

IN THE HIGH COURT OF ORISSA, CUTTACK

GCRLA No.29 of 2018

An appeal under section 378 of the Code of Criminal Procedure from the judgment and order dated 28.12.2016 passed by the Special Judge, Vigilance, Bhubaneswar in T.R. Case No.26 of 2011.

State of Odisha
(G.A. Vigilance)

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Appellant

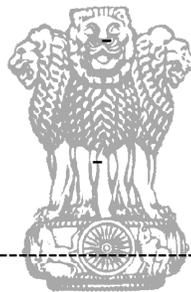
-Versus-

Sanjubala Rout

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Respondent

For Appellant:



Mr. Sangram Das
Standing Counsel (Vig.)

For Respondent:

Mr. S.C. Mekap
Advocate

P R E S E N T:

THE HON'BLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 17.08.2023

S.K. SAHOO, J. The respondent Sanjubala Rout faced trial in the Court of learned Special Judge, Vigilance, Bhubaneswar in T.R. Case No.26 of 2011 for offences punishable under section 13(2) read with section 13(1)(d) and section 7 of the Prevention of Corruption Act, 1988 (hereinafter "P.C. Act") on the accusation that she being a public servant functioning as Auxiliary Nurse

Midwife (hereinafter 'A.N.M.') at Manikagoda Primary Health Centre (hereafter 'the hospital'), on 25.09.2010 by corrupt and illegal means or otherwise abusing her position as a public servant demanded a pecuniary advantage to the extent of Rs.400/- (rupees four hundred) from the complainant Mehbub Hussain Khan (P.W.3) for releasing the cheque amounting to Rs.1,400/- (rupees one thousand four hundred) in favour of his wife Laila Begum under Janani Surakhya Yojana (hereinafter 'J.S.Y.') as Laila Begum had given birth to a male child on 07.09.2010 in the hospital and that she (respondent) accepted Rs.400/- (rupees four hundred) from P.W.3 as gratification other than legal remuneration as a motive for releasing the cheque amounting to Rs.1,400/- (rupees one thousand four hundred) in favour of Laila Begum.

The learned trial Court vide impugned judgment and order dated 28.12.2016 found the appellant not guilty under section 13(2) read with section 13(1)(d) and section 7 of the P.C. Act and acquitted her of all the charges.

The State of Odisha, G.A. Vigilance has preferred this appeal challenging the aforesaid judgment and order of acquittal.

The Prosecution Case:

The prosecution case, in short, is that Laila Begum gave birth to a male child in the hospital on 07.09.2010. P.W.1

Dr. Nausad Alli Khan was assisted by the respondent in the delivery of the child. The State Government had floated a scheme i.e. J.S.Y. and Laila Begum was supposed to receive a cheque of Rs. Rs.1,400/- (rupees one thousand four hundred) after giving birth to a child in the Government hospital. It is the prosecution case that the said cheque was not issued by the respondent who was in charge of it and there was a demand of Rs.500/- (rupees five hundred) for delivery of the service she rendered and Rs.50/- (rupees five) for the issuance of cheque. Since the P.W.3 expressed his inability to meet such demand, the demand amount was reduced from Rs.500/- (rupees five hundred) to Rs.400/- (rupees four hundred) and the respondent made it clear that without fulfillment of such demand, the said cheque could not be issued. P.W.3 repeatedly approached the respondent for such purpose and ultimately on 24.09.2010, P.W.3 agreed to pay the illegal demand of Rs.400/- (rupees four hundred) to the respondent which was to be made on 25.09.2010 and accordingly, the written report (Ext.11) was made by P.W.3 before the Vigilance D.S.P., Khurda and the case was registered as Bhubaneswar Vigilance P.S. Case No.57 dated 24.09.2010 under section 7 of the P.C. Act against the respondent and the S.P., Vigilance, Bhubaneswar entrusted Shri Biswanath Mishra (P.W.9), who was working as D.S.P., Vigilance,

Khurda squad under Bhubaneswar Vigilance division to lay the trap for detection of the case against the respondent and also to take up investigation of the case.

P.W.9 examined the complainant (P.W.3) and made requisition to Principal, School of Horticulture, Khurda in respect of two Class-II and Class-III employees respectively for secret assembly as witnesses in the trap. On the same day, at about 4.35 p.m. on the direction of the Principal, Gobind Chandra Lenka (P.W.8), Asst. Horticulture Officer and Mohit Kumar Das (P.W.7), Junior Clerk of the said office attended Vigilance Office, Khurda and they were directed to appear in the Vigilance Office, Khurda on 25.09.2010 at 6.30 a.m. P.W.9 along with other official staff and P.W.7 and P.W.8 assembled in the office chamber of P.W.9 at Khurda on the date and time fixed, where P.W.3 was introduced to the other group members and he narrated the allegations against the appellant. P.W.3 produced Rs.400/- (rupees four thousand) in four hundred-rupee denominations before P.W.9. The constable Amulya Ratna Beero (P.W.6) prepared the sodium carbonate solution in a clean glass bowl and inserted his finger in it but the colour of the solution did not change. Thereafter he processed the said currency notes with phenolphthalein powder and when he inserted his finger in the sodium carbonate solution, it turned to pink. The currency notes

were wrapped with a white paper and were handed over to P.W.3. The pink colour solution was preserved in a bottle which was properly labeled and sealed being signed by the witnesses and complainant (P.W.3) and marked as Ext. D for identification. Personal search of the complainant was taken and found he has nothing except the alleged cash which was handed over to him by the vigilance officials. Thereafter P.W.3 was instructed to deliver the money to the respondent only on her demand. The numbers of the tainted notes were noted down in the preparation report, witness Gobinda Chandra Lenka (P.W.8) was directed to accompany the P.W.3 to the respondent to overhear the conversation between P.W.3 and the respondent and after transaction was over, to give the signal by rubbing his forehead and accordingly, preparation report (Ext.12) was prepared wherein the signatures of the witnesses and P.W.3 were taken. The preparation was over by 9.15 a.m. and then the trap party members left for village Manikagoda where they reached at 11.15 a.m. P.W.3 and his wife along with P.W.8 proceeded little ahead of the trap party members to the hospital and near the hospital, the trap party members took their respective positions and P.W.3, his wife and P.W.8 went inside the hospital. When P.W.3 and his wife entered into the room of the respondent, the latter asked P.W.3 whether he had brought the cash and when

P.W.3 answered in affirmative, the respondent demanded the cash and tainted G.C. notes were handed over to the respondent. The respondent accepted the cash in her right hand and kept it in her left hand and then opened the register and told the wife of P.W.3 to put her signature on the reverse of the cheque stating that his wife should obtain the signature of the doctor. The wife of P.W.3 put her signature in the required register in token on receipt of the cheque and then both came out. The respondent also came out from the sub-centre and came to the hospital. P.W.8 had already conveyed the pre-arranged signal to the vigilance personnel for which the witnesses immediately rushed into the hospital. P.W.9 challenged the respondent to have accepted the bribe of Rs.400/- (rupees four hundred) from P.W.3. The respondent got nervous and fumbled and then admitted to have accepted and showed the cash which was still there in her left hand. Thereafter, the appellant was again taken to the sub-centre by the vigilance police. In the sub-centre, being instructed by P.W.9, Mohit Das (P.W.7) took the amount from the respondent, compared the numbers and denominations which were noted in the copy of the preparation report marked as Ext.12 and declared tallied. Then, the right hand wash and the left hand wash of the respondent with the chemical solution were taken separately and the same were preserved in two separate

bottles. The bottles were properly sealed and signatures of the witnesses including P.W.3 were obtained on the paper slips affixed on those bottles. The seizure lists were prepared, cheque was seized, detection report (Ext.14) was prepared and a copy of the detection report was handed over to the respondent in which she put her signature. On completion of the entire detection formalities, the statement of P.W.8 was recorded before the Magistrate. P.W.10, the Inspector of Vigilance, Khurda Unit under Bhubaneswar Vigilance division took over the charge of investigation of the case from P.W.9 on 25.09.2010. During investigation of this case, he examined the P.W.3 at Khurda Vigilance Office and on 11.10.2010, the statements of P.W.3 and overbearing witness (P.W.8) were recorded by J.M.S.C., Bhubaneswar under section 164 Cr.P.C. and on the same day, the four glass bottles marked as Ext. R, L, W and D were sent to the Director, S.F.S.L., Rasulgarh, Bhubaneswar for chemical examination and opinion. Some more witnesses were examined by the I.O. On 16.12.2010, he made requisition to Medical Officer, Manikagoda P.H.C. for supply of the documents relating to J.S.Y. scheme and admission and discharge of the wife of P.W.3 and supply the cheque of Rs.1,400/- (rupees one thousand four hundred). The chemical examination report (Ext.17) from the S.F.S.L. was received by P.W.10 which indicated

phenolphthalein was detected in the sodium carbonate solution in the four glass bottles. P.W.10 held pre-sanction discussion with P.W.4, C.D.M.O., Khurda by producing the F.I.R. and other relevant documents. On 31.03.2011, P.W.10 received the sanction order (Ext.16) from P.W.4 for prosecution of the respondent and on completion of investigation, P.W.10 has submitted charge sheet against the respondent under section 13(2) read with section 13(1)(d) and section 7 of the P.C. Act.

Defence Plea:

The defence plea of the respondent was one of denial and it was pleaded that on 07.09.2010, the wife of P.W.3 could not produce the mother child health card (M.C.H.) and on 25.09.2010, P.W.3 along with his wife came to the hospital and received the cheque from the respondent after production of M.C.H. It is further pleaded that from 07.09.2010 till 25.09.2010, neither P.W.3 nor his wife had come to the hospital to receive the cheque and after issuance of cheque, when the respondent had been to the washroom, P.W.3 placed the tainted G.C. notes on her table and after she returned from the wash room, on seeing such money, while the respondent was carrying the same to P.W.1 to show him, at that point of time, she was apprehended with the money by the vigilance officials and a false case has been foisted against her.

Prosecution Witnesses, Exhibited Documents & Material

Objects:

During course of trial, in order to prove its case, the prosecution examined ten witnesses.

P.W.1 Dr. Nausad Alli Khan was posted as the Medical Officer of the hospital and he stated that the respondent assisted him in the delivery of the wife of P.W.3 on 07.09.2010. He further stated that the financial benefit to such pregnant woman of Rs.1,400/- (one thousand four hundred) in shape of cheque was prepared by the respondent under the J.S.Y. scheme.

P.W.2 Rabindra Kumar Panda was the Officer in-charge of Vigilance P.S., Bhubaneswar. On the written report of the P.W.3, the S.P., Vigilance, Bhubaneswar directed him to register the case and accordingly, he registered the case and P.W.9 was directed to take up the investigation of the case. He proved the F.I.R. vide Ext.11.

P.W.3 Mehboob Hussain Khan is the complainant of this case. He stated about the demand, acceptance and recovery of bribe money from the respondent.

P.W.4 Dr. Baidyanath Nayak was posted as the C.D.M.O., Khurda who accorded sanction for prosecution of the respondent as per the requisition of the S.P., Vigilance and proved the sanction order vide Ext.16.

P.W.5 Surendra Pradhan was the Scientific Officer of S.F.S.L., Bhubaneswar, who examined the exhibits of the case and proved the chemical examination report vide Ext.17.

P.W.6 Amulya Ratna Beero was working as a Constable attached to Vigilance Unit, Khurda. He handed over the plain paper F.I.R. to the S.P., Vigilance, Bhubaneswar on 24.09.2010. He further stated to have witnessed the demonstration regarding reaction of phenolphthalein powder in his office unit. He further stated that he smeared some phenolphthalein powder with four numbers of one hundred rupees currency notes and prepared another sodium carbonate solution with plain water and kept the solution in a bottle and sealed the same.

P.W.7 Mohit Kumar Das was working as Junior Clerk in the office of Principal, School of Horticulture, Khurda who accompanied the raiding party and a witness to the detection report (Ext.14).

P.W.8 Govinda Chandra Lenka was working as Asst. Horticulture Officer in the School of Horticulture, Khurda and he acted as an overhearing witness and he is also a witness to the detection report (Ext.14).

P.W.9 Biswanath Mishra was working as D.S.P., Vigilance, Khurda squad under Bhubaneswar Vigilance Division.

On 24.09.2010 he received one written report (Ext.11) from P.W.3. He further submitted that on the same day, he forwarded the report to the S.P., Vigilance, Bhubaneswar for registration of the case and as per the direction of S.P., he laid the trap. He stated about the preparation report, recovery of tainted notes from the left hand of the respondent and also about the preparation of detection report. He arrested the respondent, released on bail and handed over the charge of investigation to P.W.10.

P.W.10 Ashok Kumar Mohanty was the Inspector, Vigilance, Khurda Unit under Bhubaneswar Vigilance Division, who is the Investigating Officer of the case and on completion of investigation, he submitted charge sheet against the respondent.

The prosecution exhibited twenty-five documents. Ext.1 is the letter of P.W.1, Ext.2 is the J.S.Y. Card, Ext.3 is the true copy of appointment letter of the respondent, Ext.4 is the true copy of joining report of the respondent, Ext.5 is the attested copy of the extract of indoor register, Ext.6 is the attested copy of bed head ticket, Ext.7 is the attested copy of outdoor patient register, Ext.8 is the xerox copy of guideline of J.S.Y., Ext.9 is the xerox copy of another guideline, Ext.10 is the disbursement register of Manikagoda P.H.C., Ext.11 is the F.I.R., Ext.12 is the preparation report, Ext.13 is the seizure list, Ext.14

is the detection report, Ext.15 is the statement of the P.W.3 recorded under section 164 Cr.P.C., Ext.16 is the sanction order, Ext.17 is the chemical examination report, Ext.18, Ext.19, Ext.20 and Ext.21 are the seizure lists, Ext.22 is the zimanama, Ext.23 is the facsimile seal, Ext.24 is the spot map and Ext.25 is the 164 Cr.P.C. statement of P.W.8

The material objects i.e. glass bottles containing sodium carbonate solutions which have been marked as M.O.I to M.O.IV and the seized four numbers of one hundred rupees G.C. notes have been marked as M.O.V on behalf of the prosecution.

Defence Witness and Exhibited Documents:

The respondent examined one witness as D.W.1, namely, Bikram Nayak who was a sweeper attached to Manikagoda P.H.C. and stated that one Soudamini and the respondent were not pulling well relating to allotment of government quarters occupied by the respondent. He further stated that on 25.09.2010, P.W.3 and his wife came to the Manikagoda P.H.C. to take the cheque and at that time, the respondent was attending the meeting in the room of the P.W.1. Thereafter he disclosed before P.W.1 and respondent that the P.W.3 and his wife had come to receive the cheque. The respondent came and handed over the cheque to Laila Begum and then he himself returned to the hospital. He further stated

that again when he went to call the respondent, he found nobody in the Centre, however the mobile of the respondent was on the table and under the mobile, there was some cash and the respondent came out of the toilet. Thereafter, he informed the respondent to attend the meeting as required by the M.O. and she brought the phone and the cash in her left hand and came to the M.O. (P.W.1) and at that time, the Vigilance Officials reached her and trapped the respondent.

The defence exhibited four documents. Ext. A is the attendance register for the month of September 2010, Ext. B is the R.I.T. letter No.898 dated 13.08.2015 in respect of transfer of Soudamini Dei to Daleisahi C.H.C., Bankoi, Khurda, Ext. C is the certificate issued by H. & F.W. Department, Govt. of Orissa and Ext. D is the Certificate of appreciation issued by U.G.P.H.C., Biswanathpur, Kalahandi.

Findings of the trial Court:

The learned trial Court after analysing the oral as well as documentary evidence on record, has been pleased to hold that from the evidence of P.W.1, the Medical Officer of Manikagoda P.H.C., it revealed that the beneficiary could not take the cheque at the time of discharge from the hospital on 07.09.2010 i.e. on the date of delivery as she failed to produce the xerox copy of the mother child health card which was

required to be produced as per the guidelines of J.S.Y. scheme and P.W.1 has further stated that till 25.09.2010, the wife of the P.W.3 along with her child had not come to the hospital to collect the cheque by submitting the xerox copy of the mother child health card and the said fact is also admitted by P.W.3 in his cross-examination. It was further held that P.W.3 has not come to the Court in clean hand and he has suppressed the fact of not supplying the required documents which was the cause for not granting the cheque earlier and in such circumstances, the plea of the P.W.3 that the cheque was issued on fulfillment of demand of money cannot be accepted. The learned trial Court further held that if the wife of P.W.3 was harassed by the respondent for non-issuance of the cheque, then why she did not bring this fact to the notice of P.W.1, the Medical Officer which created suspicion regarding the case of the prosecution. It was further held that it was not understood as to at what time, the demand of illegal gratification was made by the respondent, more so, the evidence of P.W.1, the Medical Officer showed that the respondent was all along with him at the time of delivery and therefore, the pre-demand of bribe by the respondent to P.W.3 is also not substantiated and the deal of Rs.400/-(rupees four hundred) between the parties is not clear and it is hard to believe the same. It was further held that the evidence of P.W.7

throws doubt on the case of P.W.3 inasmuch as asking for money to buy sweets on the happy occasion of birth of a son cannot be treated as demand for illegal gratification and from the evidence of I.O. (P.W.10), it was found that he had not led his investigation to find out whether the allegation of the P.W.3 was true which created suspicion in respect of the allegation of the P.W.3. It was further held that there was no reason as to why the respondent was not trapped in the sub-centre itself and the vigilance officials waited for her to come to the doctor (P.W.1) which created doubt on the genuineness of the trap. The learned trial Court further held that the plea of the defence appeared to have force that finding the money on her table, when the respondent rushed to P.W.1, she was trapped by the vigilance officials. The trap became more suspicious when the evidence of P.W.7 come out to show that right hand wash with sodium carbonate solution did not turn to pink colour but her left hand wash with the said solution turned to pink, though there is evidence that the respondent had received money in her right hand and then transferred the same to her left hand. The learned trial Court further held that the plea of the defence that since the respondent had some ill-feeling with one of her colleagues Soudamini Mallick relating to the allotment of quarters who was close to Zulfikar Alli, at the instance of that

Zulfikar Alli, P.W.3 had foisted a false case cannot be ruled out. It was further held that the wife of P.W.3, the beneficiary under J.S.Y. scheme and the actual person to receive the monetary assistance was not examined by the I.O. (P.W.10) during investigation or by the prosecution during trial and no reason was advanced as to why she was kept away from the witness box and accordingly, the learned trial Court held that the prosecution has not proved its case beyond all reasonable doubt and acquitted the respondent of all the charges.

Contentions of parties:

Mr. Sangram Das, learned Standing Counsel for the Vigilance Department challenging the impugned judgment and order of acquittal of the respondent contended that the demand, acceptance and recovery of the tainted money have been proved by the prosecution by cogent evidence and number of witnesses have deposed regarding the same and the chemical examination report also substantiate that phenolphthalein was detected in the Sodium Carbonate solution contained in the glass bottles in which the hand washes of the respondent was taken. He further submitted that the learned trial Court should not have acquitted the appellant of all the charges. Learned counsel further argued that the defence plea is not acceptable and money was

recovered while it was held by the respondent in her left hand and therefore, the plea taken that while she had been to washroom, the notes were placed below her mobile phone which she detected and was carrying the same to P.W.1 when she was trapped, is not acceptable. Learned counsel further submitted that in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Neeraj Dutta -Vrs.- State (Government of NCT of Delhi) reported in (2023) 4 Supreme Court Cases 731**, the presumption of fact with regard to demand and acceptance or obtainment of an illegal gratification may be made by the Court by way of an inference when the foundational facts are proved on record. Thus, on the basis of the materials on record, the Court can raise a presumption of fact while considering whether the factum of demand has been proved by the prosecution or not. It was further held that in the absence of evidence of complainant either oral or documentary, it is permissible to draw an inferential deduction of culpability of a public servant under sections 7 and 13(1)(d) read with section 13(2) of the P.C. Act based on other evidence, including circumstantial evidence, adduced by the prosecution. It is argued that the reasonings given by the learned trial Court are perverse and faulty and therefore, the same should be set aside and the respondent be convicted under the offences charged.

Mr. S.C. Mekap, learned counsel for the respondent, on the other hand, submitted that the learned trial Court after assessing the evidence on record has assigned cogent reasons for acquitting the respondent of all the charges and it cannot be said that the reasons are perverse or there is any error of record in arriving at such findings. Learned counsel relied upon on the decisions of this Court in the case of **Satyananda Pani -Vrs.- State of Orissa (Vig.) reported in (2017) 68 Orissa Criminal Reports 795, State of Orissa -Vrs.- Dr. Biswanath Hota reported in (2011) 50 Orissa Criminal Reports 189** and **A. Subair -Vrs.- State of Kerala reported in (2009) 6 Supreme Court Cases 587** and argued that the evidence of the complainant should be corroborated in material particulars and mere receipt of the amount by the accused is not sufficient to fasten guilt, in absence of clinching evidence with regard to demand and acceptance of the amount as illegal gratification. Learned counsel further argued that there are evidence on record to show that since the date of delivery, neither the complainant (P.W.3) nor his wife had approached the respondent to receive the cheque. The wife of P.W.3 was supposed to receive the financial benefit of Rs.1,400/- (Rupees one thousand four hundred) for delivery of her child in the Government hospital under J.S.Y. scheme on producing mother child health

card which was done only on 25.09.2010 and immediately on receipt of the said card, the signature of the wife of P.W.3 was taken on the relevant register and the cheque of Rs.1,400/- (Rupees one thousand four hundred) was handed over to the her and thus there was no prior occasion for demanding money. Learned counsel further argued that the defence plea which was advanced by the respondent has also been proved by preponderance of probability and in support of the defence plea, one witness has been examined. Therefore, it is argued that in a case of this nature, it would not be proper in interfering with the impugned judgment and order of acquittal of the respondent of all the charges and therefore, the GCRLA should be dismissed.

Principles governing appeal against acquittal:

Law is well settled that an order of acquittal should not be disturbed in an appeal under section 378 of the Cr.P.C. unless it is perverse or unreasonable and there must be strong and compelling reasons in order to interfere with the same. The Appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. The law presumes double presumption in favour of

the accused after a due adjudication by the trial Court. The Appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. The presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. When two views are possible, the one taken by the trial Court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. An Appellate Court shall not expect the trial Court to act in a particular way depending upon the sensitivity of the case, rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity. The findings of fact recorded by a Court can be held to be perverse, if the findings have been arrived at by ignoring or excluding relevant materials or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

Analysis of evidence:

The evidence of P.W.1, the Medical Officer indicates that the beneficiary, who is the wife of P.W.3, could not get the cheque at the time of her discharge from the hospital on

07.09.2010 as she failed to produce the mother child health card which was required to be produced as per the guidelines of the J.S.Y. scheme. It is further revealed from his evidence that from the date of delivery of the child till 25.09.2010, neither the mother of the child nor P.W.3 had come to the hospital to collect the cheque by submitting the copy of the mother child health card. P.W.3 has also stated in his cross-examination that during the evening hours on 07.09.2010, he took his wife to one Ranjita Das, the head nurse and at the time of discharge, P.W.1, the respondent and one Asha-karmi were present and he has further stated that since his wife was taking care of the new born baby, he could not come outside to make the complaint before any authority. Therefore, the evidence of P.W.1 that the wife of the P.W.3 did not come to hospital until 25.09.2010 gets corroboration from the evidence of nonetheless than the P.W.3 himself. The essential document i.e., the mother child health card was not produced to get the benefits under J.S.Y. and it was produced only on 25.09.2010 and the same has been marked as Ext.2 which revealed that on 25.09.2010, the wife of P.W.3 had received the cheque of Rs.1,400/- (Rupees one thousand four hundred) under the J.S.Y. scheme vide cheque no.571510. It further revealed from the evidence of the Medical Officer (P.W.1) that the respondent was all along with him at the time of

delivery and thereafter she was also present when the wife of P.W.3 was discharged from the hospital. The evidence of P.W.1 is completely silent about any demand raised by the respondent on 07.09.2010. Therefore, the learned trial Court is quite justified in holding that the pre-demand of bribe by the respondent to P.W.3 has not been proved.

An official witness has been examined on behalf of the prosecution as P.W.7 who stated that the P.W.3 disclosed during preparation that the respondent demanded Rs.550/- (rupees five hundred fifty) for sweets to issue the cheque of Rs.1,400/- (rupees one thousand four hundred) under J.S.Y. scheme. Learned trial Court has been pleased to observe that the evidence of P.W.7 throws doubt on the case of P.W.3, because asking money for sweets on the happy occasion of birth of a son cannot be treated as demand for illegal gratification.

Mr. Das, learned Standing Counsel for the Vigilance Department submitted that though P.W.7 has stated that right hand wash of the respondent did not change its colour but the evidence of P.Ws.8 & 9 is otherwise. They have stated that when the both the hand washes were taken in sodium carbonate solution, it turned pink and the chemical examination report also indicates that the glass bottles in which hand washes in Sodium

Carbonate solution were preserved, on chemical analysis found to have contained phenolphthalein.

I find that though P.W.9 stated that brass seal was used for sealing the exhibits which was left in zima of Mohit Das (P.W.7) to produce the same as and when required, but P.W.8 has stated that vigilance people put seals on the sample bottles with the brass seal which they had taken and they kept the brass seal with them. Evidence of P.W.7 is totally silent about keeping any brass seal in zima. Admittedly, no brass seal was produced in Court at any point of time. Therefore, keeping the hand washes of the respondent under proper seal in safe custody prior to its production before the Director, SFSL, Rasulgarh, Bhubaneswar which was made on 11.10.2010 i.e. about two weeks after the trap is a doubtful feature.

Analysis of defence plea:

सत्यमेव जयते

D.W.1 has stated that on 25.09.2010 at about 11.30 a.m., the complainant (P.W.3) along with his wife had come to receive the cheque and with the permission of P.W.1, the cheque was handed over by the respondent to the wife of P.W.3. When P.W.1 had sent him to call the respondent, he found that nobody was there in the sub-centre and the mobile of the respondent was on the table and under the mobile, there was some cash and

at that time, the respondent came out of the toilet. Thereafter the respondent brought her phone and cash in her left hand and was coming to P.W.1 and at that time, the vigilance officials reached near her, disclosed their identity and she was nabbed by them. Therefore, the defence plea gets corroboration from the evidence of D.W.1.

While judging the veracity of witnesses, there cannot be any different yardstick for judging the prosecution witnesses or defence witnesses and the defence witnesses are to be given equal treatment as the prosecution witnesses. The defence was not supposed to establish his defence plea by proving it beyond all reasonable doubts like the prosecution rather it is required to prove its plea by preponderance of probabilities. The prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving its case beyond all reasonable doubt. The prosecution has a bounden duty to lead an impenetrable chain of evidence suggesting the guilt of the accused and it must stand on its own leg without borrowing credence from falsity of defence evidence. A false plea set up by the defence can at best be considered as an additional circumstance against the accused

provided that the other evidence on record unfailingly point towards his guilt.

The Hon'ble Supreme Court in the case of **Rabindra Kumar Dey -Vrs.- State of Orissa reported in (1976) 4 Supreme Court Cases 233** while enunciating the duty of the prosecution has held as follows:

"While the Courts below have enunciated the law correctly, they seem to have applied it wrongly by overlooking the mode and nature of proof that is required of the appellant. A perusal of the oral and documentary evidence led by the parties goes to show that the Courts not only sought the strictest possible proof from the appellant regarding the explanation given by him, but went to the extent of misplacing the onus on the accused to prove even the prosecution case by rejecting the admissions made by the prosecution witnesses and by not relying on the documents which were in power and possession of the prosecution itself on the speculative assumption that they were brought into existence by the accused through the aid of the officers. Furthermore, the Courts below have failed to consider that once the appellant gives a reasonable and probable explanation, it is for the prosecution to prove affirmatively that the explanation is absolutely false. In a criminal trial, it is not at all obligatory on the accused to

produce evidence in support of his defence and for the purpose of proving his version he can rely on the admissions made by the prosecution witnesses or on the documents filed by the prosecution. In these circumstances, the Court has to probe and consider the materials relied upon by the defence instead of raising an adverse inference against the accused, for not producing evidence in support of his defence, because as we have already stated that the prosecution cannot derive any strength or support from the weakness of the defence case. The prosecution has to stand on its own legs, and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down. Thus it would appear to us that both the Courts below have made an absolutely wrong approach in deciding the truth of the defence version and have not followed principles laid down by this Court in judging the case of the accused."

Conclusion:

The seizure of the J.S.Y. card of Laila Begum, the wife of P.W.3 vide Ext.2 and its attested copy vide seizure list Ext.21 and the disbursement register substantiate that the document which was required for disbursement of the amount under J.S.Y. scheme was only produced on 25.09.2010 and

accordingly, the cheque of Rs.1,400/- (rupees one thousand four hundred) was issued in favour of Laila Begum on that very day. The cheque number and signature of Laila Begum with the date 25.09.2010 appearing on the relevant document substantiate the same. Therefore, when the demand aspect is a doubtful feature and the reason which has been assigned by the defence for non-payment of the cheque in question to the wife of P.W.3 is also getting corroboration from the evidence of the prosecution witnesses and the learned trial Court has vividly assigned the reasons for acquitting the respondent of the charges under section 13(2) read with section 13(1)(d) and section 7 of the P.C. Act, it cannot be said that the reasons are fallacious or based on no evidence on record or any perversity is there in the approach of the learned trial Court in arriving at such findings.

In view of the foregoing discussions, I am of the considered opinion that it cannot be said that the conclusion arrived at by the learned trial Court is not possible or it is unreasonable. There is no perversity or illegality in the impugned judgment. The learned trial Judge has not ignored any material evidence on record and after assessing it carefully, he has reached at the conclusion and has given benefit of doubt to the

respondent. Therefore, it is not a fit case where the impugned judgment and order of acquittal is to be interfered with.

Accordingly, the GCRLA being devoid of merits stands dismissed.

The trial Court records with a copy of this judgment be sent down to the concerned Court forthwith for information.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 17th August 2023/Sipun

