State Of U.P vs Dr.G.K. Ghosh on 21 September, 1983

Equivalent citations: 1984 AIR 1453, 1983 SCR (3) 993, AIR 1984 SUPREME COURT 1453, 1984 (1) SCC 254, 1983 ALL. L. J. 1170, (1985) 1 BOM CR 201, (1985) CHANDCRIC 8, (1985) IJR 9 (SC), 1984 FAJ 484, (1985) 1 EFR 1, (1985) 1 APLJ 9.1, 1984 (2) FAC 265, 1983 CRILR(SC MAH GUJ) 490, (1985) CURLR 32, 1985 SCC(CRI) 2, 1984 SCC (CRI) 46, 1985 SC CRI R 22, (1985) 1 SCR 1053 (SC), (1984) SC CR R 324, (1985) 1 RECCRIR 146, (1984) 1 RECCRIR 22, (1984) 1 CRILC 290, (1983) ALLCRIC 377, (1983) 2 CRIMES 856, (1985) EASTCRIC 79, 1984 (4) SCC 540, (1985) 1 CRILC 168, (1985) 1 SCWR 1, (1984) ALLCRIC 34, (1985) 1 ALLCRILR 494, 1984 BOM LR 86 594

Author: M.P. Thakkar

Bench: M.P. Thakkar, Syed Murtaza Fazalali, A. Varadarajan

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
DR.G.K. GHOSH

DATE OF JUDGMENT21/09/1983

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1984 AIR 1453 1983 SCR (3) 993
1984 SCC (1) 254 1983 SCALE (2)407

ACT:
Evidence-Re-appreciation of evidence by the Supreme Court in an appeal by Special Leave-Article 136 of the Constitution read with Order XXI.
Witnesses-Evidence of the complainant Probative value of.
Prevention of Corruption Act, 1947 -Police officer leading the raiding party-Not an interested witness.

HEADNOTE:

Respondent was an orthopaedic surgeon in the U.H.M. Hospital and was incharge of the Orthopaedic Department. He was allotted an official residence within the campus of the hospital and as per the prevailing rules he was permitted consultation practice at his residence, He was found guilty of demanding and accepting illegal gratification from the father of a patient under his treatment at the hospital and was convicted for an offence under section 5(1) (d) of the Prevention of Corruption Act, 1947 and for an offence under section 161 of the Penal Code by the Special Judge, Kanpur. Consequently he was sentenced to undergo to two years' rigorous imprisonment and to pay a fine of Rs.5,000 (in default to undergo 4 months' R.I.) The appeal preferred by the convict was allowed and the order of conviction and sentence was set aside by the High Court. Hence the appeal by State, by special leave.

Allowing the appeal, restoring the finding of guilt, and order of conviction, but modifying the sentence, the Court,

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HELD: (1) Only in exceptional cases and in the peculiar facts and circumstances of a case, the Supreme Court would be obliged, as in the instant case, to undertake upon itself the function of appreciation of evidence, which function properly falls within the sphere of the High Court in its capacity as the appellate Court. Here, the High Court resorted to surmises and conjectures for which there was not the slightest basis. The High Court failed to undertake the exercise of scrutinising, and making assessment of the evidence and failed to record a finding of fact in after considering the question of reliability and credibility of the witnesses and weighing the probabilities in the context of the circumstantial evidence. [996 B-E]

2:1. By and large a citizen is somewhat reluctant, rather than anxious, to complain to the vigilance Department and to have a trap arranged even if

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illegal gratification is demanded by a Government servant. There are numerous reasons for the reluctance. In the first place, he has to make a number of visits to the office of Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities. He has to accompany the officers and participants of the raiding party. All the while he has to remain away from his job, work, or avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of the trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen

who has been harassed by a Government Officer, has to face the humiliation of being considered as a person who tried to falsely implicate a Government servant, not to speak of facing the wrath of the Government servants of the department concerned in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. [1001 E-H; 1002 A B]

2:3. Of course, it cannot be gain said that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-bye to the rules, the official refuses to yield. [1002 B-C]

3:1. The evidence of a police officer cannot be brushed aside as that of an interested witness. That he has an interest is true only to an extent-a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government Officer making a demand for illegal gratification, is protected and the role of his department in the protection of such citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government Servant, would resort to perjury and concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the length of concocting a false seizure memo for prosecuting and humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience. The court may therefore, depending on the circumstances of a case, feels safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case. The present appears to be a case of that nature.[1002 D-H]

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3:2. In the instant case, taking an overall view of the evidence of PW 1, PW 2, PW 3 and the circumstantial

evidence, it is not possible to believe that the raid proved abortive and yet everyone conspired together in order to falsely rope in the respondent. [1009 F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 609 of 1981.

Appeal by Special leave from the judgment and Order dated the 22nd July, 1983 of the Allahabad High Court in Criminal Appeal No. 1237 of 1979.

O.P. Malhotra and D. Bhandari for the Appellant. V. M. Tarkunde, U.R. Lalit, Dr. B.S. Chauhan and B.B. Singh, for the Respondent.

The Judgment of the Court was delivered by THAKKAR, J. A doctor in a Government Hospital was found guilty of demanding and accepting illegal gratification from the father of a patient under his treatment at the Hospital and was convicted for an offence under Section 5 (1) (d) of Prevention of Corruption Act, 1947, and for an offence under Section 161 of Indian Penal Code by the Special Judge, Kanpur. The appeal preferred by the convict, Dr. Ghosh was allowed, and the order of conviction and sentence was set aside by the High Court. The State has called into question the said order of acquittal rendered by the High Court in this appeal by special leave.

The High Court allowed the appeal on forming the opinion that Dr. Ghosh (the respondent herein) might have demanded and accepted the amount as and by way of his professional fees inasmuch as a Government doctor was permitted to have private practice of his own as per the relevant rules, though such was not his defence at any stage.

Having regard to the facts and circumstances of the case, even the learned counsel for the respondent is unable to support the reasoning which found favour with the High Court. The respondent accused had not offered any such explanation in his statement recorded under Section 313 of the Code of Criminal Procedure. In fact the defence of the respondent before the Sessions Court was that he had never accepted any such amount from PW 3 Babu Lal. It was his case that the story regarding passing of the currency notes was concocted and that he had not accepted any currency notes from PW 3, as alleged by the prosecution. According to him he had been 'framed'. What is more, it is obvious that if the respondent had accepted monetary consideration in respect of a patient being treated at the Government hospital, it could scarcely have been contended that it was a part of permissible private practice and not illegal gratification. The High Court resorted to surmises and conjectures for which there was not the slightest basis, apart from the fact that no such defence was taken and no such plea was ever advanced by the respondent accused. Under the circumstances the decision of the High Court cannot be sustained on the basis of the reasoning which found favour with it. The finding of guilt, recorded by the Sessions Court, will therefore have to be examined afresh on merits, since the High Court has altogether failed to undertake the exercise of scrutinizing and making assessment of the evidence. If only the High Court had performed this

function, as usual, and had recorded its finding in regard to the question of reliability and credibility of witnesses, and, after weighing the probabilities, and taking into account the circumstantial evidence, had recorded a finding of fact, as it was expected to do, we would not have been obliged to undertake this function which properly falls within the sphere of the High Court in its capacity as the appellate court. As it is, in the peculiar facts and circumstances of the case, we have no option put to do so here.

The prosecution case broadly stated is as under:

> Respondent was an Orthopaedic Surgeon in the UHM Hospital at Kanpur. He was incharge of the Orthopaedic Department In his capacity as a Government Medical Officer he was allotted an official residence within the campus of the Hospital. As per the then prevailing rules he was permitted consultation practice at his residence in the evening. One Kumari Ramsri, 13 years old daughter of PW 3, Babu Lal, a worker employed in a parachute factory as a packer, was suffering from bone T. B. and was admitted to the UMH Hospital on 18th February 1976. She was referred to the Orthopaedic section on 19th February 1976. She was placed under the treatment of respondent Dr. Ghosh. After about six or seven days respondent asked PW 3 to remove the patient from the hospital saying that she was cured. PW 3 objected saying that the condition of his child had not improved. The respondent asked PW 3 to see him at his residence in the evening. It appears that at the hospital Babu Lal learnt that he would have to pay some money to the respondent, Dr. Ghosh, if he wanted his child to be treated properly. PW 3 therefore paid Rs. 20 to the respondent when he called on him at his residence in the evening as suggested earlier. Thereupon the respondent told PW 3 that his child would be permitted to remain in the hospital for treatment. Even so some seven or eight days later respondent asked PW-3 to remove the child from the hospital. It appears that PW 3 gathered the impression that he would have to pay money to the respondent for obtaining proper treatment at the hospital. PW 3 in this background made a request to the respondent to issue a certificate so that he could get a loan or advance for the medical expenses. The respondent told PW 3 that he would have to pay a sum of Rs. 250 to obtain a certificate to enable him to obtain a loan of Rs. 500. PW 3 refused to accede to the demand. Thereupon the respondent told him to remove the patient from the hospital. In view of what transpired, PW 3 met the respondent on March 13, 1976, and requested him to issue a certificate to enable him to obtain a loan from the factory. The respondent again told him that he would not issue a certificate unless his demand for Rs. 250 was met. PW 3 made entreaties to the respondent but the respondent did not relent. He told him to remove the patient from the hospital. Thereupon PW 3 promised to the respondent that he would make some payment immediately and that the remaining amount would be paid shortly thereafter. PW 3 went back to bring the money. It appears that he felt exasperated and conceived the idea of trapping the respondent at this juncture. He had five currency notes of the denomination of Rs. 10 with him. He noted down the numbers of these notes and carried the sum with him when he again approached the respondent. The respondent

accepted the five currency notes but refused to issue a certificate unless the remaining amount of Rs. 200 was paid to him, though PW 3 promised to pay the remaining amount within three or four days. PW 3 was thereupon very much annoyed by the attitude of the respondent and he decided to approach the Vigilance Department. He approached the Vigilance Officer and lodged complaint exhibit KA-8 on March 31, 1976. It appears that he had borrowed Rs. 200 with a view to provide the currency notes for laying a trap. He had carried 20 ten-rupee notes with him. In the complaint lodged by him, Exhibit KA-8, he specified the numbers of the 5 ten-rupee notes which he had already given to the respondent on the earlier occasion, the numbers of which he had noted down previously. He also specified the numbers of the 20 ten-rupee notes provided by him at the time of lodging the complaint. The Superintendent of the Vigilance Department, Shri I.P. Bhatnagar, called his Deputy, Dy.S. P. Pandey, and asked him to do the needful in the matter. Dy. S. P. Pandey asked PW 3 to meet him on April 2, 1976 at 5-30 p. m. in Kaushik Park. Meanwhile, Superintendent Bhatnagar contacted the Director of Vigilance Department and moved the competent authority for the requisite permission. The Commissioner-Cum-Secretary of the Vigilance Department, Shri Khodaji, granted written permission to lay a trap against respondent Dr. Ghosh. On receiving the sanction Superintendent Bhatnagar directed Dy. S. P. Pandey to proceed to lay the trap. It is the prosecution case that thereafter PW 3 contacted Dy. S. P. Pandey at Kaushik Park on April 2, 1976 at 5-30 p.m. Two witnesses were called. The currency notes were handed over to PW 1, Inspector Bahadur Singh. Initials were made on the 20 G. C. notes, the notes were treated with Phenophthalin powder and the plan of the trap was explained to PW 3, the public witnesses, and to the members who were to accompany the party.

As per the plan, initially, Sham Lall and Thakur Parshad were sent to the consultation room of the respondent on the second floor of his residence. What transpired need not be stated as he has not been examined as a witness. After Sham Lal returned. PW 3, along with PW 2 Constable Bachu Lal, entered the Consultation room. PW 2 was in plain clothes and had posed as the elder brother of PW 3. When both of them entered the Consultation room respondent enquired from PW 3 whether he had brought the money. PW 3 replied in the affirmative. PW 3 then handed over the 20 ten-rupee notes which had been treated with powder and the numbers of which had been noted down in the complaint against the respondent. The respondent took these notes in his hands and placed the same in the left front pocket of his bush-shirt. Thereafter the respondent took the form on which he was to issue the certificate from P.W. 3 and started filling in the details. The form was a typed one and there were blank spaces which were required to be filled in. The typed portion appeared as under:

Certified that Shri/Km._____D/o Shri _____ _____ of ORDANCE PARACHUTE FACTORY, Kanpur has been admitted in the Hospital for the treatment of_____. He will stay in Hospital for _____ days. The anticipated expenditure likely to incur is Rs. _____ . Shri_____ is recommended

to draw Medical Advance of Rs._____
_____from_____from his employer.

Station Kanpur Medical Officer
Date: Kanpur

The respondent filled in the name of the patient in the first line and mentioned her age (Ramsri, 13) in his own hand by pen. He also mentioned the name of PW-3 (Babu Lal) in the relevant column in the second line. In the fourth line in the blank space he mentioned the name of the disease (T.B. Left Hip). He also mentioned the date of admission in his own hand (18-2-76). Having filled in these blanks he was about to fill up the blank in the fifth line for mentioning the number of days for which the patient was retained in the hospital and to mention the estimated amount of expenditure and to fill up the details in the remaining columns. At this juncture, it is the prosecution case, the members of the raiding party carried out the raid in the wake of a signal given by PW-2 Bachu Lal as per the instructions given at the time of arranging the plan. Since the respondent was interrupted when he was filling up the blanks, he could not complete the form and make his signature. The half-filled certificate form, Ex. KA-5, was seized in the presence of the public witnesses. The respondent was asked if he had accepted money from PW 3. The respondent hereupon took out the 20 ten rupee notes from his pocket and handed over the same to Dy. S. P. Pandey. The numbers of the currency notes were tallied with the numbers mentioned in complaint, Ex. KA-3, and incorporated in Farad Ex. KA-1. The currency notes were placed in an envelope which was sealed. The hand of the respondent was washed in a cup of solution of Sodium Carbonate in the presence of the witnesses. The solution turned red. The parse of the respondent was searched. The bushshirt put on by the respondent, Ex. KA-22, was also seized and a part of the bush-shirt was washed in a solution which thereupon turned red. Thereafter Dy. S. P. Pandey made enquiry about the 5 ten-rupee notes given by PW 3 on the earlier occasion and carried out the search of the living room of the bungalow which was on the first floor. It is the prosecution case that the respondent provided the key of the almirah which was in the living room and the almirah was opened with that key. Two ten-rupees notes were found from that almirah. The numbers of these notes were tallied with two of the five numbers specified in Complaint KA-8. These notes were also seized and were placed in an envelope which was sealed. Meanwhile, the respondent had fainted. The copy of the Farad prepared at the time of raid was therefore handed over to his wife after obtaining her signature on the Farad in token of the receipt of the copy thereof. Thereafter the investigation was taken over by PW-6 Dy. S. P. Tripathi of the Vigilance Establishment, who interrogated the witnesses concerned and recorded the statements in the course of the investigation. The sanction for prosecuting respondent Dr. Ghosh was obtained from the Government of U.P. and the charge-sheet against the accused was submitted in due course. At the trial Dr. S. P. Pandey could not be examined because he was not alive at the relevant point of time (he was killed in the course of an encounter with dacoits before the trial commenced). Out of the two public witnesses, one, PW-5 Ram Singh, has been

examined. The other public witnesses Thakur Prasad has not been examined as his evidence would have been of a repetitive nature. Sham Lal was not examined on the ground that he had been won over by the defence. Apart from complainant, PW-3 Babulal, three of the members of the raiding party viz. PW-1 Bahadur Singh, Inspector Vigilance Department, and PW-2 constable Bachu Lal who had posed as the brother of PW-3 and had accompanied him when he entered the consultation room, were examined at the trial. The defence examined five witnesses. Though the respondent did not himself enter into the witnesses box to give evidence on oath, he was interrogated u/s. 313 of Cr. P.C. He made his oral statement in the court and also submitted a written statement in order to explain the circumstances appearing against him.

The learned Special Judge excluded from consideration the evidence of PW-5 Ram Singh in view of the criticism levelled by the defence in regard to his selection. The learned judge however considered the evidence of PW-3 complainant Babulal as reliable. He also relied upon the evidence of PW-1 Inspector Bahadur Singh and PW-2 Constable Bachulal. Taking into account the totality of the evidence including the direct evidence and the circumstantial evidence (which inter alia consisted of the seizure of the incomplete form, KA-5, from the consultation room of the respondent at the time of the raid) and the explanation offered by the respondent in regard to various circumstances appearing against him, the learned Special Judge reached the conclusion that the prosecution had established beyond reasonable doubt that the respondent had demanded and accepted illegal gratification. The learned Special Judge thereupon convicted the respondent for the offence under Section 161 IPC as also for the offence under Section 5(1) (d) of the Prevention of Corruption Act. He imposed a substantive sentence of Rigorous Imprisonment for two years and imposed a fine of Rs. 5,000 (in default to undergo R.I. for four months). The appeal preferred by the respondent was allowed in the circumstances mentioned earlier in the course of the judgment. For the reasons indicated earlier, the judgment rendered by the High Court is of no assistance and we will have to reach our own conclusion as to whether the learned Special Judge was justified in recording the finning of guilt and convicting the respondent in the aforesaid manner.

The learned Special Judge was perfectly justified in making the cautious approach adopted by him in excluding from consideration the evidence of the public witness, PW-5, Ram Singh. We will have also to do likewise and exclude his evidence from consideration to be on the safe side. We will have to examine whether the learned Special Judge was justified in recording the finding of guilt on the basis of the rest of the evidence, and the circumstances appearing against the respondent, taken along with the explanation offered by him.

By and large a citizen is somewhat reluctant, rather than anxious, to complain to the Vigilance Department and to have a trap arranged even if illegal gratification is demanded by a Government servant. There are numerous reasons for the reluctance.

In the first place, he has to make a number of visits to the office of Vigilance Department and to wait on a number of officers. He has to provide his own currency notes for arranging a trap. He has to comply with several formalities and sign several statements. He has to accompany the officers and participants of the raiding party and play the main role. All the while he has to remain away from his job, work, or avocation. He has to sacrifice his time and effort whilst doing so. Thereafter, he has to attend the court at the time of the trial from day to day. He has to withstand the searching cross-examination by the defence counsel as if he himself is guilty of some fault. In the result, a citizen who has been harassed by a Government officer, has to face all these hazards. And if the explanation offered by the accused is accepted by the court, he has to face the humiliation of being considered as a person who tried to falsely implicate a Government servant, not to speak of facing the wrath of the Government servants of the department concerned, in his future dealings with the department. No one would therefore be too keen or too anxious to face such an ordeal. Ordinarily, it is only when a citizen feels oppressed by a feeling of being wronged and finds the situation to be beyond endurance, that he adopts the course of approaching the Vigilance Department for laying a trap. His evidence cannot therefore be easily or lightly brushed aside. Of course, it cannot be gainsaid that it does not mean that the court should be oblivious of the need for caution and circumspection bearing in mind that one can conceive of cases where an honest or strict Government official may be falsely implicated by a vindictive person to whose demand, for showing favours, or for according a special treatment by giving a go-bye to the rules, the official refuses to yield.

It is now time to deal with the criticism urged as a matter of course in the context of the police officer leading the raiding party-namely that he is an interested witness. This is true, but only to an extent a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected and the role of his department in the protection of such citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government servant, would resort to perjury and concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to except the police officer to go to the length of concocting a false seizure memo for prosecuting and humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience. The court may therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the

prosecution case. The present appears to be a case of that nature. If the circumstantial evidence is of such a nature that it affords adequate corroboration to the prosecution case, as held by the learned Special Judge, the appeal must succeed. If on the other hand the circumstantial evidence is considered to be inadequate to buttress the oral testimony, the appeal necessarily must fail.

Two facts have emerged from the evidence. First, that when the fingers of the accused were dipped in the solution, the liquid turned red, evidencing the presence of phenolpththalein in powder on the fingers of the accused. The second feature of the prosecution case is the seizure of an incomplete form of medical certificate which was half filled in the handwriting of the accused himself. It is not disputed that this document was seized by the Investigating Officer. It is not disputed that the certificate is half filled. A part of it is admittedly filled in the handwriting of the accused himself. It is not disputed that when the blanks in the form were being filled the accused abruptly stopped and did not complete the remaining part of the form. Now, the prosecution version is that illegal gratification was demanded by the accused from the complainant (PW-3, Babulal) for issuing this medical certificate. It is also the prosecution case that when the agreed amount of Rs. 200 was paid to the accused he accepted the currency notes and put the same in the pocket of his bush-coat. Thereafter, he started filling the form of medical certificate which was to be issued as and by way of consideration for the illegal gratification paid to him. When he was in the process of preparing this certificate, at the point of time when he had filled it partly, the raiding party arrived upon the pre- agreed signal being given. In other words the prosecution case is that it was in these circumstances that a form of medical certificate which was partly filled in by the accused and which was partly incomplete was found on the table of the accused and was seized from his private consultation room. It must be realised that even the most crafty police officer who conspired with the complainant to lay a false case in order to rope in an innocent doctor would not be in a position to obtain a half complete medical certificate partly filled in the handwriting of the accused himself. If the prosecution version is believed, the seizure of the incomplete medical certificate partly filled in by the accused himself leaves no room for doubt that the accusation is true. It is rarely that such a piece of evidence would be available to the prosecution. The fact that the form has been partly filled by the accused himself is admitted in the statement made by him under Section 313 of the Code of Criminal Procedure. It is an undisputed fact that the medical certificate was being prepared at the request of the complainant by the accused in his own handwriting and that he abruptly stopped midway and left the from half-filled and incomplete. The prosecution version pertaining to the circumstances in which this situation arose has already been adverted to. The defence version as to (1) the circumstances in which he started preparing the medical certificate in his own writing and stopped abruptly and (2) the circumstances in which the said half completed certificate happened to fall into the hands of the Investigating Officer, must now be scrutinized with a view to find out whether the version passes the test of probabilities unscathed. And with a view to find out whether the explanation offered

by the defence, in order to move away the finger of guilt pointed at him by this incriminating circumstance, is good enough. If the outcome is in favour of the defence, the order of acquittal can be sustained. Not otherwise. This is therefore, one of the crucial circumstances on which, in a way, the entire case turns.

Let us now therefore have a close look at the explanation offered by the accused, which may be quoted verbatim for the sake of preciseness:-

"Once after finishing my round I was returning back. At that time Babulal came to me and told that in the present days of emergency he was not given leave. He requested me to write only this much in the form that his daughter Ram Shri is under my treatment so that he could have leave for attending his daughter. I replied that I will come back after performing an operation. You place the form on table and am also calling for Bed Head Ticket. Having returned from operation theatre I started filling the form and found that the form is incorrect. At that time Babu Lal was not present there. I stopped writing the form and kept the same on the table itself. I can't say as to how that from reached to the hands of Shri R.N. Pandey. This from is Ex. Ka. 5. Shri R.N. Pandey used to come to Shri B.M. Pandey."

The explanation offered by the respondent does not carry conviction and appears to be highly improbable. The respondent could not have been unaware of the form in which the certificate was to be issued. The from presented to him was a typed form (it has been reproduced in extenso in the earlier part of the judgment) containing about eight lines with blank spaces which were required to be filled up. He would have immediately realised at a bare glance that it was not the proper form before starting to fill up the form. In any event if he had realised that the form was not a proper form after filling up four gaps, he would have at least conveyed to PW-3 that he could not issue the certificate in that form. It is not even his case that he did so. Besides, there was no point or purpose in keeping the half filled form on his table. Why should he have preserved it at all ? It is inconceivable why he should preserve that half filled form and keep it in his office room on the hospital premises so that it can somehow make its way in the hands of the police. It is also difficult to understand how anyone should know about the existence of this form, steal it, and pass it on to PW-3 or to the police officers so that it could be readily used in order to weave it in the story pertaining to what transpired at the time of the raid. The respondent himself is unable to explain how the half filled form which was lying in his office room in the hospital made its way into the hands of the police officers. Again, it will have to be assumed that the police officers from the very beginning knew that the respondent would not accept the currency notes from the complainant and they would have to 'frame' him by preparing a Farad in which false recitals regarding seizure of the form were to be incorporated. One does hot come across such co-incidences in the ordinary course of life. On probabilities it is well-nigh impossible to believe that so many co-incidences could have occurred namely, (1) the respondent could not realise that the form was not a correct form till he had filled up the particulars relating to the name of the patient, the date of the admission of the patient (which would have to be ascertained from the record), and the ailment from which the patient was suffering. (2) It is also difficult to visualize that at that point of time on realizing the mistake, instead of tearing 'off' the form, he would preserve the half completed form, and would go

away from the office keeping it on the top of the table, so that some one could conveniently take it away. (3) That such a form should conveniently fall into the hands of somebody inimical to him who could do quick thinking, conceive a design to trap him, and preserve it for future use to implicate him and (4) that such a person would know PW-3 and the police officers and pass it on to them to use it to 'frame' the respondent. Nobody could have known that such a form would be lying on his table. Even if any member of the staff had found it on the table he would not have realised that it could be utilised for trapping the respondent through PW-

3. It is too much to believe that someone interested in framing the respondent had an easy access to his office room, could enter his office room in the absence of the respondent, and take away such a paper lying on his table. And that such a person would contact PW-3, Babulal, and the police officers, and plant in their mind the idea that this document could be availed of for framing the accused. It does not happen in real life. On the other hand the prosecution version is very natural and probable. The story regarding the demand for Rs. 200 was mentioned in Complaint Ka-14 which was forwarded by the Vigilance Commissioner to the Government for obtaining sanction. The evidence of PW-3, Babulal, and the evidence of PW-2, Police Constable Bachu Lal, who accompanied him goes to show that as soon as the currency notes were handed over by PW 3 to the respondent he started filling up the form. It was at that point of time that the signal was given and the raid materialized. The respondent was caught red handed while actually engaged in filling up the form, now that his demand was met. The form was seized under a Farad and a copy of this Farad was handed over immediately to the wife of the respondent after obtaining her signature on the original Farad in token of having received the copy. This would go to show that there was no room or scope for any manipulation after the police officer left the consultation room of the respondent after the raid. It was but natural for the respondent to start filling up the form as soon as the amount demanded by him was paid. The fact that he had to stop in the midst when he was engaged in completing the form provides a very strong corroboration to the version of PW 2 and PW 3. And when this evidence is weighed in the light of the explanation offered by the respondent, which fails to carry conviction and sounds extremely improbable, the circumstantial evidence provided thereby assumes very great importance. The learned Special Judge was therefore perfectly justified in attaching great importance to this piece of circumstantial evidence. As discussed earlier, it is very difficult to believe that PW 3, a poor mill worker, would go to the length of framing a Medical Officer of the Hospital where his child was taking treatment. On probabilities it is not possible to believe that he would go to the length of securing currency notes to the tune of Rs. 200 to provide the same to the police officers for arranging the trap, and to expose himself to the hazards of becoming a witness in a criminal trial, just in order to rope in the respondent against whom there was no personal enmity. On the other hand it is understandable if he was exasperated when he felt that his child was being denied proper medical treatment by the doctor who insisted on illegal gratification under one pretext or another. And on account of the strong feeling of injustice it was understandable if he lodged a complaint with the Vigilance Department out of exasperation. The respondent has no other explanation to except and save to the effect that PW 3 must have done it at the instance of one of his ambitious colleagues who was junior to him. This is what the respondent says in his statement in this connection:-

"Baboo Lal had gone wrongly under this impression that his daughter had not been benefited by the treatment.

When she was brought in the hospital her condition was most precarious and was unable to speak. She even was not in a position to tell her grief. The treatment recovered her to this extent that she regained her senses and was able to talk and cry about her pain and grief.

Having regained sensibility she started feeling pain and she used to cry. Baboo Lal hardly used to meet me. I could see him in the hospital only once. Whenever I went to check this patient at the time of round Baboo Lal never was there. He never gave me this opportunity to convey him that how much the patient has been benefited and recovered by the treatment. Baboo Lal used to come at evening and used to return back after meeting with doctors. Dr. B. M. Pandey who was my immediate junior used to sit in my office in my absence because we both had a common office. Dr. S. P. Bhatnagar Pathologist had checked Kumari Ramsri and his report is present in the file. Dr. B. M. Pandey and Dr. S. P. Bhatnagar were close friends. S. P. Bhatnagar of Vigilance department is related to I. P. Bhatnagar. Dr. B. M. Pandey and R. D. Pandey Director Vigilance are both residents of Distt. Basti and are collaterals in family.

Once Dr. B. M. Pandey had attempted to dislodge me from U. H. M. Hospital and suddenly I got a transfer order. All the ministers, M. L. As and Dy. Ministers who were Pandeys were in the back of Shri B. M. Pandey. My transfer was stayed by the Court. Meanwhile, Dr. B. M. Pandey was posted in my department.

Dr. B. M. Pandey was posted on run way duty. He was (Sic) not (Sic) of beds, but he had raised a dispute regarding allotment of beds. Thereafter Dr. R. Shingal told me that he had been pressurised too much and he allotted ten beds of the Verandh to Dr. B. M. Pandey. But B. M. Pandey was not allotted any bed in the family ward. These beds of family ward remained under me. It might be possible that Baboo Lal usually visited there and had meetings with Dr. Pandey."

So also it is not possible to believe that all the police officers had from the beginning conspired to rope in the respondent by hook or crook and had carried with them the half complete form which was acquired in a fortuitous manner to the consulting room in order to prepare the fictitious Farad at the time of the raid. It is not possible to believe that nothing had transpired at the raid, and yet, an imagined account of the occurrence and the seizure was incorporated in the Farad with a view to falsely implicate the respondent. The explanation of the respondent as to why the police officers should have falsely implicated the respondent is also not convincing. This is what he says:

"A person by the name of Nathu had died in police lock up Hahi Police Station. In that case Shri R. K. Shukla and other police officials were involved. A vast enquiry was done in that case. The post-mortem of the dead body of Nathu was performed by me. On that day Shri R. N. Pandey met me and presurrised me to give post-mortem

> report to the effect that no reason could be ascertained of causing death. I told him that whatever will be right and truth I would be giving the same in my report. Shri R.N. Pandey told me that enmity with police is not good. About 18-20 police employees were suspended on my report. That case is still pending against the police officials. I had performed the post- mortem in Dec. 1974, and the revenge of the same was taken during emergency by Shri R. N. Pandey while having league with Dr. B.M. Pandey by laying a trap on me. Baboo Lal was made a willing stooge."

The incident was a relatively stale one and it is highly improbable that the entire police force would nurse a grievance on this score and wait for such an opportunity. Be it realized that the child of PW 3 was genuinely afflicted with bone T.B. and was a genuine patient at the hospital. The defence version is therefore altogether improbable. The fact that the fingers of the respondent were dipped in the solution and the solution turned into red indicating that the flingers had come in contact with phenolphthalein powder is not disputed by the respondent, but he does not offer any explanation. This all that he says:-

> "Q. No. 11: It has come in the evidence that your fingers, pocket of the shirt from which currency notes were recovered were both separately dipped and washed in the solution of Sodium Carbonate. The colour of the solution turned red. Both the solutions were sealed in separate bottles which are Ext. 24 and Ext. 25. What you have to say in this regard ?
>
> Ans: I can't say of what contents this solution was prepared. When my fingers were got dipped in that solution the colour of the same turned red. My bush shirt had been made to put off by me. In my presence the pocket of the bush-shirt was not dipped in the solution. I don't know whether they had sealed this red solution in bottles or not."

Taking an overall view of the evidence of PW 1, PW 2, PW 3, and the circumstantial evidence, it is not possible to believe that the raid had proved abortive and yet everyone conspired together in order to falsely rope in the respondent.

Counsel for the respondent contended that it was not probable that PW 3 would agree to pay Rs. 250 in order to secure a loan of Rs. 500. It must be realised that the amount which was being demanded was in the background of the fact that the complainant felt that his child was not being given proper treatment and unless money was paid to the respondent his child would not get proper treatment. Nor can one be oblivious of the evidence of PW 3 to the effect that he was being asked to remove his child from the hospital even though she had not recovered. Evidently the request for the issuance of the certificate merely provided an opportunity which was seized upon by the respondent for making PW 3 yield to this demand. Again, the complainant had no option but to agree to give the amount demanded from him or to lay a trap, having regard to the fact that he was feeling that his child would not get proper treatment unless the demand was acceded to. If the complainant was interested in inventing a story nothing could prevent him from inventing the story to the effect that the demand was being made for a smaller amount of say Rs. 50 or so. This circumstance therefore cannot detract from the overall effect of the testimony of PW 3 Baboo Lal and PW 2 Bachu Lal who

were present at the time of raid and the clinching circumstance as regards the seizure of the certificate which was admittedly filled in partly by the respondent in his own hand. The evidence of PW-1 and PW-2 as also of PW-3, thus stands fully corroborated by the circumstantial evidence which lends assurance to it. Under the circumstances the finding of guilt and the order of conviction recorded by the learned Special Judge was unexceptionable. The High Court, as we pointed out earlier, set aside this finding under a serious misconception, on an altogether untenable reasoning, which even the counsel for the respondent has not been able to support.

Turning to the question of sentence, having regard to the fact that the respondent had to undergo the tension of a pending trial and a pending appeal for six years, and the fact that it will have adverse impact on his employment after 23 years, of service, no useful purpose would be served by imposing a long term of jail sentence. The substantive sentence of two years' R.I. is, therefore, reduced to one of 6 months' R.I. The appeal is accordingly allowed, the order of acquittal rendered by the High Court is set aside, and the finding of guilt and the order of conviction recorded by the learned Special Judge is restored, but the sentence is modified to the aforesaid extent. The respondent shall surrender to bail in order to undergo the substantive sentence imposed on him.

S.R. Appeal allowed.