SUPREME COURT OF INDIA

State of Assam

Vs.

Krishna Rao

Crl.A.Nos.92 and 93 of 1970

(I. D. Dua and H. R. Khanna, JJ.)

30.04.1969

JUDGEMENT

DUA, J.:-

1. These two appeals by the State of Assam (Crl. A. No. 92 of 1970 State of Assam v. Krishna Rao and Cr. A. No. 93 of 1970 State of Assam v. M. D. Bajid) under Art. 136 of the Constitution are directed against the common judgment of the Assam and Nagaland High Court dated April 30, 1969 allowing two appeals by the two respondents (Cr. A. 61 of 1968 M. D. Bajid v. State of Assam and Cr. A. 62 of 1968 V. Krishna Rao v. The State of Assam) against two separate judgments of the Special Judge, Gauhati dated June 12, 1968 in two separate trials. Though the High Court recorded a common judgment, it dealt with the two cases separately. We also propose to dispose of both the appeals by the common judgment.

2. The relevant facts giving rise to the two cases, the essential features of which are largely common, may now be stated. Accused Krishna Rao was a Garrison Engineer, M. E. S. at Jorhat and M. D. Bajid (appellant in the other case) was the Assistant Garrison Engineer under him. During the

term of office of these two officers, it is alleged that Messrs Barakar Engineering and Foundry Works, Calcutta were contractors under the M.E.S., Jorhat for supplying fabricated building materials and for raising structures with that material at the sites selected by the M. E. S. The Chief Engineer, Eastern Command, it is not disputed, is the person who entered into the contract and after the contract was accepted the accused Krishna Rao in the capacity of Garrison Engineer was in overall charge of the execution of that contract and M. D. Bajid was his Assistant. According to the terms of the contract the contractor was entitled to receive 75% of the value of the goods supplied through running account bills. These payments had to be vetted in the first instance by Bajid as Assistant Garrison Engineer. For the goods already supplied two running bills were submitted and the payments under those bills were made upto May 21, 1964. According to the prosecution case Krishna Rao all the time kept harassing the contractor with the motive of getting bribe and sometimes he expressed to the contractor's agent his desire in this respect. Even in regard to the two bills which were duly paid some defects were sought to be created by Krishna Rao after passing them. The third bill duly submitted was delayed on various objections with the object of extracting a bribe and ultimately on August 12, 1964 Krishna Rao demanded a bribe from C. L. Noronha, the Chief Administrative Officer, who was also attorney of the contractor company. Noronha informed the police who arranged a trap with the result that on August 13, 1964 first Krishna Rao was caught accepting a bribe of Rs. 10,000 from Noronha and thereafter Bajid was caught when he received Rupees 5,000 as bribe from the same individual in a similar manner. The prosecution story is narraged by C. L. Noronha (P. W. 3), the man directly concerned with the matter, S. P. Chaliha (P. W. 1) who was in August, 1964 posted as Income-tax Officer, A Ward at Jorhat. A. C. Barua (P.W. 2), Sub-Divisional Officer, Planning, at Jorhat and K. C. Kapur (P.W. 5), Dy. Superintendent of Police, S.P.E., C.I.A.

3. C. L. Noronha (P.W. 3) has stated in his evidence how Krishna Rao, accused, as Garrison Engineer tried to delay the payment of the two R. A. R. (running account receipt) bills of the contractor firm and conveyed to the witness the usual expectation of the staff to get 20% of the bills by way of commission. We do not consider it necessary to go into this evidence in details because, according to the Special Judge trying the accused, there being a solitary statement of P.W. 3 in this respect it was not safe to rely on it without some corroboration assuring its trustworthiness. According to the trial court P.W. 3 claims to have informed his company superiors about the demand of bribe by Shri Krishna Rao on behalf of the M.E.S. staff but none of those superiors appeared as witnesses. The demand and the delay in the payment of R. A. R. bills with the motive of extorting bribe, in the opinion of the Special Judge, was not true beyond reasonable doubt. We would, therefore, concentrate on the prosecution case regarding information of the demand of bribe to the police and the trap for catching the two accused persons.

4. According to Noronha, realising that Krishna Rao was persistent in his demand of bribe and with that end in view was obstructing clearance of the payment of their R. A. R. bills he resolved to inform the police for necessary action. On August 11, 1964 he accordingly went to the office of the Superintendent of Police S. P. W., Park Street and narrated his complaint to the S. P. Mr. Choudhary. The matter being outside Mr. Choudhury's jurisdiction he expressed his inability to take its cognizance but as two officers, Kapur, Dy. S. P. and his assistant Bishnoi happened to be present in that office P.W. 3 was introduced to them. P.W. 3 thereupon filed his written complaint Ex. 1 with these officers. Next day i.e., August 12, 1964 P.W. 3, along with those two officers, went to Jorhat

arriving there at about 1 or 2 p.m. P.W. 3 contacted Krishna Rao at about 3 p.m. when the latter enquired if arrangements for complying with his demand had been made. On P.W. 3 telling Rao that his demand was too high Rao reduced his own demand to 3% of the bills already paid though he expressed his inability to get any guarantee on behalf of the rest of the staff. On rough calculation the amount of his demand came to Rupees 14,000 but the bargain was struck at Rs. 10,000 to be paid on the following day. As P.W. 3 expressed hesitation in taking so much money to Rao's office the latter agreed to go to the contractor's office in the afternoon of August 13, 1964, to collect the amount. On his way of Rao's office P.W. 3 also met the other accused Bajid. He too demanded his share of commission at 3%. The amount acceptable to him was, however, fixed at Rs. 5,000, as he represented that it was his duty to prepare the R.A.R. and that he was also in direct supervision of the contract work. He also agreed to go to the contractor's office the following day for collecting the amount between 4 and 5 p.m.

5. P.W. 3 narrated to Kapur and Bishnoi all that happened between him and Rao and between him and Bajid. At about 9.30 or 10 a.m. on August 13, 1964 P.W. 3 contacted Kapur at the residence of Deputy Commissioner, Jorhat and told him that he would meet him at the Madras Coffee House at about 11.30 a.m. P.W. 3 then contacted Rao and Bajid and on getting assurance about the preparation of the cheque on account of the bill which was supposed to be for Rs. 90,000 confirmed the arrangement of paying the money demanded. Rao was to come to the office of P.W. 3 at about 1.30 p.m. In the Madras Coffee House P.W. 3 met Kapur, Bishnoi, who introduced him to Chaliha, Income-tax Officer and Barua, Sub-Divisional Officer. All of them then proceeded to the camp office of P.W. 3. This camp office consists of three rooms, two of them being bed rooms and one office room. All of them went to a bedroom where P.W. 3 narrated his plan. This bedroom has three doors and three windows. One door opens in the front verandah, one in the office room and the third in the bath room from where there is an exit to the rear verandah. The rear verandah is also connected with the office room through a door. All the windows and the doors had opaque curtains. The doors and windows opening into the front verandah were closed and bolted from inside. Three peepholes were made in the door connecting the bedrooms with the office room. A curtain was also hung on this door to shut out light from inside. The table in the office room was kept diagonal-wise placing the chairs on either side. In the bedroom P.W. 3 was asked to produce the Government currency notes. Kapur noted the numbers of these notes which were of one hundred rupee denomination. After P.W. 3 was searched the currency notes were besmeared with a white powder (phenolphalein powder) and instruction was given that if anybody touched the notes, then, when his fingers were dipped in water, that water would turn reddish. The notes were given back to P.W. 3 with instructions that the amount should be paid to Krishna Rao only on his demand. P.W. 3 then went to the office adjoining the bedroom. At about 1.40 p.m. Rao, accused, arrived in the office. Thereafter what happened had better be stated in the words of P.W. 3 himself:

"1. I greeted him hello Mr. Krishna Rao, come in, come in. As he took his seat I closed the front door for privacy's sake. Thereafter I told Mr. Krishna Rao 'Don't you think your demand is too much?' He said '3 per cent is my normal rate'. I told him 'will ten thousand be O. K. as agreed?' He nodded his head in the affirmative. I took out the bundle of notes from my right hand pocket sitting with his back near the door connecting the bed room. He picked up the bundle of notes, fiddled with the same for a while and kept the same in his trouser's right hand pocket. He then got up and was just walking towards the front verandah door. I also stood up. By this time the raiding party

comprising Mr. Kapur. Mr. Chaliha, Mr. Baruah and Mr. Bishnoi rushed into the office room. Mr. Kapur shouted I am D.S.P. of Police and produced his identity card. Mr. Krishna Rao turned round Mr. Kapur asked Mr. Krishna Rao to produce the smeared money which he had just received from me. Mr. Bishnoi caught hold of the hand of Mr. Krishna Rao to search him and Mr. Kapur searched the person of Mr. V. Krishna Rao. From the right hand side of the pant pocket of Shri Krishna Rao Mr. Kapur took out the bundle of 100 rupee G. C. notes. Some other loose currency notes and identity card were also recovered from him."

6. Mr. K. C. Kapur, Dy. S. P. F. appeared as P.W. 5 and substantially corroborated the testimony of P.W. 3. The two witnesses not connected with the police, Chaliha, Income-tax Officer and A. C. Barua, Sub-Divisional Officer, Planning, appeared as P.W. 1 and P.W. 2 respectively. They also fully corroborated in all material particulars the testimony of Noronha.

7. Accused Krishna Rao in his statement under S. 342, Cr. P. C. denying the allegation of his demand for bribe admitted his presence in the office of the contractor at about 1.30 p.m. on August 13, 1964. This is what he said :

"On 13-8-64 just at about 1.30 p.m. I was taken to the site office godown by Shri Srivastava and Shri Chatterjee in their jeep for inspection of stores. Earlier at 10.30 a.m. Shri Noronha had asked me to increase the value of R.A.R. to Rs. 1 lac, saying that some stores are lying in his godown which had not been accounted for in the 3rd R. A. R. and that I could inspect it and then raise the amount. To this I told that I should be satisfied about the existence of the stores before I could make addition and alteration in the payment and in the R. A. R. and then he told me that he would send Mr. Chatterjee and Srivastava."

When questioned about his having picked up the bundle of notes of Rupees 10,000 produced by Noronha and put by him in his pocket which were recovered by K. C. Kapur in the presence of P.Ws. Chaliha, Barua, Bishnoi and Noronha, he replied :

"It is not correct, the actual fact is when I reached the camp office along with Srivastava and Chatterjee Noronha was standing at the gate, he said that the stores are lying in the backyard and he led me inside the house. When I entered the office room he closed the front door and bolted it when he became angry on my objection he told me that he would teach me a lesson and he pushed something on my right hand pocket. Then Mr. Bishnoi came and Mr. Kapur brought out the bundle from my pocket and I could then know that it was a bundle of G. C. notes. I wanted to make a statement but (illegible) did not hear it and did not record it. Shri Chaliha and Shri Barua came later on and with their help Shri Kapur prepared the Memo." Rao also said that he would file a written statement. In his written statement he repeated what he had stated in Court under S. 342, Cr. P. C. and nothing new was added therein.

8. Shanti Ratna Chakravarty was produced as defence witness No. 1. He was an Upper Division Clerk in C.W.E., Jorhat. According to him on August 13, 1964 during lunch interval he saw Srivastava and Chatterjee with Rao coming out from the G.E.'s office room. They all boarded a jeep and left that place. After lunch he also saw Bajid going to Garrison Engineer's office. He then saw Chatterjee and Srivastava coming out of the office of the Garrison Engineer. They also got into the jeep and left. Avtar Singh (D.W. 2) is a Surveyor Assistant (1) in G. E. (Project), Jorhat. He has also deposed that on August 13 at about 1.50 p.m. Krishna Rao left his office with Srivastava and Chatterjee. Chatterjee was at that time the sub-contractor under Messrs Barakar Engineering Company and Srivastava was a Chief Engineer of the said company. No reliance was placed by the accused on the evidence of J. A. James (D. W. 2).

9. The learned Special Judge considered the two proseuction witnesses Chaliha and Barua, as independent witnesses having no animosity towards the accused persons. These witnesses had both heard what had transpired between Noronha and Rao and seen that money was passed by Noronha to accused Rao who pocketed the same at once. They have also deposed that when caught the accused became dumb-founded and non-plussed and there was no explanation from him.

10. An objection was also raised in the trial court about the legality of the sanction to prosecute the two accused persons but the court considered Ex. 40, read in the light of the evidence of P.W. 4, to be proper sanction. Believing the prosecution evidence the court convicted accused Rao and sentenced him to rigorous imprisonment for one year on each count under Section 161, I.P.C. and S. 5 (2) read with S. 5 (1) (d) of the Prevention of Corruption Act and also to fine of Rupees 1,000 under S. 5 (2) of the Prevention of Corruption Act and with further rigorous imprisonment for three months in case of default.

11. In so far as Bajid is concerned it is in evidence that after the trap of Krishna Rao, who was caught demanding and accepting Rs. 10,000 from P.W. 3 as bribe all the P.Ws. went back to the same bedroom. There P.W. 3 then narrated his complaint against Bajid. It was to the same effect as Ex. 1 which had been previously given to the Dy. S. P. After narrating the facts before Chaliha and Barua P.W. 3 produced Rs. 5000 in Government currency notes of the denomination of Rs. 100 each. Mr. Kapur took down the numbers of the Government currency notes and then a memo was signed by P.W. 3 and the other witnesses. After searching the person of P.W. 3 the currency notes were handed over to him by the Dy. S. P. with instruction that the same should be paid to Bajid on his demand. The remaining version had better be reproduced in the words of P.W. 3 himself :

"I had also informed the members of the raiding party about the time that is about 4 O' clock then Mr. Bajid would be coming to my office to receive the amount. All these functions were completed in the bedroom by about 3.30 p.m. I was directed by Mr. Kapur to take my seat in the adjoining office room and wait for Mr. Bajid. Round about 4 O'clock Mr. Bajid entered my room along with my Chief Engineer Shri Srivastava whom I asked to leave us for a few minutes. Mr. Bajid took his

seat on the chair facing the bedroom door in which the peepholes had been made. As soon as Mr. Srivastava left I closed the front door and took my seat on the other chair with my back to the bedroom door. At this time I told Mr. Bajid 'I think your demand is too high'. Mr. Bajid told me '3 p.c. in all'. I told him, 'Are you satisfied in 3 p.c. in all?'. He said 'Yes'. 'Yes.' On this I took bundle of G. C. notes from my right hand trouser pocket and placed the same on the table before us. Mr. Bajid took the bundle in his hand and put the same in the right hand pocket of his pant. Then I told him that 'you have now received Rs. 5000/- how much more you want?'. His reply was 'Whatever is the balance'. I then said 'Are you sure there would be no more trouble?' He said 'Yes of course'. At this stage I touched my head with my hand which was a prearranged signal given to me by the Dy. S. P. Immediately then the raiding party headed by Mr. Kapur, Dy. S. P. rushed into the office room. On this Mr. Kapur disclosed his identity to Mr. Bajid and also that of the witnesses with him. Mr. Kapur asked Mr. Bajid (about) the bribe amount that he had taken from me. Mr. Bajid was absolutely upset and was thunder struck. He did not reply to the D.S.P. but uttered the words 'Noronha Saheb ne mujkho dhoka diya hai'. Mr. Bajid had stood up from the chair and his person was searched by Mr. Kapur, Dy. S.P. A bundle of G.C. notes was recovered from the right hand pocket of pant of Mr. Bajid by Mr. Kapur. From his personal search certain other currency notes and some papers were also recovered.

The number of the recovered G. C. notes were checked by Mr. Chaliha and Mr. Baruah with the numbers mentioned in Memo Ext. 2 and they tallied. Thereafter Mr. Kapur drew up a recovery list noting down the number of the (illegible) list. During the course the said list was being prepared by Mr. Kapur, Mr. Kapur asked him "why he had taken this amount. At this Mr. Bajid said 'Mujkho bachao deo' Ex. 3 is that recovery list which bears my signature also."

12. P.W. 3 was corroborated by the evidence of Kapur, Dy. S. P. who appeared as P.W. 6 by S. P. Chaliha (P.W. 1) and A. C. Barua (P.W. 2). In his statement under S. 342, Cr. P. C. Bajid denied any demand having been made by him for commission at 3% from Noronha. In defence Shanti Ranjan Chakravarty, Avtar Singh and J. A. James (D. Ws. 1, 2 and 3 respectively) were produced. The first two witnesses deposed to having seen Bajid going with Chatterjee between 2.30 and 3 p.m.

13. Bajid's explanation for going to the contractor's office is contained in answer to question No. 4. He said:

".........that at about 3 p.m. on 13-8-64 when I was sitting with Avtar Singh S. A. (II) in his room, Mr. Chatterjee of the M. B. Industries Sub-Contractor of Barakar appeared in the room and told me that Shri Rao wanted me at site in connection with checking of the stores. He also told me that he has brought his vehicle a jeep and I might go along with him."

In answer to question No. 7 he said :

"The fact is that as soon as I (?) entered the room Mr. Noronha bolted the room from inside and he pulled out something from his pant pocket and pushed the same into my pant pocket. I was non-plussed and asked him what he was doing. At that very moment 3 persons rushed inside the room from the backdoor of the office room and one of them gave his identity as Dy. S. P. Central Intelligence Branch, stated loudly and induced me to keep the hands up, he caught hold both of my hands up finally and the bundle was pulled out from my pocket, which I saw as G. C. notes. I wanted to protest and wanted to say what had happened earlier but they did not listen to me."

In his written statement he said practically the same thing as had been stated by him in court under S. 342, Cr. P.C. with the only difference that in the written statement he somewhat elaborated the details.

14. The trial court convicted Bajid as well holding the prosecution version to have been fully established and finding the explanation of the accused untrustworthy. Like Rao he was also sentenced to rigorous imprisonment for one year on each count under Section 161, I.P.C. and under S. 5 (2) read with S. 5 (1) (d) of the Prevention of Corruption Act. He was also sentenced to fine of Rs. 500 with further rigorous imprisonment for one month in case of default.

15. On two separate appeals, the High Court dealt with the cases of the two accused separately though by means of a common judgment. The learned single Judge of the High Court at the outset referred to the English decision in Brannan v. Peek, (1947) 2 All ER 572 and to the decision of this Court in Rao S. B. Singh v. State of Vindhya Pradesh, 1954 SCR 1098 = (AIR 1954 SC 322) and observed that in trap cases the matter has to be looked into with great circumspection. In the light of this observation the High Court Court said that Noronha's evidence required corroboration by some independent witnesses. As the prosecution claimed Chaliha and Barua to be independent witnesses and the High Court also felt that they were high ranking Government officers whose evidence could not be brushed aside except for cogent reasons, the learned single Judge discussed the pros and cons as to whether these witnesses could actually see the alleged acceptance of the bribe and hear the conversation between Noronha and the accused relating to the bribe in question. After referring to the evidence with regard to the peepholes the High Court felt some doubts about the boring of peepholes prior to the occurrence as alleged. In entertaining the doubt in the matter of peepholes the High Court was principally influenced by the following factors :

(1) In Ex. 2, the memorandum drawn up after the rehearsal regarding the currency notes, which had been treated with phenophthalein powder, there was no reference to the peepholes having been bored though, according to the witnesses, that had been done before drawing up the memorandum;

(2) the size of the peepholes was differently given by different witnesses;

(3) the version by the witnesses did not tally as to who had prepared how many peepholes and with what instruments;

(4) the nail and the hammer which were said to have been used for boring the peepholes were not seized by the police and were, therefore, not exhibited; and

(5) though P.W. 9 had stated that the doors in which peepholes were bored were made of tin, according to K. C. Kapur Dy. S. P. (P.W. 5) they were made of ply wood.

The High Court also entertained some doubt about the version that Chaliha could with one eye peep through the lower hole of small dimension and the entire transaction. These circumstances, broadly speaking, weighed with the High Court in entertaining reasonable doubt as to whether the peepholes had at all been bored before the incident and this, according to the Court, also reflected on the trustworthiness of the two independent witnesses who were highly placed Government officials. While expressing this doubt the High Court added that it was improper to take the help of Government servants in such matters. Being interested in the success of the trap these witnesses, in the High Court's view could not be considered to be so independent as to be uninfluenced by a desire to secure from the court conviction on the basis of their evidence. The High Court further entertained reasonable doubt whether Chaliha and Barua could have heard the conversation between Noronha and Rao. The High Court further felt that there was no corroborative evidence regarding assurance of payment of bribe in regard to the payment of the second R.A.R. Indeed, the High Court did not feel impressed by the evidence that the payment of the bills was delayed with the object of getting bribe. The delay of three months in making payment was due to red-tapism and it could not be fixed on Rao. The evidence of Chaliha and Barua was thus not believed regarding the actual factum of the acceptance of illegal gratification. In regard to the question whether the money was thrust into the pocket of accused because of Noronha's grievance against him, the High Court observed that there being no independent corroboration of the acceptance of the bribe the mere possession and recovery of the Government currency notes by the raiding party from the person of Rao was not sufficient to show that this was the money which had been received by him within the meaning of S. 161, I.P.C. On this point Noronha's statement was considered to be insufficient to warrant a conviction in the absence of corroboration by Chaliha and Barua whose evidence was not fully believed by the High Court.

16. In regard to the defence evidence the High Court felt that the defence version could not be ruled out because the prosecution had not led any evidence to show as to by which vehicle Rao had come to the place of occurrence. The High Court also criticised Noronha's failure to inform his superior officers about Rao's conduct. Finally, the omission of the prosecution to dip Rao's hands in water to see whether it had changed its colour on account of the application of phenophthalein powder was also considered by the High Court to be a highly important circumstance rendering the prosecution version unacceptable. For all these reasons the High Court acquitted Rao.

17. Bajid was also acquitted, broadly speaking, for similar reasons, with the additional circumstances (i) that according to Chaliha's statement he had not seen from the peep-holes whether Bajid had received the money and (ii) that the copies of depositions of witnesses in Rao's case had not been supplied to Bajid for facilitating their cross-examination and this, according to the High Court, had prejudiced Bajid to a great extent in the matter of his defence. The entire trial of Bajid was for this reason considered to be tainted with illegality, but the High Court did not feel that it would be in the interest of justice at such late stage to consider the question of remanding the case for re-trial, adding that when on consideration of the evidence it had not been proved that Bajid had accepted or obtained or agreed to accept or demand any gratification the question of the accused proving to the contrary in his defence did not arise. The High Court further expressed its opinion that Bajid had been decoyed to the place of occurrence and, therefore, the defence version which was similar to that of Rao's was held to be highly probable. The High Court thus, though accepting the story of recovery of currency notes from the possession of both the accused persons, acquitted them, broadly, for the reasons just stated.

18. Before us on behalf of the State of Assam it has been strongly contended that the prosecution evidence with regard to the prior existence of the peepholes and the eye-witnesses having seen the actual passing of money through them is trustworthy and should be accepted. This direct evidence, it is urged, has been wrongly brushed aside, on the ground of omission to carry out the phenophthalein test in the case of Rao which, in view of direct evidence of passing of money, was wholly immaterial, and on account of inconsequential circumstances in the case of Bajid. The High Court, it is contended, has erred seriously in discrediting the testimony with regard to peepholes for reasons which are too slender to bear scrutiny and also by ignoring considerations of vital importance. When once this conclusion of the High Court is reversed the case for the prosecution, according to the appellant's learned counsel, becomes irrefutable. In event when the evidence of the recovery of money from the pockets of the pants of both the accused persons has been accepted and upheld by both the courts, then, by virtue of S. 4 of the Prevention of Corruption Act the Courts were legally obliged to raise the presumption that the two accused had accepted or obtained or agreed to accept or attempted to obtain that money as a motive or reward such as is mentioned in S. 161, I.P.C. unless the contrary was proved. The High Court, according to the appellant's submission, has wrongly declined to raise this presumption on the ground that the factum of receipt of money with a conscious mind or guilty conscience is necessary in order to bring the case within the purview of S. 4. The counsel invited our attention to the following observations of the High Court which, according to his submission bring out the legal infirmity in its approach :-

"The factum of recovery cannot, however, be disputed but in my opinion such recovery must be the result of receipt of the money and with a guilty conscience. The recovery by itself does not fulfil the conditions of the aforesaid sections. Although it may be one of the strong circumstances towards the guilt of the accused, demand and acceptance of bribe not being proved beyond reasonable doubt, the factum of recovery alone will not establish the guilt under those sections."

While dealing with the case against Bajid also the High Court observed:

"The words 'unless the contrary is proved' occurring in Section 4 (1) of the Prevention of Corruption Act makes it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. Before that it has to be shown by the prosecution that the ingredients of offence under Section 161 of the Indian Penal Code and Section 5 (1) (d) of the Prevention of Corruption Act have been proved by the prosecution. The plain meaning of Section 4 (1) of the Prevention of Corruption Act is that whend the offence under the said section is proved, a presumption is that a valuable thing has been received by the accused. This being the position in law, it has got to be seen whether the accused Bajid received the gratification with a conscious mind. As regards this, I have already said that corroboration of a partisan witness is lacking in this case also. Furthermore if the evidence of Sri Noronha is rejected as uncorroborated by evidence in record the mere fact that the money was recovered from Bajid cannot by itself be treated as acceptance within the meaning of S. 161, Indian Penal Code, although it is a very strong circumstances towards proof of guilt. Furthermore the factum of acceptance with a conscious mind must also require to be proved by the prosecution. In this view of the matter I am of opinion that recovery has been proved but as the ingredients of offence under Section 161, Indian Penal Code have not been satisfied, namely that the accused received the money with a conscious mind, no offence is said to have been committed."

In our opinion, there is merit in the appellant's contention that the High Court has taken an erroneous view of S. 4 of the Prevention of Corruption Act. That section reads:

"Presumption where public servant accepts gratification other than legal remuneration:

4 (1) Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub-sec. (1) of S. 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused persons has accepted or obtained, or has agreed, for himself or for any other person any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in 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 or under clause (ii) of sub-section (3) of S. 5 of this Act, 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 S. 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."

19. In State of Madras v. A. Vaidianatha Iyer, 1958 SCR 580 = (AIR 1958 SC 61) after reproducing the relevant provisions of S. 4 of the Prevention of Corruption Act this Court observed that where it is proved that a gratification has been accepted, the presumption under S. 4 of the Prevention of Corruption Act shall at once arise. It is a presumption of law and it is obligatory on the Court to raise it in every case brought under S. 4. In the reported case this Court allowed the appeal of the State of Madras and setting aside the impugned order of acquittal passed by the High Court restored that of the Special Judge convicting the respondent there. In C. I. Emden v. The State of U. P., (1960) 2 SCR 592 = (AIR 1960 SC 548) the appellant, who was working as a loco foreman, was found to have accepted a sum of Rs. 375 from a railway contractor. The appellant's explanation was that he had borrowed the amount as he was in need of money for meeting the expenses of the clothing of his children who were studying in school. The Special Judge accepted the evidence of the contractor and held that the money had been taken as a bribe, that the defence story was improbable and untrue, that the presumption under S. 4 of the Prevention of Corruption Act had to be raised and that the presumption had not been rebutted by the appellant and accordingly convicted him under S. 161, I.P.C. and S. 5 of the Preventing of Corruption Act, 1947. On appeal the High Court held that on the facts of that case the statutory presumption under S. 4 had to be raised, that the explanation offered by the appellant was improbable and palpably unreasonable and that the presumption had not been rebutted, and upheld the conviction. The appellant contended, on appeal in this Court, inter alia, (i) that the presumption under S. 4 could not be raised merely on proof of acceptance of money but it had further to be proved that the money was accepted as a bribe, (ii) that even if the presumption arose it was rebutted when the appellant offered a reasonably probate explanation. This Court, dealing with the presumption under S. 4, observed that such presumption arose when it was shown that the accused had received the stated amount and that the said amount was not legal remuneration. The word 'gratification' in S. 4 (1) was to be given its literal dictionary meaning of satisfaction of appellate or desire; it could not be construed to mean money paid by way of a bribe. The High Court was justified in raising the presumption against the appellant as it was admitted that he had received the money from the contractor and the amount received was other than legal remuneration. On the facts the explanation given by the accused, in agreement with the opinion of the High Court, was held to be wholly unsatisfactory and unreasonable. In Dhanvantrai v. State of Maharashtra, AIR 1964 SC 575 it was observed that in order to raise the presumption under S. 4 (1) of Prevention of Corruption Act what the prosecution has to prove is that the accused person has received gratification other than legal remuneration' and when it is shown that he has received a certain sum of money which was not a legal remuneration, then, the condition prescribed by this section is satisfied and the presumption thereunder must be raised. In Jhangan v. State of U.P., (1966) 3 SCR 736 = (AIR 1966 SC 1762) the above decisions were approved and it was observed that mere receipt of money is sufficient to raise the presumption under S. 4 (1) of the Prevention of Corruption Act.

20. Recently in S. N. Bose v. State of Bihar, this Court reviewed the case law on the point and observed:

"We next take up the question as to the scope of S. 4 of the Prevention of Corruption Act. As mentioned earlier, the appellant admits the fact that he received a sum of Rs. 5 from P.W. 4 on March 14, 1964. Once that fact is admitted by him, the court has to presume unless the contrary is proved by the appellant that he accepted the sum in question as a motive or reward for issuing the fit certificate. Mr. Mookherjea's contention was that the presumption in question does not arise unless the prosecution proves that the amount in question was paid as a bribe. He urged that the presumption under Section 4 arises only when the prosecution proves that the appellant had received 'any gratification (other than legal remuneration) or any valuable thing from any person'. He laid stress on the word 'gratification' and according to him the word 'gratification' can only mean something that is given as a corrupt reward. If this contention of Mr. Mookerjea is correct then the presumption in question would become absolutely useless. It is not necessary to go into this question in any great detail as the question is no more res integra. In (1960) 2 SCR 592 = (AIR 1960 SC 548) (supra) this Court held that the presumption under S. 4 arose when it was shown that the accused had received the stated amount and that the said amount was not legal remuneration. The word 'gratification' in S. 4 (1) was given its literal dictionary meaning of satisfaction of appetite or desire; it could not be construed to mean money paid by way of a bribe."

The Court then set out a passage from Emden (supra) which was followed in D. B. Desai, AIR 1964 SC 575 (supra) and Jhangan (1966) 3 SCR 736 = (AIR 1966 SC 1762) (supra). The Court then dealt with the question of the onus on the accused for proving the contrary and observed that, according to the wellsettled view of this Court, the words "unless the country is proved" mean that the presumption raised by S. 4 has to be rebutted by proof and not by bare explanation which may be merely plausible. The required proof need not be such as is expected for sustaining a criminal conviction: it need only establish a high degree of probability.

21. In view of these decisions if moneys were recovered from the pockets of the two accused persons which were not their legal remuneration then on the material on the record there can be no further question of showing that these moneys had been consciously received by them, because the defence version that these moneys had been thrust into their pockets is, on the face of it, wholly unsatisfactory and unreasonable, if not flimsy. It is noteworthy that the High Court only concentrated on the defence version relating to the vehicle in which the accused persons claimed to have been brought to Noronha's office, it did not disbelieve the prosecution story about the behaviour of the accused persons when they were accosted by the witnesses of the raid party in the office room and moneys were recovered from the pockets of their pants. It is somewhat surprising that the High Court should not have cared to deal with this most important aspect without which the trial court's judgment could not logically be reversed. The High Court was also not quite accurate in observing that Chaliha had not seen from the peepholes whether Bajid had received the money. Chaliha had said in his examination-in-chief: "then Mr. Bajid took the money and put the money in

the right hand side of his pant pocket." In cross-examination all that was elicited was "In this case I did not see the money actually going inside the trouser pocket of Mr. Bajid". Quite clearly, the High Court was somewhat inaccurate in deducing from these statements that Chaliha had not seen from the peepholes whether Bajid had received money. Once the defence version, that moneys were thrust into the pockets of the pants of the two accused persons (which is suggestive of the innocence and ignorance of what had been thrust into their pockets) is held to be improbable, as in our view it must be so held, then, the judgment of the High Court has to be reversed and that of the trial court restored, subject of course to the decision on the argument that the trial of Bajid was vitiated on account of the infirmity noticed by the High Court.

22. The High Court seems to us also to have lost sight of the fact that the raid party had on each occasion reached Noronha's office room soon after the moneys had found their way into the respective pockets of the pants of the accused persons, in Krishna Rao's pocket earlier and in Bajid's pocket a couple of hours later. Unless the members of the raid party had witnessed the passing of money from somewhere (and it is noteworthy that the front door of the office room was closed) it is not understood how they could manage on both the occasions to go into the office room soon after the receipt of the money by the two accused persons, by Rao at about 1.40 p.m. and by Bajid at about 4 p.m. They undoubtedly reached the room before the accused persons with money in their pockets could go out of it. It is nobody's case that the two accused persons were prevented from going out or were otherwise detained in the office room till the witnesses arrived. The witnesses must obviously have been in a position to see when the money was passed on to the accused persons. In this background, particularly when there is no suggestion that there was any one who went from the office room to inform the raid party that the moneys had found their way into the pockets of the accused persons, the minor discrepancies with respect to the size or the height of the peepholes from where three different persons tried to peep and see what was happening in the office or, omission on the part of the prosecution to show how the accused persons came to Noronha's office, become wholly inconsequential. These are details which, unless the witnesses are tutored, do ordinarily vary in minor particulars, and, in the normal course of things, are found generally to be stated differently by different observers. In our view, strictly speaking, these differences or variations are indications of the truth rather than of falsehood of the version given by the prosecution witnesses.

23. We may now turn to the question whether omission to supply to Bajid copies of the statements made by the witnesses in Rao's case has prejudiced Bajid's defence. We have not been shown any law under which Bajid was entitled to get copies of those statements. The trials were separate. It was open to Bajid to inspect the record of Rao's case, if necessary with the permission of the court, and copy out those statements or secure certified copies in accordance with law and use them, if necessary, in cross-examination of those witnesses who also appeared against him. There is no question of any violation of any provision of law or of any settled principle, with the result that, in our opinion, the High Court was wrong in holding Bajid's defence to have been prejudiced by the omission on the part of the prosecution to supply to him copies of statements of prosecution witnesses in Rao's case.

24. For the foregoing reasons, in our opinion, these appeals must succeed and allowing the same we set aside the judgment of the High Court and restore those of the Special Judge. The respondents, if on bail, must surrender to their bail bonds to serve out their sentences.

Appeals allowed.