



had undertaken a road work at Village-Zamarhaleri. After completion of the work it was measured and check measured by the Engineers and the bill was prepared and the final bill was pending with the accused for her signature. To sign the bill, the accused initially demanded 2% of the bill amount as bribe from the informant and later on the amount was negotiated @ Rs.2,000/- to be paid on 7.7.2006. On 6.7.06 the complainant lodged FIR with the SP, Vigilance, Bhubaneswar basing on which a case was registered. On 7.7.06 preparation was made at Vigilance Office, Puri. The informant narrated before others about the demand made by the accused. 3 nos. of 500 rupees and 5 nos. of 100 G.C.notes brought by the informant were smeared with phenolphthalein powder and its numbers were noted and given to the informant to give to the accused on demand. One Ladu Kishore Mohapatra was selected to accompany the informant to witness the transaction and to give signal. The raid party went to Gop. The informant and accompanying witness went to the office of the accused. There being asked by the accused, the informant gave the tainted money and after getting signal the raid party rushed to the office of the accused and the tainted money was recovered from the table of the accused. Her hand wash gave positive reaction. The connected file was also recovered and seized. After completion of investigation, chargesheet was submitted against the accused under the aforesaid sections resulting this trial.

3. The defence plea is one of complete denial and false implication. Further plea of the accused is that she had filed one case under SC & ST P.A.Act against the group of informant and for that a false case has been foisted against her.

4. The prosecution has examined 9 witnesses whereas whereas the accused has examined none.

5. Points for determination in this case are :-

(i) Whether on 7.7.06 the accused being a public servant working as Chairman of Gop Block obtained for herself pecuniary advantage of Rs.2,000/- by corrupt or illegal means from the complainant for signing his final bill relating to his work ?

(ii) Whether on the aforesaid date the accused accepted illegal gratification of Rs.2,000/- from the complainant in her capacity as a public servant for signing his (complainant) final bill relating to his work ?

6. Both points are taken up together. PW-1 the then J.E. of Gop Block stated that after the informant completed the road work, he had measured the work and check measurement was done by the Asst. Engineer on 17.4.06 and the net amount payable to the informant was Rs.1,02,592/- and the In-charge BDO submitted the file to the accused for her counter signature. During cross-examination, he stated that he has no personal knowledge about the incident. PW-3, the then Asst. Engineer of the Block stated that after completion of the work by the informant, it was measured by the J.E. and he had done the check measurement and the bill was placed before the BDO and thereafter the BDO sent the same to the Chairman for her counter signature on 26.5.06. During cross-examination, he could not say if prior to 31.5.07 the informant had received payments of all his dues from the Block. PW-5 the then Addl. BDO of Gop Block stated that on 26.5.06 the BDO sent the bill to the accused for her counter signature and the bill was pending before the Chairman for her counter signature. PW-6 the scientific officer stated that on 24.8.06 he had examined 5 sealed glass bottles, vide Exts.D,R,L,W and T each containing some pink solution and found phenolphthalein in sodium carbonate solution contained in all the bottles. He proved his chemical examination report, vide, Ext.11. Cross-examination of PWs-5 and 6 was declined by the accused and as such, the same remained unchallenged.

7. PW-2, the Jr. Clerk of R.T.O. Office, Puri stated that being directed by R.T.O., he had gone to the Vigilance Office, Puri on 7.7.06 at 9.45 A.M. There, in presence of Vigilance staff and PW-4, the complainant disclosed that for final payment of his bill, the accused Chairman was demanding Rs.2,000/- and saying so, he gave 3 nos. of 500 rupee G.C.notes and 5 nos. of 100 rupee G.C.notes to the vigilance officer and numbers of the notes were noted and the notes were treated with some powder. There was demonstration showing reaction of that powder in Acid water. He further stated that the money was kept in a folded paper and given to the complainant with instruction to give the same to the Chairman on demand. He was directed to accompany the complainant to see the transaction and to give signal. He also stated that a tape recorder was given to the complainant to switch it on while entering the room of the complainant. He proved the preparation report Ext.2. They proceeded to Gop, reached there at 12.30 P.M., stopped their jeep at a distance and he (PW-2) and the complainant went to the block office. When they entered into the office room of the Chairman, they found 4 to 5 persons were sitting and so the Chairman asked them to wait. He (PW-2) waited outside the office room near the window and the complainant remained inside. The seat of the Chairman was visible to him. After 4 to 5 persons left the office, the Chairman called the complainant, asked him if he had brought the money and the complainant answered in affirmative. The Chairman told the complainant to give the money to her Peon Naba. So, the complainant went to meet Naba, but did not find him and returned to the Chairman. Then the Chairman told the complainant to keep the money in the vacant space in between table top and table drawer. Accordingly the complainant kept the money there. PW-2 also stated that the complainant gave indication to him and he

gave signal to the vigilance staff. PW-2 further stated that the Chairman had verified the money in her right hand.

8. PW-2 further stated that the raid party entered inside the office and the DSP asked the Chairman if she had taken money from the complainant, but she denied. Then, being asked by the DSP about the money, the complainant showed the place where he had kept the money. One Vigilance Constable brought out the tainted money and PW-4 compared the numbers of notes with the numbers noted earlier and told that the numbers tallied. Thereafter, both hand wash of the accused was taken separately and the same turned to pink colour and preserved in two separate bottles. Wash of the place where the money was kept was taken with cotton and it also turned to pink. The complainant's file was recovered from the table drawer of the Chairman and the same along with the money and hand wash bottles were seized and separate seizure lists were prepared. He proved the seizure lists and his signatures thereon vide Exts.4 to 6 and 4/1 to 6/1 respectively. When the people gathered there, the Vigilance staff apprehending law and order situation returned to Bhubaneswar Vigilance Office with the accused and the seized property. In the vigilance office, a detection report was prepared vide Ext.3. PW-2 also stated that on 10.7.06 a CD was prepared which was displayed in his presence and the voice was reduced to writing vide Ext.7.

In his cross-examination, he could not say the number of the notes nor could say the full name of the DSP nor could say the names of those 4/5 persons present with the Chairman when they (PW-4 and complainant) arrived. These are immaterial. He stated that there were three windows in the office room of the Chairman and the window where he was standing was on the opposite wall of the entrance door. Specifically he (PW-2) stated that he saw the

complainant going outside of the office room to search for Naba and on his return, the complainant told the Chairman (accused) that he did not find Naba. He also stated that the seizure lists were prepared at Bhubaneswar Vigilance Office. He further stated that he had not read the contents of the seizure lists and being asked by the TLO he had signed on the seizure lists. PW-2 stated that he had not seen the inside of the seized file. He also stated that on 10.7.06 a CD was prepared about the recording made in the tape recorder and the voice was reduced into writing. The voice recorder or the CD has not been produced before the Court. PW-9 (I.O.) stated that the admitted voice of the accused and the voice recorded in the tape recorder has not been sent for expert opinion. PW-8 the TLO stated in his cross-examination that the tape recorder was not checked in presence of the witnesses prior to delivery of the same to the complainant. So, I am not inclined to put any reliance on the evidence regarding the voice recorder.

9. PW-4 a Sr. Clerk of D.D.A. Office, Puri stated that as per the direction of D.D.A., Puri, he had been to the Vigilance Office, Puri on 7.7.06 at 9.15 A.M. where in presence of vigilance staff and PW-2, the complainant stated about the demand by the accused and he gave 3 nos. of 500 rupee G.C.notes and 5 nos. of 100 rupee G.C.notes to the DSP and the DSP gave the same to him and he noted down its numbers and there was demonstration showing change of colour of solution by coming in contact with some powder and the notes were smeared with that powder, kept in a four fold paper, given to the complainant with instruction to give the same to the accused-chairman on demand. PW-2 was instructed to accompany the complainant to the spot to witness the money transaction and to give signal and a preparation report was made there vide Ext.2 and a copy thereof was given to him. They proceeded to Gop, arrived there at 12.30 P.M. and waited at

a distance and the complainant and PW-2 proceeded to the Block office. After getting signal from PW-2, he with the vigilance staff rushed to the Chairman's room where she was sitting. Being challenged by the DSP, the Chairman denied to have taken any money. Both hand wash of the Chairman was taken separately and the same turned to pink and same was preserved. The complainant told that the accused had kept the money in the space in between table top and table drawer and being instructed by the DSP, he(PW-4) brought out the money, compared the numbers of the notes with the numbers already noted and the same tallied. The DSP seized the file of the complainant, four fold paper, tainted money, hand wash bottles and the copy of the preparation report. He further stated that the DSP gave the brass seal which was used in sealing the hand wash bottles in his zima. He proved his signatures on the seizure lists vide Exts.4/2 to 6/2 and 10/2 and also proved the tainted money as M.O.-VI and the brass seal as M.O.-VII.

During cross-examination, PW-4 could not say the name of the chemical powder which was applied to the currency notes or which was mixed with the water for preparing the solution which are immaterial. He stated that there was one entrance door and one window on the front side of the room of the Chairman. He could not say how many doors and windows were in the room. He stated that when he entered inside the room of the Chairman, he saw that the Chairman was sitting in her seat and the complainant was standing near her and none else was present there. He stated that the seizure lists were prepared at the spot and he signed on the seizure lists at the spot after reading the contents thereof, but he does not remember the contents. He also stated that they came to Vigilance Office Bhubaneswar where the Detection Report(Ext.3) was prepared and he proved his signature

thereon vide Ext.3/2. He specifically stated that the file was recovered from the table drawer of the accused but he could not say who brought out the file from the table drawer which is insignificant.

10. PW-7 the informant in his evidence stated that in 2006 he completed the construction of a road work incurring an expenditure of Rs.2,35,135/- and the concerned clerk prepared the bill and placed it before the accused and the same was lying with the accused without being signed. He further stated that he was sufficiently harassed by approaching her time and again. He came to SP Office, lodged FIR Ext.12 on 6.7.06. During preparation, he narrated the FIR case before the DSP and other vigilance staff and witnesses, produced the currency notes to the DSP and PW-4 noted down the numbers of the notes on a paper and PW-2 was instructed to accompany him to the spot to overhear the conversation and to convey signal no sooner when he (PW-7) would pay the amount. The notes were smeared with some powder, kept in a paper and handed over to him. He proved the Preparation Report Ext.2. They proceeded to Gop in a vehicle, reached there and thereafter he with PW-2 went to the Block office and PW-2 stood near a window of the office room of the accused and the window was open. He went to the accused when outsiders came out. He asked her if she had put her signature on his bills. The accused asked him if he had brought the amount and he answered in affirmative. When he offered the amount, the accused did not agree to take, but on the other hand, told him to take back the amount. So, he put the same on the vacant space in between table top and table drawer. PW-2 conveyed the signal and vigilance people entered inside the office room and laid the trap and he came out. He further stated that during the trap the

hands of the accused washed with powder mixed water which turned into red.

This witness was declared hostile by the prosecution. Being cross-examined by the learned Special P.P., this witness admitted to have scribed the FIR mentioning therein that he approached the accused on several times and requested her to sign his bills, but she demanded 2% of the bill amount for signing thereon. He also stated that he has written in the FIR that he had reluctantly agreed to pay Rs.2,000/- on 7.7.06 at 11 A.M. at her office. He also admitted to have stated to the I.O. that despite repeated approach, the accused did not put her signature on the bill and demanded 2% of the bill amount and when he expressed his inability, she demanded Rs.2,000/- which he agreed to pay on 7.7.06 at 11 A.M. He also stated that he had given his statement u/s.164 Cr.P.C. before the Magistrate.

During cross-examination by the accused, he(PW-7) stated that when he went to the accused, she was asking him to as why he had come to the office and he did not pay any heed to it but put the cash on the table of the accused and conveyed the signal to the trap party. Even he added that no sooner he kept the cash on the table, the accused retaliated and pushed the notes as a result the tainted money fell scattered on the table as well as on the floor.

11. PW-8 the trap laying officer stated that being directed by the SP, Vigilance, he laid a trap and during preparation the complainant narrated before others about the demand of the accused and he produced 3 nos. of 500 rupee G.C.notes and 5 nos. of 100 rupee G.C.notes and its numbers were noted and the notes were smeared with Phenolphthalein powder and demonstration was executed to show the reaction of Phenolphthalein powder with sodium carbonate solution changing the colour to pink. The tainted notes were given to the complainant with instruction to

deliver the same to the accused on demand. PW-2 was selected as accompanying witness to witness the transaction to overhear the conversation and to pass signal. The preparation report Ext.2 was prepared and copy thereof was given to PW-4 to compare the numbers of the notes at the spot after detection. They proceeded to the spot, kept their vehicle at a distance from the spot. The complainant and PW-2 entered inside the office chamber of the accused and others waited outside. At about 12.30 P.M. receiving signal of PW-2, they went to the spot, found the accused was sitting on her chair and the complainant was standing in front of the table of the accused. Being challenged about acceptance of money from the complaint, the accused became nervous for some time and denied. Her both hand wash was taken in sodium carbonate solution which turned into pink. PW-4 Sapan Mishra brought out the money from the right side drawer of the office table of the accused, compared its numbers with the numbers noted in preparation report which tallied. The recovered tainted money was seized vide Ext.4. Hand wash of Sapan Mishra and the cotton swab wash of the top table drawer from where money was recovered, was taken in sodium carbonate solution which turned into pink.

12. Being asked to produce the work file of the complainant, the accused denied to have received the record. On search of the office room, the connected record was recovered from the right side table drawer of the accused and the same was seized. He also stated that the seal of SP, Vigilance which was used in sealing the exhibits was given in zima of PW-4. When huge gathering took place in the Block office, apprehending untoward situation, they returned to Vigilance Division Office, Bhubaneswar and there a detection report Ext.3 was prepared by him and copy of the same was given to the accused who signed thereon vide Ext.3/4. He

proved the statement of the complainant recorded by him vide Ext.16.

During cross-examination, he stated that in the work book of the complainant there is an endorsement in red ink that the complainant had received Rs.1,02,592/- vide cheque No.436481, dt.31.5.06. But at another place of cross-examination PW-8 stated that he cannot say as to how much money the complainant had received from the block in respect of the work. It is pertinent to mention here that the said endorsement in the case file in red ink is as follows “Rs.1,02,592/- paid vide Ch.No.436481, dt.31.5.06, PNB, Gop.” He stated that the independent witnesses had come on the written requisition of the DSP Vigilance but he cannot tell the No. of that requisition. He also stated that the hands of the complainant and his shirt were not washed. He denied the suggestion that there was no such trap and the accused has been falsely implicated on account of political consideration.

13. PW-9 the Investigating Officer stated that being directed by the SP, Vigilance, he took charge of the investigation from PW-8, recorded the statements of material witnesses, forwarded the accused to Court and sent the exhibits for chemical examination. He also stated that the complainant PW-7 had stated to him that being asked by the accused about the cash, he answered in affirmative and the accused told him to hand over the cash to her peon Naba and since Naba was not available, the accused told him to put the cash in vacant space in between table top and drawer and after the complainant put the cash, the accused counted it in her hands. PW-9 further stated that he was not a member of the raiding party and also admitted that he had not sent the seized notes for chemical examination.

14. Law is well settled that in case of bribery, prosecution must prove the essential ingredients that there was demand of

bribe and acceptance of money pursuant to the demand. The complainant stated in his evidence that he had mentioned in the FIR that the accused demanded a sum of Rs.2,000/- for signing his final bill and it was decided that the payment was to be made on 7.7.06 at 11 A.M. in the office of the accused. PWs-2,4 and 8 categorically stated that during preparation in the vigilance office, the informant had narrated before them about the demand made by the accused. The said aspect has also been mentioned in the preparation report Ext.2. Even PW-7 the informant in his evidence admitted that he had stated to the I.O. that the accused was demanding money.

The learned counsel for the accused during course of argument submitted that the TLO (PW-8) stated in his evidence that the amount was paid to the complainant vide this cheque No.436481, dt.31.5.06 and as such no work of the complainant was pending with the accused, so there was no occasion of any demand. But it may be reiterated here that during cross-examination PW-8 has stated at another place that he cannot say as to how much money the complainant had received from the Block in respect of the work. There is no evidence as to whom the cheque in question was handed over or as to in whose favour the cheque was drawn. Moreover, PW-7 the complainant being cross-examined by the accused, categorically stated that out of the total amount of Rs.2,25,205/-, he was required to receive Rs.1,02,592/-. No suggestion was put to the complainant to the effect that the said amount was paid to him vide the aforesaid cheque. Even during her examination u/s.313 Cr.P.C. the accused has not stated that either she had counter signed the bill or the amount under the cheque was paid to the complainant towards the balance amount. The case file was recovered from the right side table drawer of the accused vide Ext.6. As discussed earlier PWs-

1, 3 and 5 categorically stated that the work file was pending with the accused. From such evidence, it emerges that work of the complainant was pending with the accused which strengthens her motive to demand and also corroborates the allegation of demand.

15. The learned defence counsel placing reliance on a decision of our own Hon'ble High Court reported in **(2011), Vol.50, OCR, 852-Shyam Kirsani-Vrs.-State of Orissa** submitted that the FIR is not a substantive piece of evidence and it is a previous statement which can be used only for contradicting and corroborating its maker.

On the contrary, the learned Special P.P. during course of argument placing reliance on a decision reported in **2012, Vol.III, CCR, Page-184, Supreme Court, Bable @ Gurudeep Singh-Vrs.-State of Chhatisgarh** submitted that the FIR by itself is not a substantive piece of evidence, but it certainly is a relevant circumstance of the evidence produced by the Investigating Agency. Merely because the complainant has turned hostile, it cannot be said that FIR would lose all its relevancies and cannot be looked into for any purpose.

16. Fact remains that during evidence before Court the decoy turned hostile. Law is well settled that evidence of a Prosecution witness can't be rejected in toto merely because the prosecution chooses to treat him as hostile and cross-examined him. The evidence of such witnesses can't be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof. **(Vide 1991 (3) S.C.C.-627, Khuji @ Surendra Tiwari-Vrs.-State of M.P.)**. It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the Prosecution version. **(Vide 1999 (8) S.C.C.-624, Koli Laxmanbhai Chanabhai-Vrs.-State of Gujrat)**.

17. PWs-2, 4 and 8 said that during preparation PW-7 had stated about the demand made by the accused. The notes were smeared with powder and its numbers were noted which were recovered from the table of the accused. Both hand wash of the accused turning to pink indicates that she had handled the tainted notes which were smeared with phenolphthalein powder. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW-7 who a few minutes earlier was shown to have been in possession of the notes. As discussed earlier, PW-2 categorically stated that the accused called the complainant and asked if he had brought the money and the complainant answered in affirmative and the accused told to give the same to her peon-Naba. The complainant went to meet Naba, but did not find him and returned to the Chairman. Then, the Chairman told the complainant to keep the money in the vacant space in between table top and table drawer and accordingly, the complainant kept the tainted money there. PW-2 also stated that the accused verified the money in her right hand. PW-4 stated that being asked by the DSP about the money, the accused denied but the complainant told that the accused had taken the money and kept in the space in between table top and table drawer and he (PW-4) brought out the money from that space being instructed by the DSP.

PW-7 the informant stated that he with PW-2 went to the office of the accused and PW-2 remained near the window and he asked the accused if she had signed the bill, but the accused asked him if he had brought money and he answered in affirmative. Such evidence of PW-7 gets ample corroboration from the evidence of PW-2. But, possibly being gained over by the accused, PW-7 turned hostile and stated that when he offered the

amount, the accused did not agree to take and asked him to take back. So, he put the same in between the table top and table drawer. It is significant to note here that during cross-examination by the accused, PW-7 depicting a new story stated that he went to the accused and while she was asking as to why he had come to the office, he did not pay any heed and put the cash on the table of the accused and no sooner he kept the cash on the table, she retaliated and pushed the notes as a result the same fell scattered on the table as well as on the floor. No such suggestion was put by the accused to PWs-2 or 4 or 8 that she had retaliated and pushed the notes as a result the same fell scattered and were seized in scattered condition. Even at the earliest available opportunity, the accused had not stated so to the vigilance official during detection. So also, she has not taken such stand during her examination u/s.313 Cr.P.C. Ext.4 seizure list shows that the tainted notes were recovered from the top of the table drawer of the accused. Considering from other angle, if in fact the accused had retaliated and pushed the tainted notes, simultaneously she must have raised hue and cry to draw the attention of others. She could not have remained complacent by sitting on her chair. These facts taken together negatives the version of the complainant that the accused had retaliated and pushed the notes and the same fell scattered. So, the same is neither believable nor acceptable.

18. The learned defence counsel relying upon a decision reported in *(2006) 33 OCR, Supreme Court, Page-338 T. Subramaniyan -Vrs.-State of Tamil Nadu* submitted that in the absence of any evidence of demand and acceptance of the amount as illegal gratification, no conviction can lie against the accused. With utmost respect to the authority, it is seen that in that case immediate after the alleged payment, on query from the Vigilance

Inspector, the accused explained that the money was paid by PW-1 on behalf of PW-6 towards arrear lease rents to the temple. The decision was rendered depending upon the facts and circumstances of that case. But in the instant case, absolutely no explanation was adduced by the accused before the Trap Laying Officer soon after the incident when she was caught or during trial of the case as to under what circumstances she had received the tainted money. So the above decision being distinguishable on facts, is not helpful to the accused.

On the contrary, the learned Special P.P. placing reliance on a decision reported in **2006(34) OCR(SC), P-432 Kanshi Ram-Vrs.-State of Punjab**, submitted that the fact that the accused had received the money and in absence of reasonable explanation as to how the tainted money came to her possession, there would be presumption that she had accepted the bribe and Section-20 of P.C.Act is attracted. Law is well settled that once the amount is found to have been passed to the public servant, the burden is on the public servant to establish that it was not by way of illegal gratification *vide Raj Rajendra Singh Seth @ R.R.S.Seth-Vrs.-State of Jharkhand and another, AIR 2008(S.C.), Page-3217.*

It is also well settled that presumption drawn u/s.20 of P.C.Act is not an inviolable one. The accused can rebut the presumption either through cross-examination of PWs or by adducing evidence. The accused is required to discharge the burden not beyond all reasonable doubt but at least by preponderance of probabilities. In the instant case, the accused has absolutely not led any evidence to rebut the presumption or to establish that the tainted money relates to some other transaction except illegal gratification. Her plea during u/s.313 Cr.P.C. is one of only complete denial and false implication due to enmity.

19. The learned defence counsel during course of argument submitted that as per FIR the cost of the work was Rs.234135/- and to sign the bill the accused demanded 2% as bribe. But in the Court, the complainant stated that he was required to receive Rs.1,02,592/- only and for that it is doubtful as to for which bill amount the alleged demand was made. In my view, such submission has no merit as because the allegation right from the FIR is that the bribe amount was negotiated for Rs.2,000/- to be paid on 7.7.06. He further raised a contention that there is no document on record showing that the authorities of PWs-2 and 4 had directed them to appear before the Vigilance Office and for that their presence during preparation and detection is suspicious. There is no material on record that PWs-2 and 4 had any enmity with the accused. More so over, both of them categorically stated that being directed by their authorities, they had reported before the Vigilance Office.

The learned defence counsel further contended that PW-2 in para-1 of his evidence stated that when he arrived at the Vigilance Office, PWs-4 and 7 were present there. But PW-4 in para-1 of his evidence stated that when he arrived at Vigilance Office, PW-2 was there, but, PW-7 (complainant) arrived after 10 to 15 minutes of his arrival. So, in view of such inconsistency, there evidence cannot be accepted. The learned defence counsel further contended that the alleged seizures are doubtful as because PW-2 stated that the seizure lists were prepared at Vigilance Office, Bhubaneswar whereas PW-4 stated that the same were prepared at the spot. It is seen from Exts.4, 5 and 6 that the same were prepared in the office of the accused. PW-2 in his evidence in chief at para-3 stated that the tainted money, file and hand wash bottles were seized and he had signed thereon and by then many people gathered at the spot. The learned defence counsel

further submitted that PW-2 stated that one constable brought out the tainted notes, but PW-4 stated that he himself brought out the tainted notes. Such minor discrepancies are insignificant and do not touch to the root of the prosecution case. It may be stated here that the witnesses were examined in the Court after four years of occurrence. So, it is obvious that there would be some minor discrepancies.

Law is well settled that discrepancies may occur in the evidence of witnesses which may be due to normal error of observation or loss of memory or due to lapse of time and the like. Even in case of trained and educated persons, memory sometimes plays false. (*Vide Boya Gangana and another-Vrs.-State of Andhra Pradesh, A.I.R. 1976 (S.C.) Page 1541*).

20. The learned defence counsel further contended that as stated by the I.O. PW-9 as per chargesheet, the tainted G.C.notes recovered from the possession of the accused were stained with blood. But, there is no such mention in the seizure list, so the seizure is doubtful. The numbers of the seized tainted notes were compared with the numbers noted earlier by PW-4. PW-9 was not a member of the raid party. Whether the seized notes were stained with blood or not is not the question to be decided in this case. So, such contention has no merit.

21. On the whole, the evidence of PWs-2, 4 and 8 has remained substantially unshaken. The evidence of the complainant-PW-7 (hostile witness) corroborates the evidence of PWs-2, 4 and 8 to the extent as discussed hereinbefore. The contemporaneous documents prepared before and after detection lends additional corroboration to the version of PWs-2, 4 and 8. No material was brought to record to show any ill motive of PWs-2, 4 and 8 to falsely implicate the accused or to show that they had any grudge or animosity with the accused. I do not find any

reason to discard or disbelieve their evidence. No satisfactory explanation regarding recovery of the tainted money from her table has been adduced by the accused. So also, she has not explained how her hand wash turned pink. So, in absence of the same, it can be safely held that she had accepted the tainted money as illegal gratification for signing the bills of the informant, particularly when no other explanation is adduced by the accused to establish that the said money relates to some other transaction.

Therefore, after analysing the evidence on record as discussed above and keeping in view the proposition of law cited above and also having regard to the fact that the accused had failed to rebut the statutory presumption u/s.20 of P.C.Act, I am inclined to hold that the prosecution has well proved its case that the accused being a public servant, demanded bribe of Rs.2,000/- from the informant and accepted the same on 7.7.06 for signing his bill and she obtained pecuniary advantage by corrupt or illegal means and abusing her position as public servant.

As a result, I found the accused guilty of the offences u/s.7 and 13(1)(d) r/w 13(2) of the P.C.Act,1988 and convicted her thereunder. Considering the nature of the offences, I am not inclined to extend her the benefit of Probation of Offenders Act.

Special Judge(Vigilance),  
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 12<sup>th</sup> day of November, 2013.

Special Judge(Vigilance),  
Bhubaneswar.

HEARING ON THE QUESTION OF SENTENCE

Heard on the question of sentence. The learned counsel for the convict and the Special P.P. are present. It is submitted on behalf of the convict that she is a lady and she is no more the Chairman of the Block and she has no criminal antecedent, so, she may be released under Probation of Offenders Act. Keeping in view the submission of the convict and the facts and circumstances of the case, the convict is sentenced to undergo R.I. for one and half years and to pay a fine of Rs.2000/-(Rupees two thousand) in default to undergo R.I. for three months more for the offence U/s.13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and she is sentenced to undergo R.I. for one year and to pay a fine of Rs.1000/-(Rupees one thousand) in default to undergo R.I. for two months more for the offence U/s.7 of the Prevention of Corruption Act, 1988. The substantive sentences awarded under both the Sections would run concurrently. The period of detention undergone by the convict in this case be set off U/s.428 Cr.P.C.

The seized tainted money of Rs.2,000/-(M.O.-VI) be returned to the complainant (PW-7) if not reimbursed in the meantime. If the said amount has been reimbursed to the complainant in the meantime, in that case the seized money of Rs.2,000/-(M.O.-VI) be confiscated to the State. The sample bottles (M.Os.I to V) be destroyed. The brass seal (M.O.-VII) be returned to DSP,Vigilance, Puri. Order regarding disposal of the property shall take effect four months after expiry of the appeal period if no appeal is preferred and in case of appeal, the same shall be dealt as per the order of the Appellate Court.

Special Judge(Vigilance),  
Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 12<sup>th</sup> day of November, 2013.

Special Judge(Vigilance),  
Bhubaneswar.

List of witnesses examined for the prosecution :

P.W.1	Sarbeswar Jena.
P.W.2	Ladu Kishore Prasad Mohapatra.
P.W.3	Prafulla Kumar Kar.
P.W.4	Sapan Kumar Mishra.
P.W.5	Man Mohan Senapati.
P.W.6	Pradeep Kumar Samantaray.
P.W.7	Dillip Kumar Nayak.
P.W.8	Prakash Kumar Naik.
P.W.9	Srinivas Padhy.

List of witnesses examined for the defence :-

None.

List of exhibits marked for the prosecution :-

Ext.1	File No.CR 91/2005/2006 of Gop Block.
Ext.1/1	Estimate of PW-1 on Ext.1.
Ext.1/2	Signature of PW-1 on Ext.1/1.
Ext.1/3	Endorsement relating of PW-1 on Ext.1.
Ext.1/4	Endorsement of Asst. Engineer on Ext.1.
Ext.1/5	Endorsement of E.E. S.R.Nayak on Ext.1.
Ext.1/6	Relevant order sheet on Ext.1.
Ext.2	Preparation Report.
Ext.2/1	Signature of PW-2 on Ext.2.
Ext.3	Detection Report.
Ext.3/1	Signature of PW-2 on Ext.3.
Ext.4	Seizure list.
Ext.4/1	Signature of PW-2 on Ext.4.
Ext.5	Seizure list.
Ext.5/1	Signature of PW-2 on Ext.5.
Ext.6	Seizure list.
Ext.6/1	Signature of PW-2 on Ext.6.
Ext.7	Statement of voice recording.
Ext.7/1	Signature of PW-2 on Ext.7.
Ext.8	U/s.164 Cr.P.C. Statement of PW-2.
Ext.8/1	Signature of PW-2 on Ext.8.
Ext.2/2	Signature of PW-4 on Ext.2.
Ext.3/2	Signature of PW-4 on Ext.3.
Ext.9	Certificate of PW-4 on copy of detection report about comparing of notes.
Ext.9/1	Signature of PW-4 on Ext.9.

Ext.10	Seizure list.
Ext.10/1	Signature of PW-4 on Ext.10.
Ext.4/2	Signature of PW-4 on Ext.4.
Ext.5/2	Signature of PW-4 on Ext.5.
Ext.6/2	Signature of PW-4 on Ext.6.
Ext.1/7	Running Account Bill.
Ext.1/8	Running Account Bill.
Ext.1/9 & 1/10	Signatures of B.D.O. Subas Ch. Samantaray on Exts.1/7 & 1/8.
Ext.11	C.E. Report.
Ext.11/1	Signature of PW-6 on Ext.11.
Ext.12	F.I.R. of PW-7.
Ext.12/1	Signature of PW-7 on Ext.12.
Ext.2/3	Signature of PW-7 on Ext.2.
Ext.13	U/s.164 Cr.P.C. Statement of PW-7.
Ext.13/1	Signature of PW-7 on Ext.13.
Ext.12/2	Endorsement and signature of Smt. Rekha Lohani.
Ext.12/3	Signature of OIC, Vigilance Police Station C.Bilung.
Ext.2/3	Signature of PW-8 in Ext.2.
Ext.5/3	Signature of PW-8 in Ext.5.
Ext.5/4	Acknowledgment and signature of the accused.
Ext.4/3	Signature of PW-8 in Ext.4.
Ext.4/4	Signature of PW-8 in Ext.4.
Ext.10/2	Signature of PW-8 in Ext.10.
Ext.10/3	Signature of PW-8 in Ext.10.
Ext.6/3	Signature of PW-8 in Ext.6.
Ext.6/4	Signature of the accused.
Ext.14	Spot map.
Ext.14/1	Signature of PW-8 in Ext.14.
Ext.15	Impression of specimen seal.
Ext.15/1	Signature of PW-8 in Ext.15.
Ext.15/2	Zimanama.
Ext.15/3	Signature of PW-8 in Ext.15.
Ext.3/3	Signature of PW-8 in Ext.3.
Ext.3/4	Signature of the accused.
Ext.16	161 Statement of complainant.
Ext.16/1	Signature of PW-8 in Ext.16.

List of documents marked by the prosecution for identification :-

Mark-X	Portion of the 161 Cr.P.C. Statement of PW-7.
Mark-X/1	Portion of the 161 Cr.P.C. Statement of PW-7.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

M.Os.I to V	Five nos. of glass bottles.
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M.O.VI Tainted money.

M.O.VII Brass Seal.

List of M.Os. marked for the defence :-

Nil.

Special Judge(Vigilance),  
Bhubaneswar.