well? They are persons who have been brought by the accused to oblige him and to extricate him from the charge. I do not attach any weight to their testimony.'

18. But this need not detain us because it is for the prosecution to affirmatively and satisfactorily establish the guilt of this accused and it is not for him to prove his innocence. It is on that foot that I shall examine the evidence in this case.

19. It is proper at this stage that I should indicate the scope of an appeal from an acquittal and in regard to which the principles are really well settled. Though the High Court has full power under Section 417, Criminal P. C., to review at large the evidence upon which an order of acquittal is founded and to reach its conclusion yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial court, the findings of that court can be reversed only for substantial and strong reasons.

In exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should, and will, always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

The powers conferred by this section should be confined to cases in which lower court has obstinately blundered and produced a result mischievous to the administration of justice and interests of public. This Court will not allow an appeal against acquittal merely because it would have come to a contrary conclusion but only if lower Court is manifestly wrong. Powers under Section 417 should and would always be sparingly used by this Court.

19a. These principles are embodied in the following decisions of (a) the Privy Council (b) Supreme Court of India (c) and this Court, (a) Nur Muhammad v. Emperor, ; Sheoswarup v. Emperor ; (b) Surajpal Singh v. The State, : 1952 CriLJ331 ; Biyabani v. State of Madras, : AIR 1954 SC645 ; Zwinglee Ariel v. State of M. P., : AIR 1954 SC15 ; Wilayat Khan v. U. P. State, : AIR 1953 SC122 ; Shiv Bahadur Singh v. State of V. P., : 1954 CriLJ1480 ; Trimbak v. State of Madhya Pradesh, : AIR 1954 SC39 (40); Ajmer Singh v. State of Punjab, : 1953 CriLJ521 ; Aher Raja Khima v. State of Saurashtra; Criminal Appeal No. 64 of 1955 : ((S) : 1956 CriLJ426 . (See the dissenting Judgment of Venkatrama Iyer J. explaining the scope of 'compelling reasons'); (c) Public Prosecutor v. Pocha Sanjiva Reddi, 1931 Mad WN 105 referring to Public Prosecutor v. Lakshamma, 31 Mad LW

716: AIR 1930 Mad 704; Public Prosecutor v. Ramudu, 1931 Mad WN 729: 1931 Mad WN Cr 153. Also AIR 1930 Mad 704; Public Prosecutor v. Kandaswami Mudaliar, 1933 Mad WN 242 : 1933 Mad WN Cr. 34; Public Prosecutor v. Mayandi Nadar, AIR 1933 Mad 230.

20. That a trap had been arranged and that as a result of that trap being sprung the accused was discovered with the money inside his left trouser pocket, and that the marked currency notes therein had not been surreptitiously placed there without the knowledge of the accused by P. W. 2 is the considered finding of the learned Special Judge with which I entirely agree. The learned Judge writes:

'I do not think that by coincidence P, W. 2 would have met the accused at that juncture had it not been a pre-arranged plan. In Woods Road near the hotel called Swami's Cafe P. W. 2 is said to have paid the money and the payment is said to have been witnessed by P. Ws. 3 and 4 and the sub-Inspector P. W. 7. The accused no doubt denies that he made a demand on P. W. 2 for payment or that any money was paid to him. He would have the Court to believe that money was put into his trouser pocket. It would rather look highly fantastic that P. W. 2 would have thrust the currency notes into his left trouser pocket especially when he was wearing a coat and the trouser pockets would undoubtedly have been closed by the coat.

'How dexterous and skilful one should be so as to reach his trouser pocket and insert money without his knowledge? I am not at all convinced with the explanation offered by the accused that to his utter surprise and bewilderment, he found currency notes in his left trouser pocket when he put his hands into the pocket at the behest of the Sub-Inspector. The accused is said to be always wearing suit with tie and collar. D. W. 2 speaks to the fact that on the date of the incident also he was wearing a coat. Therefore, the story that P. W. 2's hand could have reached his left hand trouser pocket is highly improbable. I think as contended for the prosecution the payment should have been made to him only in pursuance of the demand made by the accused. But the important point to be determined is whether there is sufficient legal evidence to base a conviction though there may be moral conviction as regards the receipt of the bribe amount by the accused'

There can be no doubt that these findings correctly flow from the evidence of P. Ws. 2 to 5 and 7, which there is no reason whatsoever to doubt because nothing has been elicited in cross-examination to discredit their testimony.

21. Having come to that conclusion the teamed Public Prosecutor states that the learned Special Judge erred in refusing to invoke the presumption under Section 4 of the Prevention of Corruption Act II of 1947.

22. The learned Public Prosecutor seeks to bring to his aid the provisions of Section 4 of the Prevention of Corruption Act II of 1947. Section 4 states:

'(1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal 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) 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 motive or reward such as is mentioned in the said Section 161, or, as the case may be without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 165A of the Indian Penal Code (Act XLV of 1860) it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code or, as the case may be without consideration or for a consideration which he knows to be inadequate.

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

23. The term 'shall be presumed' means that the Court is bound to take the fact as proved until evidence is adduced to disprove it and the party interested in disproving it must produce such evidence if he can. The word is explained in Section 4 of the Indian Evidence Act as

'Whenever it is directed under the evidence Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved'

and a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

Section 4 of Act II of 1947 which deals with the drawing of presumption where a public servant has been shown to have accepted gratification other than legal remuneration, lays down a special rule of evidence in favour of the prosecution and against the accused, to facilitate the proving of the prosecution case. In the case of an offence under Section 161 or 165, I. P. C., the burden of proving that the gratification obtained by the public servant was as a motive or reward such as is mentioned under Section 161, always lies on the prosecution, so also the burden of proving that the gratification was without consideration or for a consideration which the public servant knew to be inadequate lies on the prosecution.

In view of the special rule of evidence, however, the prosecution has been relieved of its difficult task of proving this; in fact a presumption is to be raised in favour of the prosecution and the burden lies on the accused to disprove the same. To quote Halsbury Simmonds Third Edition Vol. 10, Part 5, Section 4, page 437 'In relation to certain statutory offences the onus of proof as to part of the issue may be expressly placed by the statute on the accused'. (See R. v. Kakelo, (1923) 2 KB 793; R. v. Carr Briant, (1943) 2 All ER 156. See discussion in Bayes -- A commentary on the Prevention of Corruption Act -- page 23 and following Aggarvala -- The Prevention of Corruption Act p. 77 and following.

24. The analogous English Law relating to bribery and corruption is found in the Public Bodies Corrupt Practices Act, 1889 (52 and 53 Vict 69), the Prevention of Corruption Act 1916 (6 Edw. 7, C. 34) and the Prevention of Corruption Act, 1916 (6 and 7 Geo. 5, C. 64); see Stone's Justices' Manual, 88th Edition, Volume I (1956) at pages 562 to 585. Section 2 of the Prevention of Corruption Act, 1916, states that where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift or other consideration has been paid or given to or received by a person in the employment of Her Majesty etc., the money gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

When the payment etc. of the money has been proved the onus is on the defendant : R. v. Jenkins; R. v. Evans-Jones, 1923 87 J. P. 115. In regard to evidence required to rebut the presumption, see (1943) KB 607 ; (1943) 2 All ER 156. In this case, which was under the Prevention of Corruption Act of 1916, the Court of Criminal Appeal in England held that in a case where, either by statute or common law, some matter is presumed against the accused, unless the contrary is proved, the burden or proof on the accused is less than that required at the hands of the prosecution in proving the case beyond reasonable doubt; and that that burden is discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish.

That is the test which is applied in a civil proceeding, namely, the preponderance of probability one way or the other. The Court further observed that the rebuttable presumption created by that section should be construed in the same manner as similar words or other statutes or similar presumptions at common law. To quote Halsbury once again

'In such cases the burden of proof is less stringent than that laid on the prosecution in proving guilt and corresponds to that which rests upon a plaintiff or defendant who is required to prove an issue in Civil Proceeding' (P. 437).

25. The Indian Case-law on Section 4 may now be briefly discussed. In *Promod Chandra v. Rex*, AIR 1951 All 54C, it was held as follows :

'In our opinion the presumption referred to in Section 4 arises as soon as the prosecution has proved that the accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person any gratification in the sense in which we have defined it in this judgment, or any valuable thing, from any persons provided (however illogical it may be) that in the former case it has further proved that such gratification was not accepted or obtained, or agreed to be accepted or attempted to be obtained by way of legal remuneration' (Per Mootham and Wanchoo, JJ).

In *State v. Minaketan*, : AIR1952 Ori267 it was held : Section 4 of Act II of 1947 requires that the prosecution should prove that the accused accepted or agreed to accept the amount as gratification. 'Accept' means 'to take or receive with a consenting mind'. It is, therefore, upon the prosecution to prove not only the passing of the money into the hands of the accused, but also that he took it with a 'consenting mind'. This would necessitate proof of either an agreement to accept prior to the actual acceptance, or of his consent to accept the same as gratification at the time the money was offered.

In *Mahfuz Ali v. State*, : AIR1953 All110 it was held that the presumption available under Section 4 is not confined to those cases only where the accused is, in fact, charged under Section 161 I. P. C. but it is also available in cases where the accused is charged under some other section. Section 5(1) provides for the same type of offences -- the gravamen of the charge being the same -- as in Section 161 I. P. C. and therefore, where the accused is charged under Section 5 (1) of the Act, the trial Court is fully justified in relying upon the presumption available under Section 4.

In *Ouseph Varkey v. State*, AIR 1954 Trav-Co. 492 it was held that in the nature of the prosecution evidence in that case the court was fully justified in drawing the presumption as provided for in Section 4(2) and that the sum of Rs. 35/- tendered by the accused to P.W. 1 in that case could not be taken to be so trivial as to attract the saving provision contained in Sub-section (3).

In Mehar Singh v. State of Pepsu, AIR 1955 Pepsu 150, Mehar Singh, J. held that all that is required from the accused in a bribery case and having regard to Section 4, is to establish by evidence satisfying the Judges of the probability that the amount he received or obtained was received or obtained by him innocently and that if he establishes that probability he has rebutted the presumption and is entitled to be acquitted.

In Krishnabiharilal v. State, AIR 1956 M-B. 86, it was held that it is clear from Section 4, that the moment it is proved that the accused has received a sum of money from the complainant it shall be presumed unless contrary is proved that he accepted it as a motive or reward such as one mentioned in Section 161 I. P. C. and that this presumption being there, the burden lies heavily upon the accused to prove the contrary.

In Lalchand v. State, : (1957)ILLJ650Ori , it was held that the only presumption which can be drawn by virtue of Section 4 (1) is that the thing was obtained without consideration or for a consideration which the accused knew to be inadequate, that a presumption that it was obtained from any person whom he knew to be interested in or related to be person so concerned, is not covered by this provision and that it is for the prosecution to prove by positive evidence that the accused obtained the thing from a person who is known to be related to the concerned person.

In Ram Krishna v. Delhi State, AIR 1958 SC 476, the Supreme Court has held that it cannot be laid down as an absolute rule that the laying of traps must be prohibited on the ground that by so doing an invitation is held out for the commission of offences and that the detection of crime may become difficult if intending offenders, especially in cases of corruption, are not furnished opportunities for the display of their inclinations and activities and that whatever the ethics of the question might be, there is no warrant for the view that the offences committed in the course of traps are less grave and tali only for lenient or nominal sentences.

26. To sum up : Section 4 expressly places the onus of proof as to part of the issue on the accused. The presumption under Section 4 arises as soon as the

prosecution has proved that the accused has accented or agreed to accept an amount not covered by the proviso as gratification. If unrebutted and until the contrary is proved the gratification will be deemed to have been paid or given or received corruptly as inducement or reward as is mentioned in the Act. But in such cases the burden of proof on the accused is less stringent than that laid on the prosecution in proving guilt and corresponds to that which rests upon a plaintiff or defendant who is required to prove an issue in a civil proceeding i.e. preponderance of probabilities.

27. Bearing these principles in mind if we examine the facts of this case we find that the presumption under Section 4 arises in this case and the accused not having rebutted the same in any manner it has been established that the accused has accepted the amount of Rs. 20/- as illegal gratification from P.W. 2.

28. The learned Sessions Judge has acquitted this accused notwithstanding these findings on the grounds that the Mahazar witnesses P.Ws. 3 and 4 are not independent witnesses; secondly that the Mahazar should have been written then and there squatting in the main road in the midst of the surging traffic and not going to the nearby Police Station and writing it there and thirdly, that the testimony of P.W. 2 which is that of an accomplice has not been corroborated by independent evidence in material particulars. The first two grounds can be easily disposed of.

29. P.W. 3 is a brass worker making Andas, Gundans etc. on contract work and is making a comfortable livelihood. Good artisans nowadays earn more than the white-collared brigade who have their educational qualifications to flaunt and nothing more. He is not in any way found to be a stooge of the police. In fact he has assisted this Sub Inspector only when he disclosed to him his identity card as the C.I.D. Inspector and requested his help.

P.W. 4 is another artisan employed in the well-known local firm Radio Electrical Institute of Messrs. V. Section Kajagopalan and Company at the time of his giving evidence. He owns properties worth Rs. 20,000 in Velacheri and Kumbakonam. He is also not a stooge of the police and in fact he has helped the Sub Inspector when the latter met him on his way to Central Auto Parts to see the proprietor of

Southern Accumulators and requested him to assist him in the detection of this crime.

The fact that subsequently he seems to have been convicted for a prohibition offence is certainly neither here nor there. In fact many people in fairly important stations in life and pass as respectable and dependable citizens in the metropolitan area would be found to have been convicted in regard to prohibition offences. Therefore, the evidence of P.Ws. 3 and 4 cannot with any legitimacy he described as either not independent or respectable.

30. In regard to the writing of the Mahazar, the learned Special Judge seems to have extraordinary ideas regarding its being reduced into writing without practicable delay and with which latter part we all agree. In this case it will be the height of folly to expect the Sub Inspector to sit on the pavement in Woods Road which is the centre of vehicular and passenger traffic, obstructing the same and drawing a crowd around him and busily draft a Mahazar for which the immediate requirements which the shadowing detective unless he is a moron will not carry thereby drawing attention to himself are paper, pencil, pad etc.

This recording would not make the mahazar any more sacrosanct because the Sub Inspector bent upon concoction could easily stage-manage one. There is no reason for us to make such remarks regarding Police Officers who are just as respectable and responsible officials as ourselves Judges, discharging as we all do only different aspects of public work. Therefore before implying that officers go in for concoction there must be plenty of materials and special pleadings for acquittal should not be built upon cobweb speculations of this nature.

31. Therefore, we have finally to examine the question how far the trap witness is an accomplice and secondly, what is the nature of the scrutiny we have got to make of his evidence.

32. In regard to the corroboration of trap witnesses it is interesting to find out what the standard treatises -- English, American, Canadian and Indian have got to say.

Roscoe's Criminal Evidence, Sixteenth Edition, page 145 :

'Agents provocateurs, spies, informers, detectives, etc., are not accomplices. Such persons employed in entrapping criminals 'are entirely distinguished in fact and in principle from accomplices', per Maule, J., R. v. Mullins, (1848) 3 Cox. C. C. 526; spy on Chartists; 'and I do not see that a person so employed deserves to be blamed if he instigates offences no further than by pretending to concur with the perpetrators'. Followed in R. v. Bickley, (1909) 2 Cr. App. Rep. 53, woman police spy buying noxious drug. Where a watchman agreed, with his master's consent, to let thieves into the premises at night, it was argued that what they did was not invito domino and so not larceny : but though nothing was taken, the judges held otherwise; R v. Egginton, (1801) 2 Leach 913 : 2 B and P. 508 See R v. Chandler, 1912 8 Cr. App. Rep. 82. On the other hand, where on the master's instructions, the servant handed over the property to the thief, held that there was no asportation invito domino and conviction quashed : R. v. Turvey, (1946) 31 Cr. App. Rep. 154. In B. Mortimer (L. J.) Lord Alverstone, C. J. said : 'I do not like police traps any more than does anybody else; but at the same time there are some offences the commission of which cannot be found out in any other ways, unlawful acts done in consequence of the trap are none the less unlawful'. So R v. Heuser, (1910) 6 Cr. App. Rep 73 : Police officers assenting to informer -- who was held to require corroboration --repeating gross offence: and of, Confessions and Aiders.'

Phipson on Evidence, Ninth Edition, at page 510:

'The rule requiring the corroboration of accomplices does not apply to two classes of accomplices: (a) Informers -- i.e., person who have joined in, or even provoked, the crime as police-spies (1909) 73 J.P. 239: or the police, who have assented thereto, (1910) 6 Cr. App. Rep 76'

The American Law of evidence is also the same, 14 American Jurisprudence, Section 113, p. 843, has the following to say :

'Feigned Accomplices : -- Since criminal intent is essential to render one an accomplice, it follows that a feigned accomplice is not within the rule that the uncorroborated testimony of an accomplice will not support a conviction. Thus, a detective who, for the purpose of discovering crime, ostensibly aids, in its

commission or in a conspiracy to commit it, or is a 'spotter' or paid informer, or the purchaser of liquor, unlawfully sold for the purpose of detecting the seller, or one buying a lottery ticket for the purpose of detecting and punishing the vendor, where the sale is prohibited, or one who, not knowing of a larceny until after it has been committed, purchases the stolen goods under the direction of an officer with money furnished by the latter, with a view to detect the thief is not an accomplice whose testimony must be corroborated. Of course, evidence coming from such contaminated sources should be closely scrutinized by the jury; but if they are satisfied of its truth, they may base a conviction upon it'

Wigmore on Evidence, Third Edition, Vol. VII, Section 2060 at pp. 339 to 342 :

'(d) The case of a pretended confederate, who as detective, spy, or decoy, associates with the wrong-doers in order to obtain evidence, is distinct from that of an accomplice, although the distinction may sometimes be difficult of application :

1848, Maule J., in R. v. Mullins, 7 State Tr. N. S. 1110 : 3 Cox C.C. 756: 'An accomplice is a person who has concurred in the commission of an offence..... (But such are different from) spies, that is, persons who take measures to be able to give to the authorities information so as to prevent those who are disposed to break out from effecting their purpose in the case of an accomplice, he acknowledges himself to be a criminal; in the case of these men, they do not acknowledge anything of the kind.' The line should perhaps be drawn in this case: When the witness has made himself an agent for the prosecution before associating with the wrongdoers or before the actual perpetration of the offence, he is not an accomplice; but he may be, if he extends no aid to the prosecution until after the offence is committed. A mere detective or decoy or paid informer is therefore not an accomplice; nor an original confederate who betrays before the crime's committal; yet an accessory after the fact would be, if he had before betrayal rendered himself liable as such. (See State v. Mekean, (1873) 14 Am. Rep. 530; Wright v. State, (1880) 32 Am. Rep. 599; Grimm v. United States, (1894) 156 U. S. 604 : 89 Law Ed. 550.

(e) The burden of proving the witness to be an accomplice is of course upon the party alleging it for the purpose of invoking the rule, namely, upon the defendant.

Whether the witness is in truth an accomplice is left to the jury to determine, and if they conclude him to be such, then and then only are they to apply the rule requiring corroboration. If they are in doubt, and unable to decide, the rule is not to be applied; but they need only believe by the preponderance of evidence'.

The leading treatise on Canadian Criminal Evidence,--besides Wigmore on Evidence (Third Edition), which deals with the Canadian Law of Evidence is People's Canadian Criminal Evidence (Second Edition). At p. 45 it is said :

'Police constables who act as agent provocateur to obtain evidence of keeping a bawdy house are not to be considered as 'accomplices', and their evidence does not require corroboration : Rex v. Clay, (1946) 1 C R 237 : 1946 Can. Abr. 288. No narrow or precise definition of an 'accomplice' can be laid down and much depends on the facts : Rex v. Mudgett, (1946) 19 M.P.R. III : 1946 Can. Abr. 287, see also Chapter VII'.

The Indian law of evidence is also the same. Chief Justice Monir's Principles and Digest of the Law of Evidence, Third Edition, at page 1085 (Section 133) has the following to say:

'The rule requiring corroboration does not apply to informers, i.e., persons who have joined in, or even provoked or instigated, the crime as police spies, as the object of the instigation in such cases is not the perpetration of the offence, but the detection of it, not the transgression of law, but the securing of evidence for the enforcement of public justice.'

R v. Bickley, (1909) 73 JPR 239; See Govinda Balaji v. Emperor, AIR 1936 Nag 245; Emperor v. Chatarbhuji Sahu, ILR 38 Cal 96; Bhuneshwari Pershad v. Emperor, ; but see Hari Lal Gardhan v. Emperor, : AIR1937 Bom385 ; Queen Empress v. Javecharan, ILR 19 Bom 363; Surat Bahadur v. Emperor, .

V. B. Raju, I.C.S. in his Evidence Act, at page 1188 on 'trap witnesses';

'A person who makes himself an agent for the prosecution with the purpose of discovering and disclosing the commission of an offence either before associating with wrongdoers or before the actual perpetration of the offence, is not an

accomplice but a spy, detective, or decoy whose evidence does not require corroboration though the weight to be attached to it depends upon the character of each individual witness in each case.'

Sarkar on Evidence, Ninth Edition, at page 1079, mentions :

'It may sometimes be necessary to employ spies or decoys for detection of offences which cannot be detected in any other way, but the practice is looked upon with much disfavour and in their enthusiasm these men soon degenerate into agent provocateurs instigating or provoking the commission of crimes. (See the observations of Lord Aberstone in *King v. Mortimer*, 1911 1 KB 70. The authorities indicate that if a man makes himself an agent for the prosecution before associating with the wrongdoers or before the offence is committed, or if with a view to protect his own interest or that of other pretends to associate with such persons with the object of preventing the commission of an offence by giving timely information to the authorities, he is not an accomplice. But however good the motive may be, if such a person or a spy or an informer in the exuberance of his enthusiasm actually instigates another to commit a crime even if it be for detection of offence or to get the credit of having him arrested, he is an abettor under the penal law and his position cannot be anything other than that of an accomplice. (See ILR 19 Bom 363, *In re, Koganti Appayya*, AIR 1938 Mad 893. So, when officials lay a trap and incite bribe, the officials and bribe givers would be in the position of accomplices. *In re, Chandrasekhara Iyer*, 1951 1 Mad LJ 45 in *Braman v. Peck*, 1947 2 All ER 572: 63 TLR 592, Lord Goddard, C. J. observed: 'The Court observes with concern and disapproval the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence..... .It is wholly wrong for a Police Officer or any other person to be sent to commit an offence in order that an offence by another person may be detected..... I hope the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against some one; if they do commit offences, they ought also to be convicted and punished for the order of their superior would afford no defence.'

Great disapprobation was express of the practice of requisitioning the service of magistrate as witnesses of police traps, *Mitra v. State*, : AIR1951 Cal524 . Though the detection of crimes by laying traps is not deemed commendable and may be justified in cases of peculiar difficulty and though a mere spy or detective or decoy may not be an accomplice in law, the evidence of such a person or an agent provocateur is looked upon with suspicion and cannot be relied upon for a conviction : *Hazura v. Emperor*, AIR 1929 Lah 436; see *Venkatarao v. King*, : AIR1951 Ori281 ; *Emperor v. Anwar Ali*, AIR 1948 Lah 27; the weight to be attached depends on the character of each individual witness ILR 38 Cal 96. A distinction has been drawn between 'legitimate' and 'illegitimate trap' in the latter case. Person taking part in tempting the accused are all accomplices In re. *Mohiddin*, : AIR1952 Mad561 .' (When the trap witness becomes the instigator of the offence is brought out in *Rosen v. United States*, (1896) 40 Law Ed 606; *Andrews v. United States*. (1896) 40 Law Ed 1023; *Price v. United States*, (1897) 41 Law Ed 727; (1894) 39 Law Ed 550; *Montgomery v. United States*, (1898) 40 Law Ed 1020; *Sorrelly v. United States*, (1932) 77 Law Ed 413 discussed by me in *Sundaravadivelu Chetty v. State*, 1955 Mad WN Cr. 14.

Corpus Juris of India, the Indian Evidence Act, by V. V. Chitale and S. Appu Rao, Volume 7, Section 133. No. 17, Point 7, sums up this aspect of the law of evidence in the words of the decision in *State of Vindhya Pradesh v. Shiva Bahadur Singh*, AIR 1951 Vindh-Pra 17 as follows:

'There is at one end the unblushing giver, who pays the bribe and gets an advantage, and subsequently gives evidence for same ulterior purpose. He is an accomplice of the darkest kind. At the other extreme is the person who, from the very beginning has no intention of giving a bribe, but makes a show of doing it, so as to bring the dishonest public servant to book; such a man far from being an accomplice is a good citizen, to be respected and encouraged. Between the two, there are many gradations of accomplicehood, and consequent legal infamy, and need for more or less corroboration. There is the giver, who goes half way with the intention of paying, but for some reasons beyond his control thinks it wise or safe to report to the authorities and becomes a witness. He is only a less infamous accomplice than the extreme type. Another, who changes his mind without,

external pressure, is still technically an accomplice, but not as unreliable as the two other types. Then there is the decoy or the spy, who with no intention to pay the bribe, makes himself the instrument of the authorities in tracking the dishonest public servant. The professional spy or decoy, doing this for pecuniary or other advantages though not an accomplice is suspect all the same, and requires corroboration. If on the other hand, the decoy is not acting for gain, but being himself the victim of the demand helps the authorities spontaneously from a sense of citizen's duty, he is reliable and respectable witness.' (See also *The King v. S. N. Singh Rai*, : AIR1951 Ori297 .

33. These principles have been embodied in two recent decisions of the Supreme Court *Shiv Bahadur Singh v. State of Vindhya Pradesh*, : 1954 CriLJ910 and (S) : 1956 CriLJ837 .

For a discussion of trap cases and value of evidence of trap witnesses see Kapur and Pandit. *The Prevention of Corruption Act*, P. 195 and foll.; Haripal Varshni *The Law relating to bribery and Corruption*. P. 99.

34. To sum up as pointed out by me in *Ambujam v. The State*, : AIR1954 Mad326 unfortunately owing to the increasing nature of the special enactments and the impossibility of procuring evidence in any other way and the paramount necessity of putting down offences of this kind the use of trap witness has become widespread and indispensable. The employment of trap witnesses is in accordance with the best Hindu Muslim administrative traditions.

I have traced its historical genesis in the aforesaid decision. A trap witness is not an accomplice and he does not come under the category of persons whose evidence cannot be accepted in the absence of material corroboration. But at the same time as the system of employing trap witness will lend itself to abuses, Court will closely scrutinise his testimony. The weight to be attached to his evidence will depend upon the character of each individual trap witness.

Prudence at the same time requires that the, courts should demand and the prosecution should adduce some corroborative evidence. That evidence adduced to corroborate this trap witness in the language of 16 *Corpus Juris* P. 711 need not

be strong, absolutely convincing or sufficient in itself to support a verdict of guilty, nor even equivalent to the swearing of one credible witness; any corroborative, evidence--a documentary or oral, direct or circumstantial--legitimately tending to connect the accused with the commission of the offence may be sufficient to warrant a conviction although standing by itself it would be only slight proof of accused's guilt and entitled to but little consideration and even though it is not wholly inconsistent with the innocence of the accused.

On the other hand, evidence which merely raises a suspicion that accused is the guilty party is not sufficiently corroborative of the testimony of a trap witness to warrant a conviction nor will uncertain or equivocal, corroboration suffice. No general rule can be stated with respect to the quantum of evidence corroborating a trap-witness's testimony. Each case must be governed by its own circumstances keeping in view the nature of the crime, the character of the trap-witness's testimony and the general requirements necessary to sustain a conviction.

35. Bearing these principles in mind if we examine the facts of this case, we find that first of all this trap witness is not an accomplice and secondly scrutinising with very great care his evidence it is found that it is well corroborated in material particulars not only by P.Ws. 3, 4, 5 and 7 but also by the defence evidence as found by the learned Special Judge in regard to the recovery of the marked currency notes from inside the left trouser pocket of the accused. The evidence of P. W. 6 shows the opportunity afforded to this accused to extract a bribe from P. W. 2, viz., to cough up Rs. 20/- or face a prosecution.

36. In these circumstances we can legitimately describe this acquittal as manifestly perverse, singularly mischievous and totally unmerited.

37. The order of acquittal is therefore set aside and the accused is convicted under Section 161 I. P. C. and Section 5(I)(d) read with Section 5(2) of Act II of 1947.

38. The learned advocate Mr. K. S. Jayarama Ayyar who conducted the defence of this accused in this appeal with conspicuous moderation and ability, frankly conceded that he was seeking only to support the acquittal on other grounds and

was not relying upon the judgment of the learned Special Judge whose reasoning he stated he was not in a position to support made an eloquent plea for a lenient punishment having regard to the facts that this offence took place in 1955 and that in the event of my convicting the accused he would get dismissed from service. Taking into consideration these extenuating factors, I am not sending this accused to jail and I sentence him to pay a fine of Rs. 200/- or in default to undergo R.I. for six months. Time to pay the fine is one month.

39. The Sub-Inspector Balasubramanian's investigation was both scrupulous and thorough and is commended.

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