IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 28-5-1996.

CRIMINAL APPEAL NO. 66 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Gopalal G. Chippa, since deceased during pendency of appeal, represented by heirs & legal representatives, (1) Smt. Lilaben, (2) Sanjay Gopalal, (3) Ramaiyalal Gopalal, and (4) Asha Gopalal

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA Advocate for the appellant.

MR. MA BHUKHARI, PUBLIC PROSECUTOR for Respondent.

CORAM : H.R.SHELAT, J.

28/05/96

ORAL JUDGEMENT

The appellant (now deceased) was placed on trial before the Special Judge for the District of Bhavnagar at Bhavnagar to answer the charge of the offence punishable under Section 161 of the Indian Penal Code and Section

5(1)(d) of the Prevention of Corruption Act, 1947 in Special Case No. 1 of 1984 on the file of the court. The trial ended in conviction and the deceased appellant came to be sentenced to three months simple imprisonment and fine of Rs.500/-, in default, simple imprisonment for one month more. The case of the prosecution in short is as under.

2. Dahyabhai Bhutabhai is serving as Keyman in Railways. He resides at Nari in Bhavnagar District. Damji aged about 18 years and Ramesh aged about 17 years are his sons. Both the sons go to the factories for labour work, and during leisure hours they also take their cattle to the grazing ground for the purpose of grazing. The deceased appellant was serving as Mounted Armed Police Constable. His duty was to move around the area allotted to him along with his fellow brother and have close surveillance over the theft or other crimes being committed or likelyhood thereof and not the criminals. Few days before the incident the deceased appellant told Damji that his cattle were entering into the fields of others and causing damage to the crop. It was also told to him that he was committing theft and therefore he would see that he was put behind the bars, but he would be let off if he was paid Rs.1000/-. Damji went home and informed Dahyabhai Bhutabhai his father about the threat given to him by deceased appellant. He was pacified. Thereafter on 12th September 1983 after 5.00 p.m., the deceased appellant met Dahyabhbai Bhutabhai and demanded Rs.1,000/- the amount of illegal gratification saying that if the payment was not made he would see that his son was sent behind bars involving in any case. Dahyabhai Bhutabhai supplicated and urged not to talk through his hat and be reckless as his son was not engaged in criminal activities. However the appellant paid no heed and insisted for Rs.1,000/-failing which it was made clear that his son would be sent behind bars. Dahyabhai Bhutabhai was having no option. He made it clear that because of the financial stringencies it was not possible for him to manage for Rs.1,000/-, but the deceased appellant persisted for the same. Hence Dahyabhai Bhutabhai in order to save his son Damji feeling helpless agreed to pay the amount of Rs.1,000/-, but by two equal instalments each of Rs.500/-. On the next day the payment was to be made. The place was then fixed. It was a place in GIDC area where there is a tree near the milestone of 161 Kms. near the railway track. At 5.00 p.m., Dahyabhai Bhutabhai had to go there and make the payment of Rs.500/- the sum of first instalment. After the deceased appellant went away, during night time Dahyabhai Bhutabhai cogitated and decided to lodge a

complaint. On the next day i.e. on 13-9-83 in the morning at 11.00 a.m. he went to the office of A.C.B. at Bhavnagar. Mr. Janakrai Mahashankar Vyas was serving as PSI in ACB office. Dahyabhai Bhutabhai apprised him about coercive measures adopted by the appellant accused for the purpose of extorting illegal gratification. The complaint was then reduced into writing. The permission from the Judicial Magistrate (F.C.) was obtained, and panchas were called. Both the panchas were explained about the purpose of the mission. They were also explained what role the complainant and both the panchas were to play. The currency notes given by Dahyabhai were shown to the panchas and thereafter anthracene powder was applied on both the sides of currency notes and then necessary demonstration with the aid of ultra-violet lamp was carried out and both the panchas were apprised how the limbs of the person touching the notes would be found glittering with light blue flourescent marks. In the shirt pocket put on by Dahyabhai Bhutabhai, the notes were put up with the instruction that he would pay the notes only when demand was made by the deceased appellant, till then he would not touch the same. It was also decided that after the notes were accepted, Dahyabhai would move his hand over his head and thereby would give a signal to the other members of the raiding party who would be watching remaining nearby. A first part of the panchnama was then drawn and thereafter the members of the raiding party left for the place which was the meeting place for the purpose of giving the gratification other than legal remuneration. There is a reason at a little distance from railway track. It was decided that Dahyabhai would not go under that tree which was near the milestone but would sit near the room call him under the pretext that as he was pricked with a thorn in the sole of a foot it was not possible for him to walk so that deceased appellant would go to him and the members of the raiding party hidden in the room would be able to see and hear. Accordingly Dahyabhai Bhutabhai took his seat very close to the room while the other members of the raiding party hid themselves into the room keeping the door of the room slightly open. Neither of the panchas was asked to remain with the complainant-Dahyabhai so that deceased appellant might not suspect about the raid. On that day, i.e. on 13th September 1983 at 5.00 p.m. the deceased appellant came there riding over his cycle. He parked his cycle near the railway track where the tree was. The complainant Dahyabhai called him mentioning about his inability to walk because he was pricked with a thorn. The deceased appellant went nearer to him and questioned whether he had brought the amount and what amount he had brought.

Dahyabhai Bhutabhai replied in the affirmative saying that he had brought Rs.500/-. Immediately thereafter the deceased-appellant demanded the amount of Rs.500/- and therefore taking out the amounts from the pocket by right hand Dahyabhai paid the same to the deceased-appellant who accepted the same by right hand and put the same in the handkerchief he was having in the left hand, and thereafter he closed the left fist. Immediately thereafter the signal was given as agreed upon. The members of the raiding party who were in the room immediately rushed to the complainant and deceased-appellant. The deceased appellant was then informed who they were and was also directed not to move. Thereafter the currency notes were taken from him. The numbers of those currency notes tallied with the numbers mentioned in the first part of the panchnama before leaving for the raid. Then the hands of the complainant deceased appellant were checked with the ultra-violet lamp rays. Every one could see that the appellant's fingers of both the hands were glittering with light blue flourescent marks. The currency notes were seized. The handkerchief and the ring put on by the deceased were also seized. A purse was found in the pocket of the deceased appellant from where one piece of paper was brought out on which name of deceased appellant was written. The cycle parked near the railway track was also seized and thereafter another part of the panchnama was completed. Mr. Vyas then registered the complaint and took the investigation of the case in his hand. He then recorded the statements of the concerned. At the conclusion of the investigation he filed the chargesheet before the Special Court for the District of Bhavnagar which came to be registered as Special Case No. 1/84. Hearing both, the learned Special Judge framed charge to which the deceased appellant pleaded not guilty and claimed to be tried. The prosecution adduced necessary evidence. Considering the evidence on record the learned Special Judge found that the prosecution had succeeded in establishing the charge levelled against the deceased appellant. He therefore held him guilty and convicted and sentenced aforesaid. It is against that order of conviction the present appeal has been filed. After the appeal was filed the appellant died, and therefore the heirs of the deceased appellant were brought on record and that is how the present appeal has been pursuaded.

3. The deceased appellant before the lower court submitted that at the relevant time Shri Gehlot was serving as D.S.P. in the District, while Mr. Simpi was serving as Home Inspector. Mr. Vora was serving as Office Superintendent. For one or the another reason the

malpractices they adopted in connecton with horse fodder came to light, and ACB, Rajkot raided their places. Mr. Gehlot, Mr. Simpi and others then assumed that deceased appellant had played pivotal role in getting their places raided. They were therefore not happy and were planning to involve him in one or the another case and ruin his career. At that time in the Mounted police force Ganubha was also serving as Head Constable who is considered to be a man of confidence of Mr. Gehlot and others. Mr. Gehlot and others paid Rs.500/- to Head Constable Ganubha and the case was engineered against him through Dahyabhai Bhutabhai. The day of 13th September 1983 was fixed for the purpose of raid because on that day he was required to go to the headquarters and report about the need of the horse fodder. He was then to go back in the evening to his place by the road near to the place where the raid was carried out. Dahyabhai Bhutabhai was asked to sit near the room where the members of the raiding party had hidden themselves under the pretext that he was not in a position to walk as he was pricked with a thorn in the sole and was waiting for the help of some one. When he was passing on the cycle by that road Dahyabhai Bhutabhai called him for help so as to extract the thorn. When he went there just to help him, Dahyabhai Bhutabhai along with the handkerchief threw the currency notes on the ground near to him and the members of the raiding party rushed there. Seeing the members the deceased appellant being shocked questioned why they were ? He was then slapped and the police officer asked to lift the currency notes lying on the ground. As there was no option left he lifted the amount and gave the same to the members of the raiding party. Thereafter undergoing necessary formalities he was unduly involved in the bribe case.

4. Taking me to the entire evidence on record, the learned Advocate representing the deceased appellant submitted that the learned Judge below did not appreciate the evidence in right perspective. He even ignored the defence taken, and overlooking the emerging factors supporting the defence appreciated the evidence. His prejudicial approach to convict the appellant any how could be spelt out. In short, according to him the appreciation of the evidence made and conclusions drawn by the learned Judge below were wholly against the sound principles of law, and consideration was on the verges of perverse. The panchas selected were the Government servants. The selection was made so that under the fear of departmental enquiry the prosecution could cause the panchas to yield to its desire and state against appellant. As the selection of the panchas was thus not honest, it was a circumstance going to discredit the

truth of the case of the prosecution. Further the material ingredients constituting the offence namely demand and acceptance were also not clearly established and therefore the offence was not at all constituted, but the learned Judge below overlooked the infirmities in the evidence with regards to demand and acceptance. He therefore urged me to allow the appeal, set aside the judgment and order of conviction, and pass the order of acquittal.

5. On behalf of the State, Mr. Bhukhari, the learned Additional Public Prosecutor refuting the submissions made on behalf of the deceased appellant submitted that there was no infirmity at all in the evidence, it was quite in consonance with the law and the learned Judge rightly appreciated the same and reached the logical conclusions. From the evidence of the panch, Dahyabhai Bhutabhai, and PSI Shri Vyas the fact about demand and acceptance was clearly established. There was no reason to doubt the evidence of these three witnesses. The learned Judge had discussed assigning valid reasons how the evidence of those witnesses was credible and for me there was no good cause to disagree with the reasonings of the learned Judge below. In order to have desired result the appellant's learned advocate was catechizing and cavilling.

6. It is the cardinal principle of law that the prosecution has to establish the charge beyond reasonable doubt. In the case of Rabindra Kumar Dey v. State of Orissa - AIR 1977 S.C. 170 about the burden of proof it is laid down that well settled cardinal principles of criminal jurisprudence show that onus lies affirmatively on the prosecution to prove the case beyond reasonable doubt and it cannot derive any benefit from the weakness or falsity of the defence version. It is also observed that in a criminal trial the accused must be presumed to be innocent unless proved guilty, and that the onus of the prosecution never shifts. Keeping this cardinal principle of criminal jurisprudence in mind the prosecution has to establish the charge. Before I proceed to dissect the merits of the rival contentions and the evidence on record, I may first deal with certain points raised for my consideration. It was submitted on behalf of the appellant referring the evidence of Mr. Vyas-the PSI, that when in this case the panchas were selected from the establishment of the Collector's office with the idea that they might not turn hostile, and if at all, departmental action could be initiated, it would not be just and proper to accept the case of the prosecution, the possibility that panchas supported the bogus and

concocted case under the hanging sword of departmental action could not be ruled out. In this case therefore whatever the panch stated in his evidence of the panchnama could not be made the base for reaching a particular conclusion.

7. Of course when the whole case hinges also on the evidence of panch in trap case, the selection of the panch witness must be credible, reliable and independent, but the testimony of the panch witness if he happens to be the Government servant cannot be rejected merely on the ground that he being a Government servant would not be independent and would support the case of the prosecution any how under the fear of departmental action. To reject the evidence of such witness would amount to ignoring the hard realities and unnecessarily labelling the Government servant acting as panch to be a ductile or jade. A similar question arose before the Apex Court in the case of State of Gujarat vs. Raghunath Vamanrao Baxi - AIR 1985 S.C. 1092 wherein it is laid down that the witness or Government servant assisting the investigating agency cannot be disbelieved or his evidence cannot be rejected merely on that count. It may however be noted that while cross-examining the panch witness, no suggestion has been made to him that he was supporting the case of the prosecution simply because he had the fear in his mind about the departmental action, and though the truth was otherwise, in order to save himself from the departmental action he was supporting the prosecution. In the absence of any suggestion it should be assumed that the otherside had no reason to doubt the credibility of the panch on the ground that he was a Government servant and had gone to the court to support the fact far from truth. The contention advanced in this regard therefore cannot gain a ground to stand upon. However it may be stated that for the reasons stated hereinbelow the evidence led by the prosecution does not inspire confidence with regard to demand and acceptance.

8. My attention was drawn to the decision of the Supreme Court in the case of Bhagwansingh vs. The State of Rajasthan - A.I.R. 1976 S.C. 985 wherein it is held that if everything is done by the police officer, it would be an infirmity in the case which is bound to reflect on the credibility of the prosecution case. In that case the complaint was recorded by the Investigating Officer, raid was also carried out by the Investigating Officer, search and seizure were also made by him and thereafter the investigation was also carried out by him and the chargesheet was also filed by him before the

court. In this case, Mr. Vyas, the PSI has also done every thing right from recording of the complaint till the chargesheet was filed before the court. When that is so, the credibility of the case of the prosecution is certainly doubtful and the prosecution case must fail on that count. Even if this tarnishing point is ignored and the evidence is considered, there is nothing which would lead me to hold that the prosecution has succeeded in establishing the charge levelled against the deceased appellant.

9. Before I proceed to examine the evidence, the requirement to prove the charge may be stated. It is held by the Supreme Court in the case of Hari Dev Sharma vs. State (Delhi Administration) - AIR 1976 S.C. 1489 that vital part of the prosecution if cannot be believed or not proved, conviction cannot be based. As laid down in this case, the demand and acceptance are required to be proved without any doubt, and if one of them is not proved, being the vital part, the offence cannot be said to have been constituted, and therefore conviction if inflicted cannot be sustained. Likewise view has been taken in the cases of Anantray Lalji Pandya vs. The State of Gujarat - 1982 G.L.H. 472; State of U.P. vs. Ram Asrey - 1990 Cri. Law Reporter, 188; and Palanisamy Raju vs. State of Tamil Nadu - 1986 Criminal Law Reporter, 99. In view of the law made clear in the abovestated decisions, what is required to be determined is whether the prosecution has successfully established the case about demand and acceptance.

10. So far as demand is concerned, the evidence of Dahyabhai Bhutabhai the complainant is material. It is the case of the prosecution that the deceased appellant in order to extort the money threatened Damji the son of complainant Dahyabhai saying that he was committing theft and grazing the cattle in the fields of others and was thereby causing damage to others. He would therefore see that he was put behind bars. It was also told that he could be saved only if Rs.1,000/- were paid to him for showing the favour. Thereafter Damjibhai informed his father Dahyabhai, and according to Dahyabhai on the previous day of the incident, deceased appellant met him and demanded the amount any how, and therefore he was compelled to pay, but as he was having no money he had to manage for the same. He then agreed to pay by way of 2 equal instalments each of Rs.500/-. What can be deduced from these facts is that Damji is the main source of the case of demand. It is pertinent to note that Dahyabhai is not examined and no reason is assigned for the same. If the prosecution does not examine available witness

without any cause, I am entitled to infer every thing against the case of the prosecution. On this count, it can be said that had Damji been examined, the case of the prosecution about demand would have fallen to the ground and the ruse would have come to surface. To suppress the ruse Dahyabhai is kept away from the court. It was on query submitted by the learned Additional Public Prosecutor that on the previous day of the incident in the evening after 5.00 p.m., the deceased appellant had been to Dahyabhai Bhutabhai and had demanded the amount and therefore the evidence of Dahyabhai on the point of demand was sufficient if the case of demand made to Damjibhai was not acceptable. This submission also cannot find favour. On 12th September 1983 as alleged after 5.00 p.m. the deceased-appellant met Dahyabhai and demanded the amount. The service record of the deceased-appellant produced at Exh.60 shows that on 12-9-83 right from 15.00 hours to 20.00 hours he was on duty in the two villages viz., Nari and Khumberwada. This would go to show that the case of meeting is bogus as the meeting between the two was not possible at the alleged place and time. How can there be a demand ? On such facts, there is a reason to believe that to involve the appellant as alleged in defence the case is made out.

11. On one more point the case of demand can be doubted. Admittedly, Dahyabhai Bhutabhai was not having the money to pay to the deceased appellant. He had to manage for the same and therefore he wanted time. He then went to his brother Mohanbhai who was the Manager of the association of which he was a member. The association was formed so that in case of need the member thereof can obtain financial help, and pay the amount back by periodical instalments. Dahyabhai therefore went to Mohanbhai and informed him that he was in need of Rs.500/-. He also informed him that the deceased-appellant was persistently demanding the bribe, and there was no option left to save his son, but to give the bribe. Mohanbhai then paid Rs.500/- from the fund of the association which according to Dahyabhai he has paid the amount back to the association. When accordingly the amounts are procured, naturally there must be necessary entries in the record of the association. At this stage the defence alleged must be born in mind. When a peculiar defence was taken alleging clearly that in order to rope in any how and harass him the police officers had paid Rs.500/-,it was incumbent upon the prosecution to produce necessary documentary evidence of that association in order to show that in fact the complainant raised the amount taking the loan from the association, police was not at all interested in ruining the career of

the deceased appellant and police played no mischief. It is also pertinent to note that Mohanbhai the brother of Dahyabhai is also not examined. It's not the case of the prosecution that Mohanbhai is hostile to him. When oral as well as documentary evidence though available and neither of the two is brought on record and kept away from the court it should be assumed that the case of the prosecution is not worthy of credence. On the contrary the case alleged in defence is more probable.

12. The unnatural aspect that emerges on record cannot be overlooked. Seeing the deceased appellant passing by the road the complainant Dahyabhai calls him for help as he was unable to walk because he was pricked with a thorn in the sole of a foot and it was paining tremendously. Hence immediately after the deceased appellant goes there, he would naturally inquire what had happened, where the thorn was pinching and would ask to be in a particular position. Thereafter during the course of the thorn extracting operation the talk about money would take place. But here according to the prosecution immediately after deceased-appellant unaware about pretence reached near the complainant and straightway asked about money and not about the help Dahyabhai was yearning for. Such evidence on record doubting the case of the demand has been overlooked by the learned Judge below. In my view, as the case of demand is suspicious because of such reason, one of the ingredients constituting the offence cannot be said to have been clearly established in accordance with law.

13. When the case of demand is found highly suspicious, even if the case of the acceptance is established, the accused cannot be convicted. However in this case let me state that the case about acceptance is also doubtful. The deceased-appellant, according to the prosecution, parking the cycle goes to the complainant swinging round the handkerchief he was having. He then by right hand accepted the amounts offered and placed the same in the handkerchief he was having in the left hand. One cannot miss the fact that deceased-appellant was serving as police constable and he was aware about the bribe cases and procedure observed at the time of raid. If he had the handkerchief with him, he would have certainly covered his right hand with that handkerchief and accepted the amount, so that particles of anthracene powder might not pass on the fingers or other part of the palm or hand, and have no evidence against him. The fact that bribe-money was accepted without covering the palm with handkerchief germinate suspicion and so the prosecution has come out with the case that on the

handkerchief the name of the appellant and the name of Sanjay, his son were written by ball pen and that fact removed doubt that might arise. No doubt, one may have a notion about writing of name on one's own name on a thing/article so that it can easily be identified or traced out in case it is misplaced, lost or stolen, but the notion of the people in the locality or a particular area cannot be lost the sight of. In view of the decision in the case of Madho Singh v. The State of Bihar and Others - AIR 1978 Patna 172 which is appealing, a Judge is free to use his knowledge of the local affairs without the evidence thereof being on record. In the Saurashtra region, the people are fond of embroidary, and they write the name on the cloth or draw different design on the cloth with the aid of embroidary work without which they fell something lacking. Here that embroidary work is not found for the purpose of writing the name, on the contrary the names are written by the ball pen which is certainly contrary to the ordinary notion of that locality, and that leads me to hold that the case in defence is more probable than the case of the prosecution. It can well be said that the handkerchief along with the notes were given to the complainant from the investigating agency and to rope in the accused any how, the name of the accused and the name of his son were written by pall pen.

14. Of course, when the tips of the right hand finger of the deceased-appellant were seen focussing the ultra-violet lamp rays, they were found with glittering with light blue flourescent marks, and that would prima facie lead any one to hold that the deceased appellant accepted the amount. It may be stated that in this case anthracene powder is used. The Supreme Court in this regard in the case of Raghbir Singh vs. State of Punjab - AIR 1976 S.C. 91 has made it clear that it is desirable that the currency notes to be used for the purpose of trap should be treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral testimony which is some times of a dubious character for the purpose of deciding the fate of the public servant. This High Court when the occasion arose in the case of Nathalal Govindji Vaghela vs. State of Gujarat - XX (2) G.L.R. 190 has likewise held observing further that in the case of anthracene powder there is no detection by any chemical process and therefore the use of anthracene powder must be ruled out even if the witnesses may speak about a particular marks being found when the concerned articles and limbs are viewed under an ultra violet lamp.

It still rests entirely on the oral evidence of witnesses in whose presence the experiment is alleged to have been carried out with no opportunity to test their veracity by reference to any scientific method of testing and analysis, which is surely available in a case in which phenolphthalein powder is used. The Supreme Court again in the case of Khilli Ram vs. State of Rajasthan - 1985 S.C.C. (Cri) 24 has made it clear that phenolphthalein powder treatment to currency note to be used for the purpose of trap should be resorted to. The Allahabad High Court in the case of Devendra Narain vs. State of U.P. - 1993 (3) Crimes 167 has held to which I agree that it is mandatory for the leader of the trap to treat the bribe money with phenolphthalein powder before laying the trap, and in the absence of any explanation for not so doing, the prosecution case becomes suspect. In this case anthracene powder is used and not the phenolphthalein powder which would not lead the court with certainty to reach a particular definite conclusion. For not using the phenolphthalein powder no explanation is offered by the prosecution. When that is the case, nothing with certainty can be determined in favour of prosecution. It would not therefore be just and proper to conclude against the appellant simply on the basis of the light blue flourescent marks that could be noted on the hands and limbs. At this stage, it is necessary to refer the decision of this Court rendered in the case of Ambalal Motibhai Patel vs. State - AIR 1961 Gujarat 1 wherein it is laid down that if the anthracene powder is used the prosecution has to clearly prove that no powder was detected with naked eye and that when ultra violet light was focussed, there was emission of light blue flourescent light. If the evidence proved positive result for both the tests it would be right to infer that anthracene powder was present. In short the prosecution has to prove that there was light blue emission of light under the influence of ultra-violet lamp. It is not sufficient for the prosecution to prove that under the ultra-violet light witnesses saw the stains of white powder or even that under the ultra violet light they saw some sparkling or some shimmering. In this case neither of the witness inclusive of the Investigating officer says that when ultra-violet rays were focussed, light blue flourescent marks could be seen. They only say that marks of powder were seen or something sparkling could be seen. This, in view of abovereferred decision of this Court in the case of Ambalal Motibhai Patel is not enough. Hence on the techniques of anthracene powder no definite conclusion can be drawn but it seems that the learned Judge below overlooked this aspect and was mainly swayed away with the techniques of anthracene powder.

The case of "acceptance" therefore on the basis of the marks noted cannot safely be accepted.

15. Even if the abovestated points are ignored the prosecution cannot succeed. As discussed earlier the appellant knowing about the trap cases being in the services of the police department would not accept the amount with bare hands and if he was having handkerchief he would have certainly made use of the same so as to avoid emission of light blue flourescent marks. However, in this case not on the whole fingers or some parts of the palm but only on the tips of the fingers of the right hand, according to the prosecution, emission of light blue marks could be seen or something shimmering or glittering could be seen. This fact on the contrary supports the case of the defence. If the notes are accepted other parts of the fingers and palm and not the tips of the fingers only would be affected by the anthracene powder and emission thereof would appear on fingers and palm as and when tested with the aid of ultra-violet lamp, but that is not noted, and therefore there is a reason to believe that after the notes and handkerchief were thrown as alleged in defence the deceased appellant was compelled to pick up the notes lying on the ground, and if the person is picking up the notes the tips of the finger would be affected and no other part. The fact that the tips of the fingers only were found glittering with anthracene powder shows that the case in defence is more probable, and credibility of the prosecution case is highly doubtful.

16. For the foregoing reasons, in my view the prosecution has not, beyond reasonable doubt, succeeded in establishing the case about demand and acceptance. The learned Judge below overlooking this aspect of the evidence fell into error. When the material ingredients namely demand and acceptance are not clearly established and the case in this regard is highly doubtful, the conviction and sentence inflicted cannot be maintained. The appeal is therefore required to be allowed. In the result, the appeal is allowed. The judgment and order of the lower court convicting and sentencing the deceased appellant of the charges with which he was charged are hereby set aside and he is acquitted thereof. The bail bonds are treated cancelled.

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