

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 50 of 2005**

**K.V. THIPPESWAMY (D) BY LRS. . . . . APPELLANT**

**VERSUS**

**STATE OF KARNATAKA . . . . . RESPONDENT**

**O R D E R**

1. We have heard the learned counsel for the parties.
2. Concededly, the appellant has died and this appeal is being pursued by his legal representatives.
3. As per the evidence on record, the demand had been made, the money had been paid over to the accused and had been recovered from him. The phenolphthalein/sodium carbonate test also proved positive.
4. The learned counsel has raised primarily one argument before us. He has pointed out that the complainant himself had not been examined which made the very basis of the prosecution case suspect. We find that the trial court and the High Court have dealt with this aspect and have observed that when the summons had been sent to the complainant they had received back with an endorsement that he was hospitalised and was not in a

position to talk. At one stage, a suggestion had also been mooted that a Local Commissioner be appointed to record his statement in the hospital. The trial court noted that it would be a futile exercise as the complainant was not even in a position to speak. It is also clear from the record that the statement made by the Public Prosecutor that the complainant was not in a position to appear as a witness had not been challenged by the defence counsel.

5. In this view of the matter, we find no merit in the appeal which is, accordingly, dismissed.

.....J  
[HARJIT SINGH BEDI]

.....J  
[CHANDRAMAULI KR. PRASAD]

NEW DELHI  
MARCH 16, 2011.