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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 29<sup>th</sup> May, 2015**

**+CRL.A.No.66/2013**

ANIL KUMAR TITO @ ANIL KUMAR SHARMA @ TITTO

..... Appellant

Through: Mr.Piyush Sharma, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.O.P.Saxena, APP for the State

**CORAM:**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

**J U D G M E N T**

**: SUNITA GUPTA, J.**

1. This appeal is directed against a judgment dated 15<sup>th</sup> December, 2012 passed by learned Special Judge (ACB) in CC No.45/2011 arising out of FIR No.28/2008 u/s 7/13 of Prevention of Corruption Act, 1988, Police Station, Anti Corruption Branch, Delhi holding the appellant guilty of offence punishable u/s 7 of Prevention of Corruption Act, 1988 and order on sentence dated 17<sup>th</sup> December, 2012 sentencing the appellant to undergo rigorous imprisonment for a period of 2½ years and a fine of Rs.10,000/- in

default of payment of fine to undergo simple imprisonment for a period of three months.

2. The case of prosecution in brief is that on 28<sup>th</sup> March, 2008, the complainant Gurbax Singh S/o Niranjan Singh went to Anti Corruption Branch, Delhi and gave his complaint Ex.PW3/A regarding demand of bribe of Rs.13000/- by accused Anil Kumar Tito who was working as JE (Civil), Civil Division-I, Irrigation & Flood Control Department, Basai Darapur, Delhi in consideration of not removing his rickshaw stand/shop near *nala* of Raghubir Nagar and for not seizing the rickshaws of the complainant. The gist of the complaint is that the complainant had been running his cycle rickshaw stand/repair shop at 12½ gaj near *Ganda Nala*, Raghubir Nagar and also used to give cycle rickshaw on hire on daily basis to several persons for which the accused, working as JE in Irrigation and Flood Control Department, has been demanding bribe of Rs.13000/- for not removing said cycle rickshaw stand/repair shop and threatened that in case said amount is not paid by evening of 28<sup>th</sup> March, 2008, he would stop his work and would seize his cycle rickshaws. Since the complainant was against giving bribe, he went to Anti Corruption Branch and gave this complaint to Inspector Nand Kumar, Raid Officer-PW19 in the presence of Panch witness-Pradeep Kumar.

3. It is further the case of prosecution that the complainant produced four GC notes of Rs.500/- each before the Raid Officer who noted down the serial number of the said GC notes in the pre-raid proceedings Ex.PW3/B and treated the said GC notes with phenolphthalein powder. Thereafter raid officer-PW19 gave demonstration to the Panch witness, complainant by getting touched the right hand of the Panch witness with the currency notes and wash of the right hand of the Panch witness in the colourless solution of sodium carbonate which turned into pink. Thereafter, the said GC notes were handed over to the complainant and Panch witness was instructed to remain close with the complainant and to overhear the conversation between the complainant and the person demanding the bribe amount. Thereafter PW19 along with the complainant, Panch witness and other members of the raiding party left Anti Corruption Branch in a government vehicle and reached at the spot at Raghbir Nagar near *ganda nala* and raid was conducted but during raid, the accused did not demand money nor accepted money, rather directed him to vacate the Govt. land. Thereafter raiding party left the spot and the matter was discussed with senior officers who directed for winding up the raid proceedings.

4. Thereafter on 13<sup>th</sup> August, 2008, a complaint was made by the complainant Gurbax Singh for taking action on his earlier application on the

ground that there is no chance of catching JE Anil Kumar red handed as he is extra careful in demanding money. Thereafter on the basis of endorsement Ex.PW19/B made by the raiding officer on 18<sup>th</sup> August, 2008, FIR No.28/2008, Ex.PW17/A was registered and further investigation was handed over to Inspector V.K. Singh, PW21.

5. During the course of investigation, Inspector V.K. Singh called AE Shiv Kumar, AE Syed Mohd. Akhtar and Mr. V.K. Jain, Executive Engineer from Irrigation & Food Control Department, who on hearing the conversation on the CD, identified the voice of accused. On 29<sup>th</sup> August, 2008, accused was arrested vide arrest memo Ex.PW5/A and personal search was conducted vide memo Ex.PW5/B. On 11<sup>th</sup> September, 2008 mobile phone by which the conversation was stated to have been recorded along with memory card was seized by seizure memo Ex.PW3/E. On 24<sup>th</sup> September, 2008, the transcription of the CD Ex.PW3/F was prepared. During the course of investigation, the Investigating Officer also obtained the specimen voice of the complainant as well as the accused and sent the same along with CD containing the alleged conversation to FSL and obtained FSL reports Ex.PW2/A and Ex.PW2/B. After completing investigation, charge sheet was submitted against the accused.

6. In order to substantiate its case, prosecution in all examined 21 witnesses. In his statement recorded u/s 313 Cr.P.C., the accused denied the case of prosecution. According to him, he was falsely implicated in this case. Two witnesses were examined by him in his defence.

7. Vide impugned judgment, the accused was held guilty of offence u/s 7 of Prevention of Corruption Act and was sentenced as mentioned hereinbefore. Feeling aggrieved and dissatisfied, present appeal has been preferred.

8. I have heard Mr. Piyush Sharma, learned counsel for the appellant and Sh.O.P. Saxena, Additional Public Prosecutor for the State and have also perused the written submissions filed by learned counsel for the appellant.

9. Assailing the findings of the learned Special Judge, learned counsel for the appellant submitted that there is neither any demand of bribe nor acceptance by the appellant. In the absence of the same, no case u/s 7 of Prevention of Corruption Act is made out. Reliance was placed on ***B. Jairaj vs. State of Andhra Pradesh***, Crl.Appeal No. 696/2014.

10. It is further submitted that the entire case of prosecution revolves around a CD which is alleged to have been recorded by the complainant in order to show that the appellant demanded bribe from him. There is an interpolation in the complaint about the recording on mobile phone which

fact has been admitted by PW19. Further the case of the complainant is that tape recording was done on Tata Indicom phone. The appellant produced two witnesses who have categorically stated that no recording can be made on Tata Indicom phone. Later on the complainant replaced the Tata Indicom phone with Nokia 5200. There is no explanation from the side of the prosecution with regard to the change of mobile phone. The original tape containing the alleged conversation was not sent to FSL for examination. The fact of retrieving the audio file was not mentioned in report Ex.PW2/A which was admitted by PW2-Dr.C.P.Singh. As regards the identification of the voice of the accused on the CD, it was submitted that PW13 and PW14 have categorically stated that they were not sure that voice on the CD was of the accused and they had signed Ex.PW13/A on the asking of the Investigating Officer of the case. As per seizure memo of the mobile phone Ex.PW4/C, the file has been deleted from the mobile phone. Falsity of the prosecution case is also reflected from the fact that one of the witnesses of the seizure memo, PW11 has stated that the conversation was played 2-3 times during his stay. If the recording has been deleted from the original tape, how can he hear the voice recording? Further the witness admitted that the CD contained a lot of voice. Merely on the basis of FSL report, the appellant has been convicted. The complainant had a grudge against the

appellant inasmuch as the appellant was asking him to vacate the government land where he was parking his rickshaw during night.

11. Reliance was placed on *Ram Singh vs. Col. Ram Singh*, 1985 Supp. SCC 611, where the law was laid down by Hon'ble Supreme Court for fulfilling various requirement before basing the conviction upon tape recorded proceedings which were followed in *Devender Singh vs. CBI*, CrI. Appeal No. 359/2009 and reiterated in *Nilesh Dinkar Paradkar vs. State of Maharashtra*, (2011) 4 SCC 143.

12. It was further submitted that the testimony of the complainant suffers from material improvements, therefore, the prosecution has failed to bring home the guilt of the accused beyond shadow of doubt. As such, the accused is entitled to be acquitted.

13. Per contra, learned Additional Public Prosecutor for the State supported the findings of the learned Special Judge and submitted that there is no infirmity in the order which calls for interference. As such, the appeal is liable to be dismissed.

14. Focussing first on the aspect of demand of bribe, it is a matter of record that pursuant to the complaint Ex.PW3/A made by the complainant Gurbax Singh regarding demand of Rs.13,000/- by the accused, a raid was conducted in the presence of Panch witness-Pradep Kumar, however, as per

the report Ex.PW3/B and PW3/C, the accused neither demanded nor accepted any money, rather directed the complainant to vacate the government land, as such, direction was given for winding up the raid proceedings.

15. Thereafter, on 13<sup>th</sup> August, 2008, an application Ex.PW3/F was given by the complainant for revival of his earlier application on the ground that it is difficult to catch the accused red handed as he was taking extra precautions. In the original complaint Ex.PW3/A, it was mentioned that the complainant had recorded the proceedings on his mobile phone regarding demand of bribe by the accused. Therefore, vide endorsement Ex.PW19/B, the FIR was registered.

16. The entire case of the prosecution, therefore, revolves around the tape recorded proceedings.

17. The pre-requisite of proving the tape recorded conversation have been spelt out by the Hon'ble Supreme Court in ***Nilesh Dinkar Paradkar*** (supra), wherein it was held as under:-

*“31. In our opinion, the evidence of voice identification is at best suspect, if not, wholly unreliable. Accurate voice identification is much more difficult than visual identification. It is prone to such extensive and sophisticated tampering, doctoring and editing that the reality can be completely replaced by fiction. Therefore, the Courts have to be extremely cautious in basing a conviction purely on the evidence of voice identification. This Court, in a number of judgments emphasised the importance of the precautions, which are necessary to be taken in placing any reliance on the evidence of voice identification.*



32. In the case of **Ziyouddin Burhanuddin, Bukhari v. Brijmohan Ramdass Mehra and Ors.**, (1976) 2 SCC 17, this Court made following observations:

*“We think that the High Court was quite right in holding that the tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:*

*(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.*

*(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.*

*(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.”*

33. In the case of **Ram Singh and Ors. v. Col. Ram Singh**, 1985 (Supp) SCC 611, again this Court stated some of the conditions necessary for admissibility of tape recorded statements, as follows:

*“(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.*

*(2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence -- direct or circumstantial.*

*(3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.*

*(4) The statement must be relevant according to the rules of Evidence Act.*

*(5) The recorded cassette must be carefully sealed and kept in safe or official custody.*

*(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.”*

39. This apart, in the case of **Mahabir Prasad Verma v. Dr. Surinder Kaur**, (1982) 2 SCC 258, this Court has laid down that tape recorded evidence can only be used as corroboration evidence in paragraph 22, it is observed as follows:

*“22. ....Tape-recorded conversation can only be relied upon as corroborative evidence of conversation deposed by any of the parties to the conversation and in the absence of evidence of any such conversation, the tape-recorded conversation is indeed no proper evidence and cannot be relied upon. In the instant case, there was no evidence of any such conversation between the tenant and the husband of the landlady; and in the absence of any such conversation, the tape-recorded conversation could be no proper evidence.”*

18. Reverting to the case in hand, a perusal of the complaint Ex.PW3/A reflects that at the fag end of the complaint, in different ink it is recorded:-  
*“maine kal Anil Sharma dwara paise mangne ki baat apne mobile mein bhi record ki jo mere mobile mein mauzood hain”* PW19-Inspector Nand Kumar has admitted that this portion mark ‘X’ to ‘X’ is in different ink.

19. Ex.PW3/D is the seizure memo dated 28<sup>th</sup> March, 2008 of CD (conversation), where it is recorded that the complainant informed about recording of demand of bribe by the accused in his mobile phone (Indicom) which recording was heard on the computer. With the help of computer, a CD was prepared in the presence of Panch witness-Pradeep Kumar and the complainant, which was sealed with the seal of NK.

20. It is the admitted case of the prosecution that CD was deposited by PW21-Inspector V.K. Singh with PW20-Head Constable Jitender Singh

only on 18<sup>th</sup> August, 2008. Prior to that no articles were deposited in the *malkhana*. Meaning thereby, from 28<sup>th</sup> March, 2008 till 18<sup>th</sup> August, 2008, this CD remained in possession of Inspector Nand Kumar who had sealed the CD with his own seal.

21. On being entrusted with the investigation of the case, on 25<sup>th</sup> August, 2008, Inspector V.K. Singh called PW14-AE Shiv Kumar and PW13-AE Syed Mohd. Akhtar of I & FC to recognize the voice available in the CD. It is alleged that audio CD was played on computer with the help of computer operator in the presence of Panch witness-Vijay. The CD was heard by both the witnesses and they read the transcript. Observation memo voice recording Ex.PW13/A was prepared wherein it is recorded that both the witnesses stated that JE Anil Kumar has done a wrong thing by demanding bribe. It is a shameful act and he should be punished. There is no mention in this observation memo that the witnesses had identified the voice of the accused. Both these witnesses, in cross-examination, stated that they were not sure as to whether the voice in the CD was that of Anil Kumar and that before playing the CD, they were informed by the Investigating Officer of the case that the CD contains the voice of Anil Kumar and the complainant.

22. On 28<sup>th</sup> August, 2008, Inspector V.K. Singh sent a letter to PW15-Sh. V.K. Jain, XEN, I & FC Department. It is alleged that CD was again played

on computer with the help of computer operator in the presence of Panch witness-Naresh Chand. CD was heard by Sh. V.K. Jain and he also went through the transcript. After hearing the CD, Sh.V.K. Jain had identified the voice of JE Anil Kumar. Observation memo Ex.PW21/A was prepared. However, Mr. V.K. Jain appeared as PW-15 and his testimony is conspicuously silent regarding any such observation memo Ex.PW21/A or that in his presence the CD was played or he heard the transcript or he identified the voice of the JE Anil Kumar.

23. As per the further case of prosecution, on 11<sup>th</sup> September, 2008, mobile phone make Nokia, by which voice of the accused is alleged to have been recorded, was produced by PW16-Gurnam Singh with memory card and this mobile phone was handed over to Panch witness to check whether there is facility to record the voice in the said mobile. It was checked by the Panch witness and he confirmed that the mobile was having the facility to record voice. It was seized vide seizure memo Ex.PW3/E. It is recorded in the seizure memo that Gurnam Singh had deleted the voice recording being personal in nature and the recording done by Gurbax Singh regarding demand of bribe was already converted into CD in anti corruption branch and the same was deleted thereafter. On 24<sup>th</sup> September, 2008, transcript of CD Ex.PW3/F was prepared after hearing the CD.

24. Thereafter it is alleged that on 29<sup>th</sup> August, 2008, accused was arrested. The CD was played in the presence of accused Anil Kumar and Panch witness-Avinash Kumar and observation memo Ex.PW5/D was prepared recording that on hearing the CD, accused was in tears. There is nothing in this observation memo that the accused admitted his voice in this CD.

25. It is further the case of prosecution that on 30<sup>th</sup> March, 2009, a notice was served upon the accused that his voice sample is required to be taken and the CD was played in his presence. The portion encircled 'X' at PW10/A was written by the accused in the presence of PW10 Sh. Krishan, Panch witness wherein he denied that the CD contains his voice. The accused gave his consent for voice sample on the ground that CD does not contain his voice. Thereafter the voice sample of accused in the presence of PW10-Krishan was taken and this witness has also deposed that the accused denied that the CD contains his voice.

26. In view of this evidence coming on record, it is to be seen whether the conditions necessary for admissibility of tape recorded statement as laid down in ***Ram Singh's*** case has been fulfilled or not.

27. The first condition regarding the identification of voice of the speaker is not fulfilled as PW13 and PW14, who were from the department of the

accused and were called to identify his voice, were not sure whether the voice was of the accused or not. She V.K. Jain, XEN has nowhere deposed that any observation memo was prepared in his presence or that he identified the voice of the accused. So far as accused is concerned, he has denied his voice in the CD in the presence of Panch witness-Krishan and, therefore, expressed his willingness to give voice sample which was taken. Under the circumstances, it was not established that voice in the CD was that of the accused. Moreover, PW13 & PW14 have deposed that they were informed by the Investigating Officer of the case that they have to identify voice of accused. No attempt was made even to mix the voice of the accused with some other unidentified voice. In such circumstances, the voice identification evidence would have little value.

28. As regards the second condition that the accuracy of the tape recorded statement has to be proved by maker of the record by satisfactory evidence direct or circumstantial, even this condition is not fulfilled. As per the seizure memo Ex.PW3/D, the CD was prepared from mobile phone (Indicom), however, this mobile phone Indicom was never taken into possession and admittedly it has no recording facility. Therefore, it is not understandable as to how the voice of the accused was recorded in this mobile phone and how the CD was prepared. Subsequently, vide seizure

memo dated 11<sup>th</sup> September, 2008, Ex.PW3/E, a mobile phone make Nokia 5200 was seized. It is not the case of the prosecution that any CD was thereafter prepared from this mobile. Admittedly the original chip was not sent for checking of voice identification. Only memory chip was seized. However, as per the seizure memo of the mobile phone, the conversation was deleted. The net result is that the CD which is alleged to have been prepared from mobile phone Indicom vide Ex.PW3/D could not have been prepared as there is no facility of recording in Tata Indicom mobile. Moreover, that mobile phone was never seized by the Investigating Officer of the case. Rather at a later stage, on 11<sup>th</sup> September, 2008, mobile make Nokia 5200 belonging to Gurnam Singh was seized from which the recording was already deleted. Therefore, no explanation is forthcoming as to from where the CD was prepared. PW2-Sh. C.P. Singh, Assistant Director, FSL stated in his cross-examination that he found audio file namely "Record 006.amr" of size 488 KB from the hidden file. However, he admitted that this fact was not mentioned by him in his report Ex.PW2/A. Under the circumstances, the accuracy of the tape recorded statement is not proved by satisfactory evidence.

29. Even the possibility of tampering with the tape recorded statement cannot be ruled out. It is alleged that vide seizure memo dated 28<sup>th</sup> March,

2008, the CD was taken into possession but it always remained in the custody of the officials of Anti Corruption Branch and it was deposited in the *malkhana* for the first time on 18<sup>th</sup> August, 2008 only. Even thereafter the CD was played on 25<sup>th</sup> August, 2008 before PW13-Syed Mohd. Akhtar, PW14-Shiv Kumar and on 28<sup>th</sup> August, 2008 before PW15-Mr. V.K. Jain and on 29<sup>th</sup> August, 2008 before the accused in the presence of PW5-Constable Ravinder Singh and PW9-Avinash Kumar and at every juncture, the CD was unsealed. It is not the case of prosecution that two CDs were prepared. There is nothing on record to show that after the CD was deposited in the *malkhana* on 18<sup>th</sup> August, 2008, it was ever taken out from the *malkhana* to prepare the observation memos or that it was again deposited in the *malkhana*. That being so, the possibility of tampering with the CD cannot be ruled out. Therefore, even the condition No.3 & 5 for admissibility of tape recorded statement is missing.

30. It has also come in the statement of the witnesses that there was voice of *thak thak* in the CD and, therefore, it cannot be said that the voice of speaker was clearly audible and was not distorted by other sounds or disturbances.

31. Furthermore, if the transcript of the CD Ex.PW3/F was prepared only on 24<sup>th</sup> September, 2008, it is not clear as to how this transcript was heard by



PW14-Syed Mohd. Akhtar and PW14-Shiv Kumar on 25<sup>th</sup> August, 2008 and by PW15-V.K. Jain on 28<sup>th</sup> August, 2008. Moreover, PW16-Gurnam Singh has admitted that prior to 11<sup>th</sup> September, 2008, neither the complainant Gurnam Singh nor the Investigating Officer of the case contacted him. Further, according to PW11-Sh. Thakur Dayal, the mobile phone make Nokia 5200 was seized in his presence and the Investigating Officer of the case had played the mobile phone in his presence and he heard the conversation 2-3 times. As per the seizure memo, the recording was already deleted, therefore, it is not explained as to how the conversation was played from this mobile phone by the Investigating Officer in the presence of this witness or he heard the same. Under the circumstance, in view of the aforesaid discrepancies appearing in the prosecution case, the tape recorded conversation does not stand the test of requisites spelt out by the Supreme Court in ***Ram Singh's*** case. Merely on the basis of the report of FSL, the appellant could not have been convicted of the offence.

32. Moreover, as observed in ***Mahabir Prasad Verma (supra)***, a tape recorded evidence can only be used as corroborative piece of evidence. Besides tape recorded conversation, there is testimony of PW3 Gurbax Singh. A perusal of the same goes to show that the same suffers from material improvements. According to him, on 28<sup>th</sup> March, 2008, he had

gone to meet the accused and informed him that he is a poor person. Accused demanded Rs.15000/- from him on the ground that he was running cycle rickshaw/repair shop at Govt. land. When he met the accused, Chowkidar of his department was with the accused and accused told him to remove his shop in case of non-payment of amount of Rs.15000/-. He improved the version by stating that accused had initially along with Chowkidar had come to his shop. He further went on stating that after about half an hour, he arranged a mobile phone and reached the office of the accused and met him there. The matter was settled for Rs.13000/-. At that time, he had recorded the talks which had taken place between him and the accused. Initially, he went to police Station Rajouri Garden for taking action against the accused but they declined. On 29<sup>th</sup> March, 2008, he went to Anti Corruption Branch and met the DIG who called his subordinates. He gave his complaint Ex.PW3/A. He handed over Rs.2000/- comprising of Rs.500 each. Panch witness was called and in the presence of Panch witness, the GC notes were smeared with some powder and after giving the demonstration, pre-raid proceedings were conducted. Thereafter, they went to the office of the accused. He asked the accused to accept Rs.2000/- initially and that he would pay remaining Rs.10,000/- later on. Apprehending suspicion, accused stated that he would take the money

afterwards. He further told him that he had identified the Panch witness accompanied by the police officials and that he had already given a statement as a witness with the said police official in another case of Anti Corruption. On 13<sup>th</sup> of the next month, he handed over the mobile phone in which he got recorded the conversation between him and the accused to the police official. However, the police official heard the conversation on the date of raid itself. However, in cross-examination, he was confronted with complaint Ex.PW3/A where instead of demand of Rs.15000/-, Rs.13000/- was recorded. There was no mention that the accused told him to remove his shop in case the amount of Rs.15,000/- is not paid. There was also no mention in the complaint that after about half an hour, he arranged a mobile phone and reached the office of the accused who met him there. He admitted that in TATA Indicom, recording cannot be done. According to him, recording of conversation was heard on the mobile phone of Gurnam Singh and there was no reference of mobile phone of Gurnam Singh in Ex.PW3/D. He went further by deposing that CD was sealed on 28<sup>th</sup> March, 2008 after hearing the same. If the mobile phone of Gurbax Singh was seized only on 11<sup>th</sup> September, 2008, it is not understandable as to when the recording was done from that mobile phone as, as per the seizure memo of mobile phone Nokia, the conversation was already deleted. There was no

facility of recording in TATA Indicom phone. The witness also admitted that there was voice of *thak thak* in the CD. The result of the foregoing discussion is that the testimony of the complainant suffers from material improvements.

33. Moreover, there is gross delay in lodging the FIR which has not been satisfactorily explained because after the raid proceedings were wind up on 28<sup>th</sup> March, 2008, there was no fresh evidence against the accused for registration of FIR on 18<sup>th</sup> August, 2008. If it is believed that the recorded conversation was the evidence available against the accused, then as per the seizure memo dated 28<sup>th</sup> March, 2008, the CD was seized on that date itself. Therefore, instead of winding up the proceedings, the FIR could have been registered. The subsequent complaint Ex.PW3/F made by the complainant does not level any fresh allegations against the accused except for stating that the accused is taking precaution and there are no chances of his apprehension red handed.

34. In view of the foregoing discussion, the prosecution cannot be said to have established its guilt against the accused beyond shadow of doubt. That being so, he is entitled to benefit of doubt.

35. Accordingly the appeal is allowed. The impugned judgment dated 15<sup>th</sup> December, 2012 and order on sentence dated 17<sup>th</sup> December, 2012 are set aside.

36. The sentence of the accused was suspended vide order dated 14<sup>th</sup> January, 2013 and he was ordered to be released on bail. His bail bond is cancelled and his surety stands discharged.

Trial court record along with the copy of the judgment be sent back.

**(SUNITA GUPTA)**  
**JUDGE**

**MAY 29, 2015**  
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