Gujarat High Court
State Of Gujarat vs Ghanshyamsinh Ranchhodsinh ... on 18 December, 1996
Equivalent citations: (1997) 1 GLR 751
Author: K Vaidya
Bench: K Vaidya, M Kadri
JUDGMENT K.J. Vaidya, J.

1. This appeal by the State of Gujarat is directed against the impugned judgment and order dated 6-5-1994, rendered in Special Case No. 4 of 1993 passed by the learned Special Judge, Ahmedabad (Rural), wherein the respondent-Ghanshyamsinh Ranchhodsinh Vaghela, on his coming to be tried for the alleged offence punishable under Sections 13(1)(d), (i), (ii), (iii) and 13(2) of the Prevention of Corruption Act, 1988, was at the end of the trial ordered to be acquitted.

2. According to the prosecution, PW-4 Virsinh Ambaliyar, P.I., A.C.B., Ahmedabad, on 9-11-1989 received information that near Narol Highway Road, local police, traffic police, police attached to the Mobile Court and Forest Officers were demanding and accepting the bribes on one pretext or the other from the drivers of the vehicles passing to and fro. On the basis of this information, PW-4 requisitioned services of two Panch witnesses, viz., PW-2 Mahendra Naranbhai, and Sunil Manubhai (not examined) employees serving in R.T.O., and on their appearing before him on 10-1-1989 at 8-15 A.M. in A.C.B. office, they were posted with the aforesaid information and were instructed to accompany him to Narol Highway to lie on wait for passing vehicles. The first part of this proceeding was taken down in the Panchnama Exh. 14 drawn at the Shahibaug office of the A.C.B. which was completed at 9-15 A.M. This in turn was duly signed by the said two Panchas and PW-4 P.I.-A.C.B. Thereafter the raiding party consisting of two Panchas, PW-3 Bhalchandra Patil, H.C., A.C.B., lead by PW-4 in a Government vehicle proceeded towards the Narol National Highway No. 8. At about 10-00 A.M. one Tempo bearing No. GRX-5314 came from Naroda side which was stopped and on inquiring the name of its driver, he gave out the same as Vasant Mangilal Patel, who is PW-1 in the instant case. PW-4 thereafter introduced himself and other members of the raiding party to PW-1 and posted him with the aforesaid information regarding the demand and acceptance of the bribe money from drivers of the vehicles also further inquiring from him as to whether he would like to act and co-operate as a decoy witness in the proposed raid! On PW-1 showing his willingness to act as such a witness, five currency notes one out of which was of Rs. 20/- and other four notes of Rs. 10/-totalling Rs. 60/- were produced, the numbers, of which were noted down in Panchnama Exh-14. Thereafter, the person of PW-1 was searched. Usual Anthracene powder test, prior to the smearing it with currency notes and thereafter after applying the same, was carried out which was ultimately placed in the left hand side pocket of bush-shirt put on by PW-1. Thereafter, PW-4 instructed firstly, PW-1 that till the time the bribe amount was demanded, he should not touch the currency notes kept in his pocket for the said purpose, and secondly, P-2 Panch and P-3 to sit in the driver cabin of the Tempo alongwith PW-1 and to proceed ahead, from Narol towards Vishala Circle. PW-1 in particular was further specifically instructed that if any Government employee stopped his vehicle, then to stop it at once and pass on the information whatever he solicited, and on demand of bribe being made, the currency note of Rs. 20/- smeared with Anthracene powder kept in pocket of his bush-shirt be given to him. Moment this bribe amount was accepted, he was further instructed to give signal by waving out his hand from the cabin window

three times. PW-2 and PW-3 were also instructed to be by the side of the PW-1 and see and hear whatever transpired in between PW-1 and the accused demanding and accepting the bribe. This part of the proceedings was also taken down in the second part of Panchnama Exh. 14 which was completed at 11-15 A.M. duly signed by the PW-2 Panch, another Panch Sunil (not examined) and PW-4. Thereafter, PW-1 alongwith PW-2 and PW-3 sitting in cabin with him drove his vehicle towards Narol Highway which was followed by PW-4 and second Panch in another vehicle. At 11-35 A.M. when this raiding party reached Vishala Circle, the tempo was stopped by one person clad in Khaki Vardhi who after some inquiry demanded the money from PW-1 who took out the currency note of Rs. 20/- from his pocket which was accepted by him by his right hand and placed in the right side pocket of Vardhi pant. Immediately thereafter, as instructed on getting the pre-arranged singals, the raiding party swung into action and caught hold of the person accepting the bribe amount. PW-4 introduced himself to the person who accepted the bribe amount and on inquiring about his name he gave it as Ghanshyamsinh Ranchhodsinh Vaghela. Thereafter, PW-4 on inquiring from PW-2 Panch as to what had happened, he narrated the entire incident. Thereafter, the post-raid examination in the light of the ultra-violate lamp was carried out, wherein on seeing both the hands of Ghanshyamsinh, his fingers and thumb tips were found smeared with Anthracene powder. Not only that but the pant and the bush-shirt put on by the accused when seen in the light of ultra-violate lamp, the right hand side as well as inside of the pocket were found smeared with the Anthracene powder. Thereafter Panch-1 was directed to search Ghanshyamsinh and take out whatever was found from the pocket of the pant put on by him. During this search of accused, the currency notes of Rs. 562/- were taken out from the left-hand side pocket, while from the rear side pocket, some coins of Rs. 7-30 Ps, and from the right side pocket Rs. 20/- were recovered. The number on the said currency note of Rs. 20/- was tallied with the number given in the Panchnama Exh. 14 which was found to be the same!! Thereafter, on examining this currency note also in light of the ultra-violate lamp, marks of Anthracene powder were noticed on both its side. Thereafter these currency notes in question, coins and the Memo Book were seized under the Panchnama (Exh. 14). Thereafter when both the hands of PW-1 were seen in the light of ultra-violate lamp, on the tip of the right thumb, marks of Anthracene powder were noticed. After this was over, the accused was given a receipt of whatever things were seized from him. All these things were noted down in the third stage Panchnama (Exh. 14) at 15-00 P.M. drawn near Vishala Hotel, Chamunda Tea Stall. On the basis of these facts, PW-4 lodged a complaint Mark 11/1 (ought to have been given due exhibit) for the aforesaid alleged offences under the Corruption Act, against the respondent-accused on the very day. Thereafter, after the investigation was over on receipt of the sanction to prosecute, charge-sheet was filed against the accused for the alleged offence to stand trial before the Sessions Court, Ahmedabad (Rural) at Ahmedabad.

3. At trial accused pleaded not guilty and claimed to be tried. He also submitted his written defence at Exh. 23 wherein in substance it is his case that at the relevant time, he was serving as a police constable in traffic branch and was attached to the mobile Court. He has also admitted that on the date of the alleged raid, he had stopped tempo bearing No. GRX 5314 coming from the Narol side, and demanded papers from its driver, which since the same were not given, he had started noting down the name of the driver for issuance of the memo. It is his further case that on the said driver not complying with the direction and when he once again demanded papers and since the same were not given, he asked driver of the tempo (PW-1) "what do you want to do? Why don't you give name?

To this-instead of giving the same the driver while sitting in the vehicle, tried to place something on memo book in the hand whereupon he moved away. Immediately thereafter person coming from behind caught hold of him. In substance, it is his case that he has been falsely implicated!!

4. The trial Court after duly appreciating on the one hand the prosecution evidence brought on the record and on the other hand defence version, acquitted the accused in substance on the following grounds, giving rise to the present appeal by the State.

4.1 That PW-1 the decoy witness has backed out from the prosecution case on the crucial part of the evidence regarding illegal demand and acceptance of the bribe money by the accused from him, and accordingly he having been declared hostile to the prosecution was not dependable.

4.2 That likewise the evidence of PW-1, due to several infirmities enlisted in detail in the judgment, the evidence of PW-2 (Panch) is rendered doubtful and therefore, not dependable.

4.3 That so far as PW-3 is concerned, his evidence pales into insignificance in view of the doubtful nature of the evidence of PW-1 and PW-2.

4.4 That so far as PW-4 is concerned, his evidence is found to be not acceptable on the ground that there are certain omissions in the complaint which assumes quite great importance more particularly in view of the infirmities in the evidence of PW-1 and PW-2 highlighted above. According to the learned trial Judge firstly what is stated before the Court does not find place and reflected in the complaint. According to the learned trial Judge, PW-4 has admitted that he has not stated that the currency note of Rs. 20/- smeared with Anthracene powder was recovered from the right hand side pocket of the pant. It is also admitted by him that he has not stated that Anthracene powder marks were noticed when the pant of the accused was examined in ultra-violate lamp, and on the right hand side finger tips Anthracene powder marks were noticed.

5. Heard learned A.P.P. Mr. Shelat and Mr. Anandjiwala learned Advocate appearing for the respondent-accused. According to the learned A.P.P., impugned order of acquittal is ex-facie illegal and deserves to be quashed and set aside on the ground that the appreciation of evidence made by the learned trial Judge is quite perfunctory and illegal, ignoring some of the Supreme Court decisions wherein despite the complainant and Panch not at all supporting the prosecution case, solely accepting the evidence of the raiding officer accused have been convicted on charge of accepting bribe. The learned A.P.P. further submitted that PW-4 P.I.-A.C.B. had indeed no reason to falsely frame up accused if indeed he was innocent who was also a police constable. In fact, nothing is either alleged against PW-4 in his cross-examination nor anything is probablised from the attending circumstances from which it could be spelled out that he was a liar, interested party to a false trap and therefore, disbelieve him!! On the previous tip-off arranging raid, selecting PW-1 as a decoy witness, requisitioning the services of two Panchas, going to the alleged spot, the immediate recovery of currency note of Rs. 20/- from the pocket of accused smeared with Anthracene powder, its numbers tallying with the numbers and other contents given in Panchnama Exh. 14 and the complaint of PW-4 and the overall contents of contemporaneous record viz., Panchnama Exh. 14 supporting the original prosecution case-All these in quick succession are indeed quite strong

circumstances to held accused guilty for the alleged offence. As against this, Mr. K.B. Anandjiwala has vehemently supported the impugned judgment and other of acquittal by vigorously defending each and every reasons for the acquittal given by the trial Court. Mr. Anandjiwala has also raised an additional point that once it is found that Panchnama Exh. 14 was not made at the time and place as asserted by PW-4 P.I., A.C.B.-whatever is stated therein thereafter is hit by Section 162 of the Code and hence not admissible. According to Mr. Anandjiwala since no case is made out on the basis of which the reasons given by the trial Court can be said to be unreasonable, the order of acquittal cannot be lightly interfered with. Mr. Anandjiwala has also relied upon two decisions of the Supreme Court rendered in case of: (1) Gulam Mohmood A. Malek v. State of Gujarat , and (2) G.V. Najundiah v. State (Delhi Administration) .

6. Now in order to properly appreciate the aforesaid submissions in their just and proper perspective, it is indeed necessary to once again minutely screen and scrutinise the prosecution evidence to judge it afresh.

6.1 PW-1: Decoy Witness: Driver Vasantbhai Mangibhai-Accordingly, to start with his evidence, it indeed cannot be gainsaid that so far as the alleged demand and acceptance of bribe-money is concerned, he has not supported the prosecution case so far as the actual wordings of "demand and acceptance" are concerned. Thus, on casual reading and perfunctory appreciation of evidence of this witness, one may quite feel that he has knocked down the bottom of the prosecution case!! We are quite conscious of the fact that PW-1 is a decoy witness who has been declared hostile, but at the same time mere label of "hostility" should not and cannot be permitted to prevent and prejudice any Court from examining the overall content of his evidence in its total perspective. A prosecution witness can be hostile in part or wholly. That is to say, there can be a degree of hostility to the prosecution. In other words, to the extent prosecution witness does not support prosecution case that much part of his evidence can, rather must, be kept out of the consideration, but at the same time to the extent it supports the prosecution case, which in turn is not rendered improbable or false in cross-examination by defence Advocate, the same can to that extent certainly and must be accepted and relied upon!! This is the only reasonable and prudent way of appreciating the evidence of hostile witness in a criminal trial-to ultimately reach at the just decision. Now it appears that merely because this witness for whatever reasons on demand and acceptance did not say anything in his evidence before the Court, on that ground alone he has been dubbed and declared hostile, as if he has taken out the entire wind out of the sail of prosecution, but if we otherwise with little more composure carefully see, the entire evidence of PW-1 right from the time PW-4 requested him to act as a decoy witness till the time raid was over, more or less, he has supported the prosecution case. This is clear when he admitted that at the relevant time when he was requested to act as a decoy witness, he was driver of tempo bearing No. GRX-5314. He has also admitted that on the date of the incident, he was returning with empty vehicle and was passing through Naroda National Highway going to Ahmedabad where at about 11-00 A.M. the officers of Anti-Corruption stopped him and requested him to act as a decoy witness. He has also further admitted that he was posted with information regarding bribe amount demanded and accepted from vehicle drivers by some police personnels, etc. etc. He has also admitted about Rs. 60/- (including Rs. 20/- currency note) and instructed that if anybody demanded money, then only that was to be given. He has also admitted that the amount of Rs. 60/- comprised of the currency notes, out of which one note was of Rs. 20/-

denomination. He has also admitted that in his cabin, PW-2 Panch, PW-3 were sitting alongwith him by his side!! He has also admitted that while driving the vehicle, when he reached near Vishala, he was stopped by one Constable (Accused) demanding the papers and licence. At this stage, this witness, for the reasons best known to him, or perhaps the reason too well-known to all of us that he became little lukewarm in giving exact evidence before the Court on demand and acceptance of the bribe money!!! When he said that on the accused Constable demanding from him licence and papers along with licence and papers he gave Rs. 20/-. He has also stated before the Court that the person who demanded licence and papers was present in the Court, i.e., the accused and that he was in an uniform. It is because of this infirmity that the learned P.P. was constrained to declare him as hostile. Ordinarily, when a witness is declared hostile and in turn is confronted with his previous police statement, (for that purpose in the instant case his complaint) by the learned P.P. in charge of the matter, he always starts denying the prosecution case by saying to quote "It is not true that it was like this or it was like that etc. or he has not stated so in his complainant or the previous police statement as the case may be". Now, instead of doing this if we closely peruse the admissions after admissions of this witness in his cross-examination by the learned A.P.P., he has gone on admitting most of the prosecution case, save and except actual words of demand uttered by accused. To reproduce some of the admissions made by PW-1 in his cross-examination, it may be stated that (i) in para 13, PW-1 has admitted to quote-"it is true that thereafter I was instructed that 1 should take Panch No. 1 (PW-2) and PW-3 A.C.B. Police Inspector (sic. Head Constable) in my vehicle and to proceed towards Narol Circle towards Vishala Hotel and in case if the local traffic personnel or the police personnel of the mobile van ask to stop the vehicle, to stop it. (ii) In para 14, PW-1 admits to quote-"I was also instructed that for one reason or the other if the bribe amount was demanded then the muddamal currency notes smeared with Anthracene powder should be given to the person stopping the vehicle and moment said currency note was accepted, to take out his right hand from the cabin and give signal by three times waiving the hand, (iii) I was also instructed that on way, if local police, traffic police or personnel of mobile van or officer of the forest department stops the vehicle, whatever that may take place between me and the said officer be heard and what the transaction took place". This instruction was given to Panch No. 1 (PW-2). (iv) In para 16, it is admitted that Panch No. 2 and other persons of the raiding party were instructed to follow in a Government vehicle and on pre-arranged signals being made to run, caught hold the officer stopping the vehicle and demand and accepting the bribe. (v) It is also admitted to quote "Panchnama regarding the aforesaid was drawn near Narol Circle and thereafter at 11-20, I and Panch No. 1 (PW-2) and other personnels of A.C.B. were coming behind. At about 11-45, near Vishala Hotel Circle, Chamunda Tea Stall, a Police Constable gave signal to stop the vehicle and accordingly I stopped vehicle on the side of the road and thereafter G.R. Vaghela, i.e., to say the accused demanded papers of the vehicle, (vi) In para 19 it is stated, to quote-"It is, therefore, that A.C.B. personel stopped Ghanshyamsinh and introduced himself. Saheb of the A.C.B. directed Ghanshyamsinh to stand there in the same position (and not to move). Thereafter, A.C.B. inquired from Panch No. 1 (PW-2) as to where was the muddamal currency note, to which Panch gave reply. Thereafter, A.C.B. personnel inquired about the name and Buckel number from Ghanshyamsinh, it was given by him. (vii) It is also admitted by PW-1, to quote "that thereafter examined both the hands of Ghanshyamsinh in the light of ultraviolet lamp and at that time his right hand finger and thumb as well as mountain of the palm was found shining white with the Anthracene powder. It is also true that the memo book and the left hand of Ghanshyamsinh was not found with the marks of

Anthracene powder. On throwing light of the ultra-violet lamp on the right hand side of the pant, its border and inside portion, Anthracene marks were noticed. (viii) In para 20, it is further stated, to quote-"that the right hand side of Ghanshyamsinh on search being taken by P.I. a currency note of Rs. 20/- was recovered, which was found tallying with the number earlier noted in the Panchnama Exh. 14. (ix) In para 23, PW-1 also admits, to quote-"that over and above the muddamal currency note of Rs. 20/-, other currency notes valuing Rs. 562/- and coins of Rs. 7.30 were recovered. He also admits that pant put on by Ghanshyamsinh was seized on the spot and that Ghanshyambhai was given receipt of the Articles seized. (x) In para 24, PW-1 admits that thereafter Prathvisinh has carried out in experiment of my hands in the light of the ultra-violate lamp and while examining my right hand, fingers and top of the thumb as well as mounted portion of palm were found to be shining with white smeared Anthracene powder. All these aspects were noted down in the Panchnama Exh. 14. Thus, it could be easily seen that PW-1 has quite conveniently winked and turn deaf ear to his seeing and hearing of actual transaction of demand and acceptance of the bribe money given to accused, on the rest of the important peripheral part of the prosecution case, PW-1 has supported the prosecution case, rather to put it more affirmatively he has not at all disputed the same! This is the type of PW-1 complainant, who for the reasons unexplained, rather best known to all of us to reasonably infer that when he came to be examined before the Court, he has chosen to sit on the fence deliberately creating some doubt in favour of the accused thereby leaning in favour of the accused. In fact, in the background of this case, it will not be unreasonable to infer why the complainant and/or for that purpose even the Panch witness became luke-warm and turn-coats !! These days, ordinarily to give an honest and truthful evidence against any accused person, much more so against the dreaded criminal/s and the accused police officer requires lot and lot of guts and courage for quite apparent, obvious and simple reason, viz., that to do so would be to open the box of pandora. The lurking apprehension which grips and terrorises and thereby sub-dues and demoralise the spirit and strength of the witness in giving truthful account to the Court is that in case on the basis of his evidence, the accused is convicted and sentenced, he would not spare any efforts retaliating against him endangering his person and/or his family member's limb, life and liberty. May be these threats ultimately prove to be quite hollow!! But then a person suspecting any Article to be poisonous one naturally will dare not taste it, save at the risk and cost of life!! Why should he do it? This lurking fear complex constantly haunting ordinary witness/es in telling the true story before the Court apprehending retaliation cannot be ruled out in the instant case also. This witness quite admits his presence at the time of the incident. He admits so many other things, but at the same time, on the material aspect of giving money, he has chosen to keep his lips sealed!! Under the circumstances, merely because PW-1 a decoy witness has not chosen to support the prosecution case on the verbal aspect of actual demand and supply, and some other minor aspects, technically it may be quite allright to declare him hostile when the prosecution has thought it desirable to do so, but at the same time on the other hand, when he admits in the first instance that muddamal currency note of Rs. 20/- was placed in his right hand side pocket of the bush-shirt, in the second place, when immediately recovery of very same Rs. 20/- rupee- note is made from the right hand side pant pocket put on by the accused, and in the third instance, that too as a result of pre-signalled arrangements, then in that case, it appears that this witness has become hostile and hostile only because he has been attempted to be won-over to that extent to make him appear doubtful to weak-minded doubting Court to score acquittal!! This is a matter of overall appreciation of the prosecution evidence on the basis of other proved facts!! Had indeed the entire prosecution

story been stopped at this stage only, then pershaps, making allowance we would have been constrained to resolve doubt in favour of the accused, but unfortunately PW-1 is not the only witness upon whom and whose mercy the fate of the prosecution case helplessly depends. In fact, there is other and further prosecution evidence coming from PW-2, PW-3 and PW-4 from whose evidence it can be reasonably inferred that PW-1 has conveniently and deliberately tried to defuse the prosecution case by giving go-bye to his earlier version regarding actual demand and acceptance of the bribe money. While deciding such type of cases, the Court is not supposed to be waylaid like a gullible child on any tempting, tantalising, suspicious situation created for the purpose mortgaging rather placing its common sense in the cold storage. In this view of the matter, we feel quite unpragmatic rather unjudicial to cancel the prosecution case merely because the decoy witness want us to defraud and cancel it altogether totally obliterating the rest of quite cornicing and dependable evidence of PW-3 and PW-4. We accordingly refuse to be a ready instrument in the hands of such smart witness as PW-1 who in our opinion is out to sabotage the prosecution case. Judicial proceedings are not the game of chess. Nor where any witness could ever be allowed to be smarter enough to out-smart and overtake or to make a Judge his pawn and dictate the fate of the case as he likes!! To be simpleton, gullible Judge, readily allowing to be played with at the whims, caprices and dictates of some unscrupulous witnesses abdicating pragmatic judicial approach, ignoring altogether overall effect of other evidence is simply a disqualifying character to be a real Judge of issue/s. The Judge has to stand firm, refusing to be swayed by some outwardly attractive, hot-heated arguments pressing him to be subjected to live in the make-believe world as dreamt and wished by the accused and record the order of acquittal!! In this view of the matter, we have a reason to believe that on particular point of the demand and acceptance of bribe money by backing out, PW-1 has deliberately tried to save the situation in favour of the accused! This in a way indirectly supports and proves the prosecution case. At any rate, we refuse to subscribe to the view of the learned trial Judge that because the decoy witness has attempted some confusion, we should readily allow ourselves to get confused as per his wishes. Fortunately enough, the prosecution case does not rest solely with PW-1 as a terminus leaving the Court to no alternative but to get confused and confounded wandered away to deliver the judgment of acquittal in favour of accused as there are still as many as three other important witness to help the Court in reaching the just decision. In this view of the matter, now we will have to go to the evidence of rest of the three witnesses, viz., PW-2 Panch; PW-3 Head Constable and PW-4 who is a raiding officer.

6.2 PW-2: Panch Mahendra Naranbhai-Now so far as the demand and acceptance part of the prosecution story is concerned, this witness was very much sitting just nearby the side of the PW-1, and by and large has supported the prosecution case, when he said-to quote "at about 11-35 A.M. when we came near the Circle of Vishala Hotel near Chamunda Tea Stall, one person on duty stopped the vehicle. He demanded from PW-1: Vasant the papers of the vehicle and the licence, whereupon PW-1 said that he was not having licence and the papers. Thereafter the duty Constable who stopped the vehicle took out the memo-book and asked him to furnish the name and address or to give him the driving licence and papers. The man who demanded the papers and licence was that very person present in the Court. Moment the memo-book was taken out, PW-1 said I have no vehicle papers. Thereafter, the said duty Constable looked at the face of PW-1 and said "what do you want"? Thereupon, PW-1 said (patavi dyo) "settle". Thereupon, the duty Constable said "well give the amount". Thereupon PW-1 took out the currency note of Rs. 20/- from his pocket by his right

hand, which was accepted by the accused and kept the same in the right hand side pocket of his pant. Thereafter he walked away with the memo-book. This story in the examination-in-chief as it is and even in cross-examination remained unshaken! This also stands duly corroborated by the contemporaneous record, viz., Panchnama Exh. 14. It is of course quite true that PW-2 Panch has also fumbled little before the Court when apparently he made some honest mistakes regarding firstly, the time and place of preparing the Panchnama Exh. 14 and the place where the Khaki pant from which bribe amount was recovered was seized!! It was indeed quite desirable that the Panch witness who is even otherwise also entitled to refresh his memory by looking at the Panchnama should have been quite careful enough while giving evidence before the Court because many a times much turns upon his evidence when the prosecution has no other dependable evidence to bank upon. Sometimes even minor discrepancies in a given case are unnecessarily magnified and highlighted to mislead the Court from reaching its just and proper conclusion, if in the first instance, learned P.P. incharge of the case and the concerned trial Judges in his turn also not alert and on their respective guards, and mislead to decide a case divorced of its common sense pragmatic approach. In fact, if by chance even Panch witness omitted to state or committed some mistake which went contrary to the contents of Panchnama, then in that case, it is the duty of the learned P.P. and also of the trial Court to see that by inviting the attention of Panch witness to the contents of Panchnama, his memory is refreshed and thereby the same is clarified before the Court. Not to give this important opportunity rather the right of Panch witness to refresh his memory by doing this much needful is indeed quite unjust both to the Panch witness and prosecution also and accordingly improper for the learned P.P. and the learned trial Judge! This sort of carelessness sadly reflects upon the competence of the concerned learned P.P. and the learned trial Judge as well!!! Further, at the same time, merely because the Panch is not proved to be that meticulous, pink of perfection, an ideal perfectionist on some point here or there in giving evidence before the Court with desirable care, caution, concern and circumspection, to discard his evidence on some such small count would not be proper more particularly when we have indeed no reason to doubt the evidence of other two equally important witnesses of the raid, viz., PW-3 and PW-4, who were very much present at the relevant point of time when Panchnama Exh. 14 was drawn and who has stood by the prosecution case like rock. We can certainly not be oblivious to the fact that the PW-2 Panch was giving evidence before the Court practically after about four years!! Quite long lapse of time!! His background of law and knowledge regarding how to give evidence before the Court cannot be as perfect as that of the lawyer, shrewd Investigating Officer or to the unrealistic expectation of some of the hyper technical Courts!! He is after all a layman. Accordingly, if there is indeed nothing otherwise in the cross-examination to indicate that he was out of falsely implicate the accused either at his own instance because of some personal enmity with the accused or at the instance of the complainant for some consideration to wreck personal vengeance, his evidence cannot be lightly brushed aside because some obvious unavoidable possible human error creeps in his evidence more particularly, when it is recorded after quite long lapse of time!! Further, assuming for the sake of argument that because of the alleged flow in evidence given by PW-2 before the Court, he ought to have been declared hostile and was accordingly declared hostile then even the heart beats of the prosecution case cannot be said to have stopped as PW-3 and PW-4 clearly sustains and supports the life of the prosecution case. Out of the two kidneys, two lungs, two legs, two hands even if one of them ceases to function and taken out then even human life does get hopefully and successfully sustained on one of it!! These are the witnesses who have personally no axe to grind in falsely

implicating the accused. Moreover, since there is nothing in the cross-examination to over-shadow, cloud and doubt their overall credibility, the same cannot be thrown over board gifting away the accused cheap benefit of doubt, acquittal, putting unjust premium over the evidence of dishonest witnesses, letting down the prosecution case.

6.3 It is true that while giving evidence before the Court, PW-2 Panch has in unmistakable terms admitted that "Khaki pant" put on at the time of the raid, which is shown to have been seized at the time of drawing Panchnama (Exh. 14) was actually seized at Shahibaug Police Station. This was a point which was heavily emphasised by Mr. Anandjiwala and accordingly having anxiously considered the same, it appears to us that either PW-2 Panch because of passage of time, under some misapprehension has committed some honest mistake or had become quite lukewarm on the point to assist the accused. Be the case as it may, but on that count alone the overall weight of the prosecution case cannot be thrown to winds! At the same time, without entering into any controversy about the credibility or otherwise of this witness, even if we keep aside the evidence of this witness there is still evidence of two important witnesses left, namely, PW-3 and PW-4 which fully supports and sustains the prosecution case against the accused as could be seen from the appreciation of their evidence that follows.

6.4 PW-3: Bhalchandra Ramdas Patil, Head Constable, Anti-Corruption Bureau, Ahmedabad-This witness who was Head Constable had accompanied PW-1 and PW-2 (Panch) and was sitting in the cabin of the vehicle. In fact, the learned Judge was unable to find any infirmity in his evidence by way of either improvement or contradiction or improbability or in any other way. However, it appears that his evidence is discarded simply on the ground that the evidence of the first two principal prosecution witnesses, viz., PW-1 and PW-2 failed to help the prosecution to the desired extent! Now this approach of the learned trial Judge is simply inconceivable. Merely because some of the witnesses do not support the prosecution, that does not mean that the evidence of this witness is to be discarded comparing the same with other witness/es. On the contrary, if indeed this approach of the trial Court is approved, it would be quite risky in reaching at the just and proper conclusion. The evidence of the Panch witness is either accepted or discarded on the basis of the strength and infirmity brought on the record in his evidence. It will indeed be quite unjudicial if the evidence of a witness is mechanically rejected comparing it with evidence of hostile witness ignoring altogether overall credibility of his evidence. In this view of the matter, we have found PW-3 to be quite dependable, in absence of any finger of suspicion raised against him on the basis of some definite material available on record on the further basis of which he could be stamped out as unworthy of any credit. Accordingly, this Court is inclined to accept and rely upon the dependable evidence of this witness even though he is also a police witness.

6.5 PW-4 P.J. V.K. Ambaliyar, P.I., ACB, Ahmedabad-He has been disbelieved on some of the astounding grounds, namely (1) that as a complainant he has not stated certain facts in the complaint! According to the learned trial Judge, PW-4 has not stated in his complaint that the currency note of Rs. 20/- smeared with Anthracene powder was taken out from the right hand side pocket of the pant put on by the accused!! Secondly, it is not stated in the complaint that inside and outside of the pocket of pant, when seen in the light of ultra-violet lamp there were signs or marks. Thirdly, it is not stated whether on the right hand tips of the accused there was white shine marks

seen in the ultra-violet lamp. Now all these grounds are as baseless and as flimsy as could be. In the case of such a nature, the complaint is never supposed to be an Encylopediac document containing minute details of A to Z prosecution case. It is ultimately meant for the purpose of putting the criminal law in motion and for that purpose it should disclose some nucleus, some germs constituting prima facie ingredients of the offence. Accordingly, if that prima facie ingredients are clear; then in that case merely because it does not describe minutely and exhaustively the alleged offence in question, that by itself on that ground alone, the evidence of PW-4 complainant cannot be stamped as incredible. In the instant case, and for that purpose in any other case like the present one, one indeed cannot afford to overlook the most material aspect, namely, as to what happened on the spot at the relevant time and place of the commission of offence and for this there is always available a contemporaneous record quite well-known as Panchnama, which is prepared in presence of the Panchas, Investigating Officer and the accused. Once the Panchnama is ex facie clear, describing the details, there is indeed no doubt whatsoever in our mind to doubt the say of PW-4 complainant merely because he is a police officer. In a given case, even Panchnama through oversight may miss mentioning of some facts but merely on that count, the entire Panchnama cannot be thrown out. In fact, in nature of such cases, there is indeed no question whatsoever of disbelieving PW-4 complainant merely on the ground that complaint does not contain certain particulars. If the Court wants to disbelieve and discard the evidence of PW-4 from consideration, it can be so discarded provided only and only if on the basis of just reasoning and not on any excuses or pretext like the one resorted to in the instant case.

7. As a matter of fact, how indeed the evidence of prosecution witnesses in trap cases under the Corruption Act is required to be appreciated, the Supreme Court has time and again given illuminating guidelines in the following decisions:

7.1 Hazari Lal v. The State (Delhi Administration) AIR 1980 SC 873 : In this case, the accused Police Constable was tried on the charge of accepting bribe of Rs. 60/- from the PW-3 (informant) for the alleged offences punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 161 of Indian Penal Code by the learned Special Judge. At this stage, it would be quite important to note that at trial, both the complainant and the Panch witnesses did not support the prosecution and were accordingly declared hostile. Despite this alarming fact, the learned trial Judge convicted the accused for the alleged offences relying upon the evidence of the Police Officer who participated in trap and other attending circumstances. This in turn was confirmed by the High Court and ultimately by the Supreme Court also!! In appeal before the Supreme Court, it was contended on behalf of the appellant-convict that the Courts below have made free use of the statements made by the witnesses in the course of investigation as if such statements were substantive evidence! If these statements were excluded from consideration, there would be no evidence of any demand or acceptance of bribe by the accused. All that would be left would be the evidence of the Investigating Officer and PW-4 to the effect that accused took out the currency notes from the right hand pocket and flung them across and wall in the adjoining room. This evidence as contended by the learned Counsel for the accused would not be sufficient even if accepted to draw adverse inference against the accused under Section 4(1) of the Corruption Act. Now this contention was precisely negatived by the Supreme Court in paras 8 and 9 of its judgment, wherein in substance, it is held that where the evidence of the police officer who laid the trap is

found to be trustworthy, there is no need to seek any corroboration. There is no rule of prudence which has crystallised into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration...Not only that, but it is further held that-"It is not necessary that the passing of money should be proved by direct evidence. It can also be proved by circumstantial evidence. The events which followed in quick succession in a given case may lead to the only inference that the money was obtained by the accused from PW-3. Under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to facts of the particular case..." Thus, it could be seen that even though both-the complainant and the Panch did not support the prosecution case, yet the Supreme Court relying upon the evidence of the Police Officer convicted the accused. This fact-wise ratio is directly applicable to the facts and circumstances of the present case, and in this view of the matter, the order of acquittal shall have to be altered into conviction.

7.2 State of U.P. v. Dr. G.K. Gosh : In this case, Dr. G.K. Gosh was found guilty of demanding and accepting the illegal gratification and accordingly was convicted and sentenced under Section 5(1)(d) of the Corruption Act, 1947 and Section 161 of I.P.C. by the trial Court. This was appealed against where the High Court acquitted the accused apparently because the evidence of the Panch witness Ramsing was found to be that of selected Panch, and therefore, interested and of doubtful nature. This order of acquittal was challenged by the State before the Supreme Court, wherein accepting and relying upon the evidence of the complainant and the Police Officer, the accused came to be convicted quashing and setting aside the order of acquittal passed by the High Court. While convicting the accused, in para 11 at page 1157, the Supreme Court observed that.

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 complaints 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 citizen is vindicated. Perhaps, it can be contended that he is interested in the success of the trap so that his ego satisfied or that he earns 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 note offered by the complainant is it would not be reasonable to go to the land 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 upon 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, decides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there shall be not 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 but fail.

7.3 State of Kerala v. K.M. Mathew and Ors. : In this case, the Supreme Court holding that the evidence of the Investigating Officer cannot be discarded merely on the ground that he was interested in success of the investigation. In para 3 of the judgment Supreme Court observed that the Courts of law have to judge the evidence before them by applying the well recognised test of basic human probabilities. The evidence of the Investigating Officers cannot be branded as highly interested on ground that they want that the accused are convicted. Such a presumption runs counter to the well recognised principle that-prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case.

7.4 Prakash Chand v. State (Delhi Admn.) : This was also a case under the Corruption Act. The Supreme Court dismissing the appeal of the appellant-accused observed in para 5 of the judgment-"We are unable to agree with the submission of Shri Anthony that no conviction can ever be based on the uncorroborated testimony of a person in the position of PW-6 who, for the sake of felicity may be described as a "trap witness". That a trap witness may perhaps be considered as a person interested in the success of the trap, may entitle a Court to view his evidence as that of an interested witness. Where the circumstances justify it a Court may refuse to act the uncorroborated testimony of a trap witness. On the other hand, a Court may well be justified in acting upon the uncorrorated testimony of a trap witness, if the Court is satisfied from the facts and circumstances of the case that the witness is a "witness of truth". The Supreme Court ultimately held that the Courts below were justified in convicting the accused placing reliance upon the evidence of the Police Officer; accordingly having regard to the facts and circumstances of the instant case, in our opinion, the aforesaid Supreme Court decisions directly cover the aspects involved.

7.5 Nasirmiya Hasanmiya Mallik v. State of Gujarat 1993(1) GLR 853: This was a case of the running trap primarily based on the evidence of the decoy witness, Panch witness and the Police Officer. In this case also, the decoy witness who gave money to the accused did not support the prosecution. Not only that but even the Panch witness was also not exact in giving out evidence before the trial Court and yet this Court had confirmed the order of conviction and sentence solely relying upon the evidence of Police Officer. Here it is further specifically required to be noted that this judgment was challenged before the Supreme Court and the same came to be confirmed on 10-12-1992 dismissing the Special Leave to Appeal (Criminal) No. 2868 of 1992 filed by the accused Narsirmiya. Now the facts-situation of the present case, in our opinion, squarely falls within the purview of the case of Nasirmiya Hasanmiya Mallik (supra), and in this view of the matter also the impugned order of the acquittal deserves to be quashed and set aside and accordingly shall have to be reversed recording order of conviction.

8. It is simply unfortunate that the learned P.P. in charge of the case before the trial Court does not appear to have taken appropriate care to point out the aforesaid decisions more particularly the decision rendered by this Court in case of Nasirmiya Hasanmiya Mallik (supra). This is a decision

reported only in the year 1993 and accordingly we fail to understand as to how it was lost sight of to be cited before the trial Court! We feel that if the best of social welfare legislations fail, it is only because of some Public Prosecutors just fail to discharge their duties to the reasonable expectation from them and neither D.S.P. nor Commissioner of Police of the area nor the concerned Department in particular, viz., Anti-Corruption Bureau, Home and Legal Departments exercise proper vigilance in the matter of discharge of duty by the concerned learned Public Prosecutors. In corruption cases, it shall be the duty of the Director of Anti-Corruption and the raiding authorities to see that P.P. in charge of the case places all material decisions in favour of the prosecution before the Court.

9. Before we conclude on the Supreme Court decisions cited by the learned A.P.P., it must also be stated that Mr. Anandjiwala also in his turn has relied upon two decisions of the Supreme Court as stated above. However, for these reasons as discussed above at length and more particularly in view of the recent decision of this Court rendered in case of Nasirmiya Hasanmiya Mallik (supra) which came to be confirmed by the Supreme Court, in our opinion, the same are indeed of no assistance to Mr. Anandjiwala. In the last resort, Mr. Anandjiwala submitted that even if other view of conviction was possible, this being an acquittal appeal and the accused was merely a Constable and accepted only Rs. 20/-, this Court should not interfere with this appeal. Now, it is indeed not possible to accept this submission of Mr. Anandjiwala because in such type of corruption cases which harrass the society squeezing away its vital, mercy cannot be allowed to lay down wrong law, and ultimately temper with justice.

10. We are indeed quite conscious of the fact that we are appreciating the evidence and that too in an acquittal appeal and accordingly, therefore, ordinarily the reasons for acquittal should not be lightly interfered with but for the convincing reasons! Accordingly, the circumstances under which we have been constrained to reverse the impugned judgment and order of acquittal is that when on an identical facts-situation there is a decision of this Court and the Supreme Court and yet totally unmindful of the same, if ultimate conclusion of acquittal is reached, that decision cannot be said to be a reasonable one as no subordinate Court and for that purpose even the High Court can ignore the reported decision unless the fact-situation is diametrically opposed to the satisfaction of the concerned Court. In fact, we are quite sure that had indeed the aforesaid decisions been pointed out to the learned trial Judge, the scale of justice would have surely tilted in favour of the prosecution as it cannot run away from the fact that the same were squarely and with all force applicable to the facts and circumstances of the case at hand. Not only this but incidentally, it may also be pointed out that the Supreme Court has also in case of the State of U.P. v. Dr. G.K. Gosh (supra) where accused came to be acquitted by the High Court reversed, the said order and convicted and sentenced accused for the alleged offence under the Prevention of Corruption Act.

11. In view of the aforesaid discussion, it is indeed not possible to uphold the view taken by the learned trial Judge acquitting the accused and accordingly the impugned judgment and order of acquittal requires to be reversed quashing and setting aside the same. In our opinion, the evidence on record of the PW-3 and PW-4 P.I. Ambaliyar is found to be quite satisfactory and dependable. Accordingly, we hold that the charge against the accused having been brought home, he needs to be convicted atonce.

12. In the result, this appeal by the State of Gujarat is allowed. Impugned judgment and order of acquittal recorded by the learned Special Judge, Ahmedabad is hereby quashed and set aside. Accused, accordingly, is convicted for the alleged offences under Sections 13(1)(d)(i), (ii), (iii) and 13(2) of the Prevention of Corruption Act, 1988.

13. SENTENCE: This takes now to the next important question of sentence. Since we have reversed the order of acquittal, it is indeed necessary to hear the accused on the point of sentence. At this stage, Mr. K.B. Anandjiwala, the learned Counsel appearing for the respondent-accused has requested that as the accused is unable to remain present before the Court, his Affidavit highlighting the circumstances for taking a lenient view of the matter while awarding the sentence be taken on record. This request of Mr. Anandjiwala is accepted. The said affidavit, in substance, reads as under:

That I am police Constable serving in police department since 18 years. I have wife, two sons and two daughters, who are dependent on me. The eldest one is daughter aged about 14 years by name Ramila, second daughter is aged 9 years by name Bhagwatiben. I have two sons, namely, Ravubha and Anirudhsinh, aged 8 years and 5 years respectively. All my children are studying in school. I am the only son of my parents. My father is aged 60 years and mother is aged about 58 years. All are dependant on me. My father owns one land admeasuring 4 vighas at village Vasna (Iyava), Taluka Sanand. There is no sufficient income from the said land, and therefore, they are dependant on me. So far as savings aspect is concerned, except G.P. Fund, there is no other savings, though I have put in 16 years of service. My bank balance is hardly Rs. 1,500/-. As all my children and wife and old parents are dependent on me and if I am sent to jail, all these members of my family would starve. Even the children will have to abandon their study though they are not at fault at all, and they will suffer a lot. Their future will be in dark. Therefore, I pray mercy from this Hon'ble Court.

14. Further, in support of the aforesaid affidavit, Mr. Anandjiwala has also relied upon a decision of this Court rendered in the case of Sanjaykumar Jayantilal Gandhi v. State of Gujarat reported in 1993(1) GLH (UJ) 33 wherein accepting the plea of guilty, this Court has modified the order of sentence from that of R.I. for one year to a fine of Rs. 20,000/- only, and in default to undergo further R.I. for six months. Now, taking into consideration the overall facts and circumstances of the case, the aforesaid decision is not applicable at all. This is not the case wherein a lenient view can be taken more particularly when the offence committed by the respondent is in the capacity as a Police Constable, who is expected to maintain the law and order and not to commit offence of such a nature. To take a lighter and lenient view of the matter by granting less than the minimum prescribed under the Act would be at the hazard of the greatest public interest, where corruption despite the special Act with the deeming fiction and presumption against the accused is spreading with leaps and bounds!! Apart this in matter of awarding sentence, there cannot be any precedence, as ultimately everything depends upon the facts and circumstances of that particular case.

15. In the result, this appeal is allowed. The impugned judgment and order of acquittal passed by the trial Court is quashed and set aside. The respondent-accused is convicted for the alleged offence under Sections 13(1)(d)(i), (ii), (iii) and 13(2) of the Prevention of Corruption Act, 1988 and is sentenced to undergo R.I. for 18 months and fine of Rs. 1,000/- and in default, to undergo further R.I. for 3 months.

16. At this stage, the learned Advocate for the respondent-accused has prayed for 10 weeks' time to surrender, in order to enable the accused to make appropriate arrangements for his family members and also for collecting funds for going to the Supreme Court. Time to surrender is granted accordingly.

17. While parting, taking into consideration the evidence of Vasant Mangilal Patel, decoy witness who has been declared hostile and the Panch-witness No. 2 Mahendra Naranbhai, who has not supported the prosecution, this Court would be failing in its duty if we do not issue notices to the said two witnesses for their prima facie giving false evidence before the Court. Accordingly, Office is directed to issue notices against Vasant Mangilal Patel and Mahendra Naranbhai, making it returnable on 24th January, 1997, by giving it separate Misc. Criminal Application number, calling upon them as to why action should not be taken against them for giving false evidence.