
(2002) 08 BOM CK 0006
In the Bombay High Court
Case No : Criminal Appeal No. 152 of 1997

Arun Bind

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Evidence Act, 1872 — Section 101
Prevention of Corruption Act, 1988 — Section 13, 20, 4, 7

Citation : (2003) BomCR(Cri) 295 : (2003) 105 BOMLR 12

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Judgement

R.S. Mohite, J.—The appellant Arun Natthuji Bind has filed this appeal for quashing and setting aside the judgment and order passed by the Special Judge, under the "Prevention of Corruption Act, Gondia on 25.4.1997 in Special Case No. 2/92, by which he has convicted the appellant for committing offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs. 2,000/- and in default to, suffer S.I. for two months.

2. The brief facts of the prosecution case are as under :

That, P.W. 1 Parasram Bhoyar was a villager who had purchased a buffalo from Gramin Bank, Mundipar in the year 1987 under the Government Scheme. The buffalo was insured and had a ear tap bearing No. 83891. In the year 1988 the present appellant was serving as a Live Stock Development Officer in Panchayat Samittee, Goregaon. The buffalo of Parasram was unwell. Parasram who is examined as P.W. 1 admits in his evidence that he had visited the appellant at his office in Goregaon on one or two occasions for treatment of his buffalo. He has further admitted that the appellant also had visited his village twice or thrice on scooter for giving treatment to the ailing buffalo.

3. Unfortunately, inspite of treatment given by the appellant as also by one other

Veterinary Doctor by name Dr. Shambharkar, the buffalo of P.W. 1 expired on 15.12.1988. The post-mortem was required to be conducted on buffalo on 16.12.88, the present appellant came to the village of Parasram, conducted the post-mortem and handed over the ear tap of the buffalo to Parasram.

4. To claim the insurance, Parasram was required to obtain the signature of the appellant. It is his case that he therefore filled in requisite insurance form and took it to the office of the appellant situated at Panchayat Samittee, Goregaon. However, as the appellant did not sign it, Parasram had returned back to the village. It is the case of the prosecution that Parasram once again visited the appellant for the same purpose, but on the second occasion also the appellant did not sign the form. That, after some days, in the Bazar of Goregaon, Parasram happened to meet the appellant. He enquired from the appellant as to when he is likely to sign the form. The appellant has said that he may sign the form after 2-3 days. At that time the appellant has alleged to have demanded Rs. 150/- and it is alleged that appellant told him that the amount was for signing the form. Parasram told the appellant that he would not give him any money.

5. That, thereafter Parasram went to the house of his cousin by name Ramdas Lataye, he was advised by Ramdas that they should go to the office of the Anti Corruption Bureau at Vharanda. On 16.3.1989 both of them went to the office of Anti Corruption Bureau and lodged the report to the effect that the appellant was demanding a bribe. The report lodged by the appellant on 16.3.89 is at Exh. 24.

6. After recording the report, the officers of Anti Corruption Bureau made usual preparation under a Pre-trap panchanama which is at Exh. 31. That, thereafter A.C.B. officers alongwith two panchas and P.W. 1 Parasram then came to Goregaon. The jeep of the police was made to stand by the side of the Panchayat Office. One panch, i. e. P.W. Moreshwar then went to the office of the appellant. The appellant was sitting in his office. P.W. 1 Parasram went to the appellant and asked the appellant to give his signature on the form. The appellant inquired with Parasram as to whether he had brought Rs. 150/-. Parasram replied in the affirmative and handed over Rs. 150/- to the appellant. The appellant took the money and thereafter put his signature on the proforma. Thereafter, Parasram and panch Moreshwar came out of the office of the appellant and signalled the police. After receiving signal, the A.C.B. officers came to the office of the appellant and both his arms were caught and his hands were dipped in the water. The water solution became violet. The money which was kept by the appellant in the table drawer was seized by the police. The hands of Parasram were also washed and solution turned violet. These two violet coloured solutions were collected in separate bottles and the usual post trap panchanama was made. This post trap panchanama is to be found at Exh. 32.

7. After completion of investigation and obtaining sanction, a charge-sheet came to be filed and cognizance was taken by the Special Judge and a charge was framed against the appellant for the offence under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. On the basis of the evidence adduced, by

the impugned judgment and order the conviction is recorded by the Special Judge, as aforesaid.

8. It is well settled that in order to bring home the guilt of the offence u/s 7 of the Prevention of Corruption Act, 1988, the prosecution would have to prove that the appellant had accepted or obtained or agreed to accept or attempted to obtain any gratification other than legal remuneration as a motive or reward for doing an official act. To bring home the conviction u/s 13(1)(d) of the Act, the prosecution would have to prove that the appellant by corrupt or illegal means or by abusing his position obtained for himself any available things or advantage.

9. In such a case, what is required to be proved is a making of demand and acceptance of bribe, for illegal gratification.

10. In the present case the charge as framed against the appellant is firstly for accepting an amount of Rs. 150/- from Parasram, for himself, as gratification other than legal remuneration as motive or reward for conducting autopsy on the dead body of the buffalo which was an official function of the appellant as public servant and thereby commission of an offence u/s 7 of the Prevention of Corruption Act, 1988. The second charge against the appellant was pertaining to obtaining of pecuniary advantage of Rs. 150/- from the complainant Parasram by abusing the appellant's position as a public servant and thereby committing on offence u/s 13(1)(d) of the Prevention of Corruption Act, 1988.

11. In this background the evidence which the prosecution produced on record in relation to the making of the demand by the appellant was brought on record through the evidence of P.W. 1 Parasram and the evidence of P.W. 2 Moreshwar. The evidence as brought on record In relation to making a demand was as under.

12. In his complaint, Exh. 24, Parasram talks about the appellant making a demand for a bribe, for the first time on 8.3.89. His version as contained in his complaint relating to the said first demand is as follows :

On 8.3.89, Wednesday at about 4.00 o'clock in the evening, when I went and met him in his office and inquired him about post-mortem examination form and filling of the form of insurance company, he asked me as to whether I brought the certificate from Dr. Shambharkar. On it, I gave him the certificate brought from Dr. Shambharkar. Thereupon, he said to me, "Give me Rs. 150/- in connection with post-mortem examination report and claim form of insurance company, otherwise I will not prepare your documents. "On it, I told him that I had no money at that time. He, then, asked me to bring money on 15.3.89 and take the claim form and postmortem examination report.

13. This alleged demand of bribe on 8.3.89 find no mention whatsoever in the substantial evidence of P.W. 1 Parasram. In his substantial evidence Parasram only talked about two visits to the office of the appellant situated at Goregaon and mentioned that the appellant did not sign the insurance forms. There is no mention whatsoever regarding the appellant demanding any amount by way of

bribe or otherwise during these two visits.

14. In his substantial evidence, P.W. 1 Parasram then mentioned another incident which occurred some days after his last visit to the office of the appellant. As regards this incident is version as follows :

After some days in the bazar of Goregaon I happened to meet accused. I enquired with the accused when he is likely to sign the form. Accused said that he may sign my form after 2 or 3 days. Accused demanded me Rs. 150/-. I enquired accused why for he is demanding Rs. 150/-. He told me it is for signing the form. I told the accused that I will not give him money.

As regard this piece of evidence, in his cross-examination, P.W. 1 Parasram gave completely different version which is reproduced as under :

It is not true accused had met me in Bazar of Goregaon and had demanded Rs. 150/- towards his visiting and treatment fee. It is true I offered him Rs. 50/-. It is true that, accused had demanded Rs. 150/- to me. I had not offered amount towards fees. Now, I say that I offered Rs. 50/- to accused and I Rs. 50/- assured remaining amount be paid subsequently. It is true accused told me that I should bring lumpsum of Rs. 150/- in the office.

15. A glance at Exh. 24, the report would be necessary to find there could be any corroboration to the version given by this witness. What he has stated in his complaint is as under :

Yesterday 15.3.89 at 6.00 o'clock in the evening, I and my cousin Ramdas Bansiram Lataye had met him in the market and said to him, "Saheb, you prepare my documents". On it, he asked me. "Have you brought money? I said to him, "I have got an amount of Rs. 50/- only with me, you take it. I will give remaining amount later on.

16. On a reading of the entire evidence of the complainant as a whole together with his complaint Exh. 24, it can be seen that the complainant has given two different versions. In his examination in chief he does not talk about his cousin Ramdas Lataye accompanying him. On the contrary, he talks about going to the house of his cousin Hemraj, after the demand is made and his cross-examination states that he had mentioned the name of Hemraj by mistake. So also, in his cross-examination and in his complaint his version of offering Rs. 50/- and promising to give remaining amount of Rs. 100/- later on differs with his version in the examination in chief, where he talks a stand of informing the appellant that he could not give any money at all. The prosecution could have examined Ramdas Bansiram Lataye, but for the reasons best known to the prosecution, Ramdas was never examined. In my opinion, it would be very dangerous to place reliance on the evidence of Parasram, in so far as it relates to the making of demand by the appellant in the market on 15.3.1989. However, before I move on from this incident, it would be proper to refer to the evidence of P.W. 2. Moreshwar who is panch witness and whose evidence also sheds some light on

the aspect of alleged making of demand by the appellant at the market place of village Goregaon on 15.3.1989.

17. It is the prosecution case that P.W. 1 Parasram and his cousin Ramdas went to the office of Anti Corruption Bureau and that P.W. 2 was called there as a panch. In his cross-examination, P.W. 2 Moreshwar states as follows. :

Parasram had told that as accused was demanding Rs. 150/- after conducting the post-mortem but he had no money to give him. Ramdas had told that, accused was demanding Rs. 150/- towards post-mortem as well as treatment. Ramdas told that they do not want to give him money as their buffalo is insured Animal and therefore, wanted accused to be trapped.

I have referred to this evidence in order to find out if any corroboration can be obtained to the version of the demand alleged to have been made by the appellant. From this evidence it can be seen that though partly it might be a hearsay evidence in so far as what Ramdas said, yet in so far as Parasram had told him, the version lends no corroboration to the version given by Parasram. In his evidence Parasram talks about a demand for signing insurance forms, this aspect finds no corroboration from the evidence of this witness. The details as to whether such demand was made is also missing from the evidence of P.W. 2 Moreshwar.

18. There is one more incident on the day when the trap was laid and sprung when the appellant is alleged to have restated his demand. According to the evidence of Parasram on 16.3.1989 he alongwith the Anti Corruption Bureau officers and the panchas came to the office of the appellant. The appellant was sitting in his office. P.W. 1 Parasram further stated in his examination and under :

I went to the accused I asked the accused to give his signature on the form. He inquired with me whether I have brought that Rs. 150/-. I told him that I have brought Rs. 150/-. I gave accused Rs. 150/-. He took the money. Thereafter, accused put his signature on the proforma. Pancha Moreshwar was accompanied with me. Accused was alone in his compartment. Myself and Moreshwar came out of the office of the accused. I signalled the police. After receiving my signal anti corruption people came to the office of the accused and his both the arms were caught upwards.

19. From this evidence it is not clear as to for what purpose the appellant had enquired, if Parasram had brought Rs. 150/-? However, what is clear is that, the appellant signed the proforma after the receipt of money from Parasram. This version ought to have been fully corroborated by P.W. 2 Moreshwar, but unfortunately the prosecution witness Moreshwar had given conflicting evidence on this point. On this point he has stated as follows :

Accused was sitting in the separate room. It was his cabin. Parasram went in his room. Room was small. I was standing in a door. I was at a distance of 5 ft. from that table. Accused enquired with Parasram whether he had brought the Badge

and papers. Parasram replied in affirmative. Accused went in the office room, brought some papers and handed over those papers to Parasram. I was standing behind the curtain. Accused demanded money to Parasram after handing over the papers. I could hear only accused demand money. Accused also used some word like postmortem. Thereafter, Parasram gave money to accused.

20. This evidence comprises a different version in so far as Parasram talks about the demand for signing the papers after the money was paid, the version of this witness talks about, the appellant signing the papers before the money was paid. However, the difficulty of the prosecution does not end there. In his cross-examination this witness again admitted to a version which was not at all spoken about by the complainant Parasram. In his cross-examination he stated as follows :

I was standing near curtain. Parasram went inside. One person had came out of the cabin of the accused. Accused had gone out of his cabin for bringing papers. That time Parasram was standing near the table of the accused. I was looking where the accused was going. Accused returned within five to seven minutes. During that time, Parasram was alone in the cabin. After arrival of accused to his cabin, he gave some papers to Parasram. Parasram came out of the office with those papers. Parasram went in the Vharanda and signalled the police.

He has further stated in his cross-examination, :

Because of curtain, I had not seen what talks were held between accused and Parasram.

21. In my opinion, the purpose of the alleged demand said to be made by the appellant on 16.3.89 is not clear from the evidence of the complainant and the version of the complainant does not stand corroborated and in fact, stands unsupported by the version which is given by the P.W. 2 Moreshwar.

22. In the net result, I find it unsafe to believe the evidence of the prosecution on the question of demand made by the present appellant. Quite apart from the fact that the evidence is unsafe, the nature of the evidence is completely at variance with the charge of which the appellant stands accused. A glance of the charge indicates that it pertains to obtaining the gratification for conduction of post-mortem examination, but this is not at all the version of the complainant, as has been demonstrated above. The substantial evidence of the complainant indicates that according to him the first demand was made on 15.3.89 that was several months after conducting of the post-mortem which was done by the appellant on 16.12.1998.

23. The evidence pertaining to acceptance which would have relevance to the conviction u/s 7 of the Prevention of Corruption Act, 1988 carries the prosecution no further. It is their case that the marked notes were found from the drawer of the appellant in his office. The evidence of P.W. 2 Moreshwar indicates that the complainant Parasram was alone in the office of the appellant for about five to

seven minutes and was standing near the table. Moreshwar himself claims that he could not see because of the curtain. The finding of phenolphthalein on the hands of the appellant unfortunately cannot be the stand against the appellant because Moreshwar in his evidence states that when the appellant told the police party that he had kept money in the drawer, the Anti Corruption Bureau Officer, Gawai asked the accused to take out that amount. This would render the finding of phenolphthalein on hands of the appellant as the circumstances capable of being explained by the defence and it would be necessarily fatal to the defence.

24. In this background a reference is required to be made to the defence particularly in view of the presumption u/s 20 of the Prevention of Corruption Act, 1988 in relation to offence u/s 7 of the said Act. It is the defence of the appellant that he had treated the buffalo of the complainant by coming to the village of the complainant Parasram. He had given medicines and conducted post-mortem and for that he was entitled under a Government Circular to charge the private fees. The evidence of the complainant Parasram indicates that he had gone on 1 or 2 occasions to the office of the present appellant at Goregaon and that the appellant had come to his village, on his scooter to treat his buffalo. He has also admitted that the appellant had given medicines for the treatment of the buffalo. At Exhs. 47 and 48, the relevant Government Circulars are on record and they indicate that the appellant was entitled to charge his private fees. It cannot be the lost sight of the presumption of Section 20 of the Prevention of Corruption Act is a rebuttable presumption. The burden on the appellant in this case was not as heavy as that on the prosecution and all he had to do rebut the presumption was to show that the defence was probable. In this regard the Advocate for the appellant has relied upon a decision of the Apex Court in a case of Trilok Chand v. State of Delhi 1977 Cri. L.J. 254 in which the Apex Court has observed as under. :

The degree and the character of the burden of proof which Section 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which u/s 101. Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination u/s 342 of the Cr. P.C. may not be enough, the burden on him to negate the presumption may stand discharged if the effect, of the material brought on the record in its totality renders the existence of the fact presumed improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour. It is not necessary for to establish his case beyond a reasonable doubt.

The Supreme Court has further set out another proposition as under : "If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as stillborn."

25. In the present case there is sufficient indication to show that the defence version obtains some support from the version of prosecution itself. The record

indicates that the appellant had in fact treated the buffalo of the complainant and had gone to the village of the complainant on 2-3 occasions on scooter, thus the applicant obviously must have incurred some costs. The record indicates that admittedly even according to the complainant, medicines were furnished by the appellant and the record indicates that the appellant can have a private practice. To this extent, the prosecution version itself lends support to the defence version. It cannot be the lost sight of that the appellant is a qualified doctor and the complainant in his entire evidence has made no attempt to show that he paid any fees especially when the appellant had taken pains to visit his village on 2 or 3 occasions and must, have incurred cost in this regard. The argument that by demanding an amount of Rs. 150/- for his fees, the appellant had exceeded the Government fees chargeable must be rejected outright as the same has no relevance to the charge for which the appellant stands accused.

26. I find from the judgment of the Special Court that there is no proper reference to the relevant evidence pertaining to the demand. In the circumstance, I thought it proper to incorporate in this judgment the relevant extracts from the evidence. Once it, is held that neither the demand nor the acceptance of illegal gratification is proved by the prosecution, then the impugned judgment of the Trial Court will have to be set aside in the present case.

27. In the circumstances, I quash the judgment and order passed by the Special Judge, under Prevention of Corruption Act, Gondia on 25.4.1997 in Special Cri. Case No. 2/1992 and acquit the appellant of all charges. The bail bond. If any given by the appellant would stand cancelled.