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STATE OF A.P.

v.

S. JANARDHANA RAO

NOVEMBER 17, 2004

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[B.N. AGRAWAL AND A.K. MATHUR, JJ.]

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Prevention of Corruption Act, 1988—Sections 7, 13(1)(d) read with section 13(2)—Demand of money by way illegal gratification by Judicial Officer—Trap laid and officer caught—Convicted by Trial Court—Acquitted by High Court—Correctness of—Held : When prosecution succeeds in proving the case beyond reasonable doubt by credible evidence, High Court not justified in refusing rely upon the evidence merely on basis of certain minor contradictions—Hence, conviction by trial court restored—Evidence Act, 1972.

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A Sessions Case was pending trial in the court of the respondent—member of Higher Judicial service. Respondent demanded Rs. 6 lacs by way of illegal gratification which was reduced to Rs. 3 lacs for showing official favour to two accused in the Sessions Case through a Police Constable (A-2) in his Court. One of the accused — PW-1 sought permission of the Chief Justice of High Court and laid a trap and handed over the particular amount to A-3, wife of the respondent which was kept by her son. Trap party recovered the same amount at the instance of the son and also found the respondent entertaining PW-1 in his flat at odd hours. FIR was lodged. A-1 to A-4 were tried. Accused persons pleaded that they were falsely implicated at the instance of the then Registrar of the High Court – member of Higher Judicial Service. A-2 was granted pardon as he turned an approver. Prosecution witnesses were examined. Trial Court convicted and sentenced the respondent under sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988; it however acquitted his wife and son. High Court dismissed the appeal filed by the appellant-State against acquittal order whereas allowed the appeal filed by the respondent and acquitted him and also recorded adverse remarks against the Registrar of High Court. This Court dismissed the SLP filed by the State against acquittal of wife and son. The present matters concern the acquittal of A1 by the

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High Court.

Allowing the matters, the Court

HELD : 1.1. Order of acquittal by High Court suffers from the vice of perversity as it has refused to place reliance upon the evidence of witnesses merely on the basis of certain minor contradictions in the evidence of witnesses, though, they have supported the prosecution case on all material particulars. Also the High Court was also not at all justified in making adverse remarks against the then Registrar of the High Court. Therefore, order of acquittal of the respondent is set aside and the conviction order passed by trial court is restored and the adverse remarks recorded in the impugned judgment against the Registrar are expunged. [48-D-F; 48-F-H]

1.2. The prosecution has succeeded in proving its case of illegal gratification against the respondent-accused beyond reasonable doubt. Relying on the evidence of prosecution witnesses, it proved the following circumstances against the respondent, that the respondent (A-1) demanded a sum of Rs. 6 lacs by way of illegal gratification which was later reduced to Rs. 3 lacs through A-2, for showing official favour to PWs 1 and 2, who were accused in Sessions Case, pending trial in A-1's court; that PW-1 met the Chief Justice of High Court and obtained permission for laying a trap and registering a case; that the date on which the Sessions Case was fixed in the respondents' court, respondent pronounced the code word that 'all the petitions posted to that date stand adjourned to 6th September, 1996' to assure PW-1 that the amount was demanded on his behalf by A-2 and to go ahead with modalities worked out earlier which was to pay the amount of Rs. 3 lacs in the denomination of Rs. 500 notes to his wife, at his house; that the amount was paid to the wife of A-1 at his house and the same was recovered by the trap party at the instance of son of A-1; and that after payment of illegal gratification to the wife of A-1, A-2 informed A-1 about the same on phone and fixed time with him to meet PW-1 and A-1 was found meeting and entertaining PW-1 in his flat in the night at odd hours. [48-D; 43-C-H; 44-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 865 of 2003.

From the Judgment and Order dated 9.1.2003 of the Andhra Pradesh High Court in CrI.A. No. 272 of 2002.

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WITH

Crl. M.P. No. 2569 of 2004.

A. Sharan, Additional Solicitor General, Samir Ali Khan, Manoj Saxena, Amit Anand Tiwari, M.P. Meharia, S.K. Mitra and Khem Chand for the Appellant.

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D. Rama Krishna Reddy, G. Venugopal and Ms. Madhu Moolchandani for the Respondents.

T.V. Ratnam for Registrar, (Vigilance) High Court of A.P.

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P.P. Rao, S. Chandra Shekhar, Ms. Mahalakshmi Pavani, S.G. Balaji Iyer, Ms. T. Swarupa Reddy and Dr. I.P. Singh for the Applicant in Crl. M.P. No. 2569/2004.

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The Judgment of the Court was delivered by

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B.N. AGRAWAL, J. : Initially four persons, namely, S. Janardhana Rao (A-1), Mohammed Omar Bin Moin (A-2), S. Indira (A-3) and S. Prasanth (A-4) were made accused, but as A-2 turned to be an approver, pardon was granted to him and he was examined as PW-21. Thus, trial proceeded against the remaining three accused persons and the learned Special Judge upon the conclusion of trial acquitted A-3 and A-4 whereas convicted A-1 under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 3,000; in default to suffer simple imprisonment for a period of two months on each

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count. The sentences, however, were ordered to run concurrently. Against the order of conviction, A-1 preferred an appeal before the High Court of Andhra Pradesh whereas the State preferred an appeal against the order of acquittal of A-3 and A-4 and the High Court dismissed the State appeal whereas allowed the appeal filed by A-1 and acquitted him of all the charges.

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The State of Andhra Pradesh filed two petitions for grant of Special Leave to appeal; one against the order whereby the High Court dismissed appeal filed by the State against the order of acquittal of A-3 and A-4 by the trial court, which SLP was dismissed; and the second against the order whereby the High Court acquitted A-1 of all the charges in which leave was granted.

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The prosecution case, in short, was that A-1 was the member of Andhra

Pradesh Higher Judicial Service and posted as IIIrd Metropolitan Sessions Judge, Hyderabad, at the relevant time and residing in Flat No. 402 of Garudagagan Apartments, Padmaraonagar, Secunderabad, A-3 was his wife, who was working as a teacher in Government New High School, Kotteru, Hanumakonda, and A-4 was their 19 years' old son, who was deaf and dumb by birth. A-2 was a police constable attached to the court of A-1. Before A-1, Sessions Case No. 186 of 1989 was pending trial in which besides others, Sant Esher Singh (PW-1) and Rajinder Singh (PW-2) were accused. As the trial of the said case was at its final stage, A-1 is alleged to have sent message through PW-21 to PWs 1 and 2 demanding a sum of Rs. 6 lacs as illegal gratification for recording their acquittal in the said case, but ultimately the amount was reduced by A-1 to Rs. 3 lacs. As PWs 1 and 2 were not agreeable to pay even the reduced amount, PW 1 approached the officials of Anti Corruption Branch (hereinafter referred to as 'ACB') for conducting a trap, but as it was a case in which a judicial officer was involved, they expressed their inability to do anything without any order from the High Court. Thereafter, on 3rd and 4th September, 1996, PW-1 met the learned Chief Justice of Andhra Pradesh High Court and permission was granted by the High Court to conduct trap and register case. Thereupon, PW-1 went to the office of ACB with Rs. 3 lacs which was kept in a plastic cover and gave it to S.Sreeramulu (PW-3) whose services were secured by R. Suryanarayana, Deputy Superintendent of Police, ACB, (PW-23). PW-23 noted down the numbers of all the currency notes which were in the denomination of Rs. 500/- in six bundles, on a separate sheet of paper. One of the officials of ACB treated the currency notes with the layer of phenolphthalein powder. Thereupon, officials of ACB organized a trap and they went to the court of A-1 on 4th September, 1996 which was a date fixed in the case where A-1 pronounced in open court the code word that "all the matters will be adjourned to 6th September, 1996" which could be taken as confirmation that PW-21 approached PWs 1 and 2 on his behalf and the work would be done. Then, on the same day, PWs 1 and 21 along with the trap party went to the house of A-1 at Hanumakonda in which his wife and son were residing. While members of the trap party were waiting at some distance from the house, PWs 1 and 21 went to the said house and as it was bolted from inside, PW-21 pressed the call bell whereupon wife of A-1 opened the door and both PWs 1 and 21 went inside the house where son of A-1 was also present. When PW-21 tried to hand over the plastic cover containing sum of Rs. 3 lacs, wife of A-1 asked him to count the money in her presence and after the same was counted, as directed by her, PW-21

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A kept the plastic cover containing the aforesaid amount on the teapoy which was shifted by her son to the cup-board in the same room. Thereafter, PWs 1 and 21 came out from the house and gave pre-arranged signal to the members of the trap party consisting of G. Bal Reddy (PW-22), PW-23 and the mediator (PW.3) who entered the house, met wife of A-1 and asked her about the receipt of the sum of Rs. 3 lacs, which she denied. Thereafter, son of A-1, who was deaf and dumb, led the members of the trap party to the bathroom attached to the master bedroom by making gestures and signs; and removed the lid of the flush tank where plastic bag containing sum of Rs. 3 lacs was found in water, photograph of which was taken, and after the same was taken out therefrom, the numbers of the currency notes, contained in the plastic bag, were compared and the same tallied with the numbers already noted down by PW-23 on a separate sheet of paper. After seizure of the aforesaid sum of Rs. 3 lacs, PW-21 informed A-1 about the payment of the said sum of Rs. 3 lacs to his wife and A-1 fixed up time to meet PW-1. According to pre-arranged programme, PWs 1 and 21 went to the flat of A-1 in the Apartment at Secunderabad in the night between 4th and 5th September, 1996 at 1.00 O'clock. After some time, PW-21 came out and remained outside the apartment. In the meantime, according to pre-arranged plan, the officials of ACB came there, entered the flat of A-1 and found that A-1 was entertaining PW-1.

E Stating the aforesaid facts, a first information report was lodged for prosecution of A-1, his wife (A-3), his son (A-4) besides PW-21 and investigation proceeded, on completion whereof chargesheet was submitted against all the aforesaid four accused persons after obtaining the required sanction. On receipt of the chargesheet, cognizance was taken.

F Defence of the accused persons was that they were innocent, no occurrence as alleged had taken place and they were falsely implicated in the present case at the instance of M.E.N. Patrudu (PW-20), the then Registrar (Vigilance) of the High Court of Andhra Pradesh, who was also member of Andhra Pradesh Higher Judicial Service.

G During trial, as A-2 was granted pardon, the trial proceeded against the remaining three accused persons, as stated above. During trial, the prosecution examined several witnesses and got exhibited various documents. Upon conclusion of trial, the learned Special Judge acquitted A-3 and A-4, wife and son respectively of A-1, but convicted A-1, as stated above, whereupon

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two appeals were filed, one by the State against the acquittal of A-3 and A-4 and the other by A-1 challenging his conviction before the High Court. The appeal filed by the State was dismissed whereas the one filed by A-1 was allowed and he was acquitted of all the charges whereupon two Special Leave Petitions were filed before this Court. The Special Leave Petition filed against the order of the High Court confirming acquittal of wife and son of A-1 was dismissed whereas leave was granted against the order of acquittal of A-1 rendered by the High Court. Hence, this appeal in which an application was filed by M.E.N. Patrudu (PW-20), the then Registrar (Vigilance) of Andhra Pradesh High Court, which gave rise to Criminal Misc. Petition No. 2569 of 2004 for expunging the adverse remarks recorded by the High Court against PW-20 in the impugned order of acquittal of A-1 which was directed to be considered at the time of hearing of the appeal.

In order to prove its case against A-1, who is respondent herein, the prosecution has relied upon the following circumstances:

- (i) A-1 demanded a sum of Rs. 6 lacs by way of illegal gratification which was later reduced to Rs. 3 lacs for showing official favour to PWs 1 and 2, who were accused in Sessions Case No. 186 of 1989 which was pending trial in his court and the said demand was made through PW-21.
- (ii) PW-1 met the learned Chief Justice of Andhra Pradesh High Court and obtained permission of the High Court for trap and registering a case.
- (iii) On 4th September, 1996, which was the date fixed in Sessions Case No. 186 of 1989, A-1 pronounced the code word that "all the petitions posted to that date stand adjourned to 6th September, 1996" to assure PW-1 that the amount was demanded on his behalf by PW-21 and to go ahead with modalities worked out earlier, i.e., to pay the amount of Rs. 3 lacs in the denomination of Rs. 500 notes to his wife in his Hanumakonda house.
- (iv) The amount of Rs. 3 lacs was paid to the wife of A-1 on 4th September, 1996 at his Hanumakonda house and the same was recovered by the trap party at the instance of son of A-1 from the flush tank of bathroom attached to the master bedroom of his house.
- (v) After payment of illegal gratification to the wife of A-1, PW-21

- A** informed A-1 about the same on phone and fixed time with him to meet PW-1 and A-1 was found meeting and entertaining PW-1 in his flat at Garudagagan Apartments at Secunderabad in the night between 4th and 5th September, 1996 at 1.00 O'clock.
- B** To prove the first circumstance, prosecution has led the evidence of PWs 1, 2 and 21. PW-21 who was an approver, stated that he was a constable attached to the court of A-1 and one day, in the month of June, 1996, A-1 called him in his chambers and asked him to secure a driving licence for one of his relatives which work was done, as such, he became familiar to A-1. Thereafter, A-1 called him at his house and asked him to contact PWs 1 and 2, who were accused in Sessions Case No. 186 of 1989, for payment of illegal gratification to the tune of Rs. 6 lacs to A-1 whereupon those accused persons would be acquitted. The witness further stated that as he was afraid of PW-1, he met PW-2 on 20th August, 1996 and conveyed the message of A-1 to him and on his advise, met PW-1 on 24th August, 1996
- C** and communicated the message to him as well, who wanted some time to consult PW-2. Five or six days thereafter, he again met PW-1 who expressed that he and PW 2 were in a position to pay only a sum of Rs. 3 lacs and the said information was passed on by PW 21 to A-1 who asked him to settle the deal for the said sum. PW-21 further stated that thereupon he informed PW-1 that A-1 was ready to accept sum of Rs. 3 lacs for recording acquittal of PWs 1 and 2. Thereupon, as PW-1 appeared to be in doubt whether the amount was actually demanded by A-1, PW-21 stated that it would be confirmed on 4th September, 1996 which was the date fixed in the said sessions case on which day in open court A-1 will announce "that all the matters will be adjourned to 6th September, 1996", which could be taken
- D** as code word to indicate that PW-21 approached PW-1 on behalf of A-1 and the amount of Rs. 3 lacs should be paid to the wife of A-1 at his Hanumakonda house. The statement of PW-21 has been corroborated in all material particulars by PWs 1 and 2 and the trial court after a detailed discussion placed reliance upon their evidence and the High Court was not justified in disbelieving their evidence on the basis of certain minor contradictions in their evidence. In our view, the prosecution has succeeded in proving this circumstance by credible evidence.
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- H** In order to prove the second circumstance, the prosecution has examined PW-1, Khaja Pasha (PW 15), PWs 20 and 23. PW-1 stated that upon the receipt of message of A-1 through PW-21, he informed ACB officials who

refused to take any action on the ground that permission of the High Court was required as A-1 was a member of Andhra Pradesh Higher Judicial Service. Then on 3rd September, 1996, PW 1 could telephonically talk to PW-15, Private Secretary to the learned Chief Justice, Andhra Pradesh High Court, and appointment was fixed to meet the learned Chief Justice at 8.00 p.m. on that day. PW-15 further advised PW-1 to bring a written representation. Thereupon PW-1 went to the residence of the learned Chief Justice along with written representation (Ex.P-1) and gave the same to PW-15 in a sealed cover. After some time, he was called by the learned Chief Justice who asked PW-1 as to whether the contents of Ex.P-1 were true and correct and warned him that in case the same were found to be false, action would be taken against him. He further stated that he was asked by the learned Chief Justice to come again on the next day in the morning and accordingly this witness again went to the residence of the learned Chief Justice on 4th September, 1996 at 7.30 a.m. At that time, the Director General, ACB, the Joint Director, ACB, the Deputy Superintendent of Police, ACB, (PW.23) were already present at the house of the learned Chief Justice besides PW-20, the then Registrar (Vigilance) of the Andhra Pradesh High Court and he was informed by the learned Chief Justice that the Joint Director, ACB, will take care of the case under the guidance of Director General, ACB, whereupon PW-1 presented complaint before the Joint Director, ACB, on the same day. The aforesaid statement of PW-1 has been corroborated by PW-15, Private Secretary to the learned Chief Justice, Andhra Pradesh High Court, and PW-20- the then Registrar (Vigilance) and PW-23, who is said to have written a letter on 4th September, 1996 to the Director, ACB, to conduct a trap and register case against A-1. PW-23 has also supported the statement of PW-1. The statements of these witnesses are consistent with each other and have been relied upon by the trial court, but the High Court was not justified in refusing to place reliance upon them as there were certain minor discrepancies therein Thus, we find that the prosecution has proved this circumstance as well.

To prove the third circumstance, the prosecution has led the evidence of PW-1, M.Ramakrishna Rao (PW-8), Milan Gokele (PW-9), T. Harikrishna (PW-12) and PW-21. PW-1 stated that on 4th September, 1996, he was present in the court room when A-1 announced the code word by saying that "all the matters stand adjourned to 6th September, 1996". The statement of PW-1 has been supported by PW-8 who was a special public prosecutor conducting Sessions Case No. 186 of 1989 who has categorically stated in

A his evidence that after luncheon recess when the case was taken up, A-1, who was the Presiding Officer, stated in open court that "all the matters stand adjourned to 6th September, 1996" but on the representation made by PW-9, the defence counsel, the case was adjourned to 9th September, 1996 as 6th September, 1996 was not convenient to PW-9. PW-9, the defence

B counsel, corroborated the statement of PW-8. He further stated that as 6th September, 1996 was not a date convenient to him, the matter was adjourned to 9th September, 1996 on his representation. PW-12, Inspector of Police, ACB, stated that he was deputed to attend the court on 4th September, 1996 to observe the proceedings in Sessions Case No. 186 of 1989 and on that

C day in his presence, A-1 announced in open court that "all the matters stand adjourned to 6th September, 1996". PW-21 stated that though on that day he had also gone to the court, he did not go inside the court hall, but was standing outside the court hall and after the case was adjourned, PW-1 came out from the court hall and informed this witness that A-1 announced code word in open court by saying that "all the matters stand adjourned to 6th

D September, 1996". From a bare perusal of the evidence of these witnesses, it would be clear that their evidence is consistent with each other and there is no contradiction therein on any material point. We find that the trial court was justified in relying upon their evidence to prove the circumstance and the High Court was wholly unjustified in doubting the veracity of their statements on the basis of minor contradictions in their evidence.

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In order to prove the fourth circumstance, the prosecution adduced the evidence of PWs 1, 3, 21, 22 and 23. PW-1 stated that on 4th September, 1996, he went to ACB office with the sum of Rs. 3 lacs kept in a plastic cover and handed over the same to the Dy. Superintendent of Police, ACB

F (PW-23) and his statement has been corroborated by PWs 3, 22 and 23. These witnesses have further stated that phenolphthalein powder was applied to the currency notes. It was arranged that PWs 1 and 21 would go inside the house of A-1 at Hanumakonda and after paying the sum of Rs. 3 lacs to his wife, they would come out from the house and PW 1 would give signal to the trap party by wiping his face with handkerchief and thereupon the

G trap party would go inside the house. PW-1 stated that according to pre-arranged plan, while the trap party was waiting outside the house at some distance, he and PW-21 went inside the house of A-1 at Hanumakonda which was bolted from inside and on the call bell being pressed by PW-21, wife of A-1 opened the door and on being told by PW 21 that they were

H sent by A-1, she stated that she had already received a message from A-1

and was waiting for them. The witness further stated that PW-21 was asked by wife of A-1 to count the money which was in plastic cover and thereafter to keep the same on teapoy pursuant to which PW-21 after counting kept the plastic cover containing the sum of Rs. 3 lacs on the teapoy. Wife of A-1 asked her son to keep the said plastic cover in the cup-board. Whereafter PWs 1 and 21 came out from the house and according to the pre-arranged plan, signal was given to the members of the trap party who arrived there and were taken inside the house by PWs 1 and 21. PWs 3, 22 and 23, who were members of the trap party, stated that on receiving pre-arranged signal from PW-1, they, along with PWs 1 and 21, entered the house of A-1 after his wife opened the door and they disclosed their identity. On being asked by the trap party, she denied any knowledge about the sum of Rs. 3 lacs. These witnesses further stated that son of A-1, who was deaf and dumb, made gestures and signs and took them to the bath room attached to the master bedroom and opened the lid of the flush tank in which plastic cover containing sum of Rs. 3 lacs was found and the same was taken out by PW-3 on the instructions of DSP, ACB (PW 23). After opening the cover, the numbers of currency notes were compared and the same tallied with the numbers noted down separately on a sheet of paper by the members of the trap party. The trap party thereafter seized the amount of Rs. 3 lacs and prepared *mazhar* for the same. Members of the trap party also took photograph of the plastic cover containing sum of Rs. 3 lacs before the same was taken out from the flush tank. The evidence of PWs 1 and 21 has been supported by PWs 3, 22 and 23, who were members of the trap party, and the trial court did not find any discrepancy in their evidence, but the High Court erroneously refused to place reliance upon their evidence merely because there were certain minor contradictions therein.

In order to prove the last circumstance against the respondent (A-1), the prosecution examined PW-1, D.Subba Rao (PW 4), K. Ramesh (PW 6), Butchanna Goud (PW 7), K.Kumar (PW-18) and PWs 21 & 22. PW-21 stated that after the seizure, he along with members of the trap party left for Hyderabad and from the house of PW-7, he had a telephonic talk with A-1 and informed him about the payment of Rs. 3 lacs and fixed up time of the meeting of PW-1 with A-1. PW-21 further stated that according to pre-arranged programme, in the night between 4th and 5th September, 1996 at 1.00 o'clock, PWs 1 and 21 went to the flat of A-1, which was situated at Garudagagan Apartments, Secunderabad, and they were followed by PW-4 and PW-22. While PWs 1 and 21 were going to the flat of A-1, they met

A PW-6 who was the watchman. After meeting A-1, PW-1 stayed in the flat of A-1 while PW-21 came out and the door was bolted from inside. After some time, PWs 4, 18 and 22 came there and found that PW-21 was standing outside the flat. PW-1 in his evidence corroborated the aforesaid statements made by PW-21. PWs 4, 18 and 22 stated that on call bell being pressed, **B** A-1 opened the door and they found that PW-1 who was accused in Sessions Case No. 186 of 1989 was being entertained in the house of A-1 at such an odd hour. PW-7 stated that PW-21 had a telephonic talk with A-1 from his house. PW-6, the watchman of Garudagagan Apartments stated that PWs 1, 4, 18, 21 and 22 came to the flat of A-1 during that night. The statements of PWs 1, 4, 6, 7, 18, 21 and 22 have been relied upon by the trial court to prove this circumstance against the respondent upon threadbare discussion of their evidence and the High Court was not justified in disbelieving the same on account of minor contradictions. Thus, we find that the prosecution has proved this circumstance as well by credible evidence. **C**

D From the foregoing discussions, it would be clear that the prosecution has succeeded in proving its case beyond reasonable doubt, the trial court was quite justified in recording conviction of A-1 and the judgment of High Court acquitting him suffers from the vice of perversity as it has refused to place reliance upon the evidence of witnesses merely on the basis of certain minor contradictions in the evidence of witnesses, though, they have supported the prosecution case on all material particulars. In our opinion, the High Court was also not at all justified in making adverse remarks in the impugned judgment against PW-20, the then Registrar (Vigilance) of the Andhra Pradesh High Court, which were wholly uncalled for and the same are accordingly liable to be expunged. **E**

F For the foregoing reasons, the appeal as well as Criminal Misc. Petition No. 2569 of 2004 are allowed, the judgment of acquittal, rendered by the High Court so far the same relates to A-1, is set aside, the order of conviction of A-1 recorded by the trial court is restored and the adverse remarks, recorded in the impugned judgment against PW-20, are expunged. **G** The respondent is directed to be taken into custody forthwith to serve out the remaining period of sentence.