
(2002) 09 MAD CK 0024
In the Madras High Court
Case No : Criminal Appeal No. 639 of 1995

Balusamy	Vs	APPELLANT
State by Deputy Superintendent of Police		RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 11, 13, 13(1)(d), 13(2), 20

Citation : (2002) 09 MAD CK 0024

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Balaguru, for the Appellant; O. Srinath, G.A., for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Balusamy was convicted for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the

Prevention of Corruption Act (hereinafter referred to as "the P.C. Act") and sentenced to undergo Rigorous Imprisonment for six months and to

pay a fine of Rs. 1,000/- for the offence u/s 7 and to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs. 1,000/- for

the offence u/s 13(1)(d) read with Section 13(2) and the trial Court ordered the sentences to run concurrently. Hence, this appeal.

2. The case of the prosecution is as follows:-

(a) K. Balusamy, the appellant/accused was working as Sub-Registrar (Guidelines) in the Office of the District Registrar, Nagapattinam. Arul

Prakasam. P.W.2, owned the lands in the name of his brothers. Opposite to the said lands, the other lands belonging to Rajakannu and Rangaiah

were situated. They wanted to exchange their lands among themselves.

Therefore, three documents presented for registration before the Sub-Registrar, Thiruthuraipoondi. After formal registration, the documents were kept pending and the same were referred to the District Registrar, Nagapattinam for necessary enquiry.

(b) The parties were informed that the officer from the District Registrar Office, Nagapattinam would be coming for inspecting the lands in question

to know about the nature of the lands covered by the documents. Few days thereafter, the accused, namely, Balusamy. (the Sub-Registrar

(Guidelines)) visited the house of P.W.2 and made enquiries regarding nature of the lands to be exchanged. After inspection, the accused informed

both Arul Prakasam, P.W.2 and his brother Veera Muthu Konar, that the lands would be termed as ""house-sites"" and therefore, the parties have

to pay stamp duty to the extent of Rs.7,000/-. On the date of inspection, he obtained the signatures of P.W.2 and Irulappa Konar in the

form/Ex.P-2 series. Before he left the place, he asked Veera Muthu Konar to send his son, P.W.2 to meet him at Nagapattinam on Monday.

(c) After ten days, P.W.2 met the accused at the Office of the Sub-Registrar, Nagapattinam and at that time, Balusamy, the accused, demanded a

sum of Rs.3,000/-from P.W.2 to be paid to him as ""bribe"" for writing a report favourable to them, so that they may avoid the stamp duty. P.W.2

expressed his inability.

(d) However, again on 30.5.1994, when P.W.2 met the accused at this Office at Nagapattinam and explained his difficulties in securing the amount

demanded, the accused agreed to accept Rs.1,500/-, stating that unless the said amount is paid, the documents would not move from his office.

He further directed him to meet him at the office of the Sub-Registrar, Thiruthuraipoondi, on 2.6.1994 at about 10 a.m. and to pay the amount to

him there.

(e) P.W.2 came and informed his brothers and father. They were not inclined to give any money as bribe. Therefore, it was decided to give a

complaint to the Office of the Vigilance. Accordingly, the complainant-P.W.2 went to the Office of Vigilance at Thanjavur and gave a complaint,

which is Ex.P-4 on 1.6.1994 at about 5 p.m.

(f) P: W.8/Inspector of Police received the said complaint and registered the same in Cr. No. 1 of 1994 for the offence u/s 7 of the P.C. Act.

P.W.2, the complainant was asked to stay in the Office of the Sub-Registrar, Thiruthuraipoondi. The next day morning, two Officers, one from the

Agricultural Office and another from Public Works Department were requested by the Vigilance Officer to be the witnesses to the trap.

Accordingly, Muthukumar, working in the Agricultural Office as an Agricultural Officer and one Krishnaswamy from the same office appeared and

in their presence, Ex.P.4/ complaint was read out. P.W.2 handed over Rs. 1,500/- to the Vigilance Officer/P. W.8. The phenolphthalein powder

was applied and demonstration test was conducted by adopting the procedure prescribed under law. Earlier, P.W.8 instructed P.W.2 to give the

amount to the accused, if he demanded the same and after receipt of the amount, he must give a signal by folding his dhoti. This was a pre-

arranged signal to nab the accused. A mahazar was prepared and attested by both P. W.3 and Krishnasamy and signed by the Officers

concerned. Ex.P-5 is the said mahazar.

(g) Then, at about 9.30 a.m., they left Thanjavur and reached Thiruthuraipoondi at about 2.30 p.m. P. Ws.2 and 3 were alone asked to go into the

Sub-Registrar Office and the other Officers were standing outside. When P.W.2 was standing at the entrance of the Office of the Sub-Registrar,

the accused who was sitting inside the Office, on noticing him, came out and asked him as to whether he brought the money. At that time, P.W.3

also was standing by his side and when the accused asked as to who he was, P.W.2 said that he was his brother-in-law.

(h) Then, the accused said that he has asked for a taxi to go to Ariyalur and they could also come with him upto Thiruthuraipoondi bus stand. So

saying, he went inside and after few minutes. he came out and in the meantime, the taxi came and stood in front of the Office of the Sub-Registrar.

Someone from the Office rushed to the accused and told him that the District Registrar was coming and he was to be given a lift to

Thiruthuraipoondi bus stand. On hearing this, the accused got excited. Then, the immediately turned to the side of P.W.2 and gave a signal to give

the money.

(i) Then, P.W.2 took out the money and handed over the same to the accused. The accused received and put the same inside his pant-pocket.

P.W.2 requested him to settle his matter soon. The accused responded stating

that he would finish the matter.

(j) Thereupon. P.W.2 gave the said pre-arranged signal to the Officers waiting near the Sub-Registrar Office by folding his dhoti and then he went

outside. On receipt of the said pre-arranged signal, P.W.8 and other Officers introduced themselves to the accused and then he was taken inside

the Sub-Registrar Office. The phenolphthalein test was conducted on both the hands of the accused, which proved positive. Thereafter, the

accused was asked to take out the money that he received from P.W.2. He took out the money from his pant-pocket and handed over the same.

The pant-pocket was subjected to test, which also proved positive and when he was asked as to why he received the amount, he said that he gave

Rs.1,500/- as advance to P.W.2, since he assured that he would arrange for a job to sent his relative to Arab country and since he did not like the

job at Arab country, he asked him to return the amount of Rs. 1,500/- and accordingly, he gave back the money which was received by him.

(k) With regard to the said Test conducted and the explanation, the mahazar was prepared and this mahazar is Ex.P-6 and the copy of the

mahazar was also served on the accused and the mahazar was attested by the witnesses and the Officers concerned.

(1) After observing all formalities, P:W.8 handed over investigation to P. W.9, the Deputy Superintendent of Police (D.S.P.) of Vigilance

Department. He examined all the witnesses, obtained sanction and sent a report and thereafter filed charge-sheet against the appellant/accused for

the offences indicated above.

3. During the course of trial, P. Ws.1 to 9 were examined, Exs. P-1 to P-9 were filed and M. Os. 1 to 5 were marked. On the side of the defence,

no evidence was adduced.

4. However, the appellant/accused stated in Section 313 Cr. P.C. questioning that the amount of Rs. 15.000/- which was given by his relative in

order to send him to foreign country for job and since the amount was demanded back, warning him that he would take action against him, P.W.2

filed a false complaint and on the date of trap, P.W.2 trusted on his pant-pocket and as such, he had not received any money as bribe.

5. The trial Court, on an appreciation of the evidence available on record, found the appellant/accused was guilty of the said offences and

convicted him thereunder, as indicated above. Challenging the same, this appeal has been filed.

6. Learned counsel for the appellant, while relaying on various decisions, would contend that the accused is entitled to be acquitted, for the

following reasons:-

(i) Ex.P-2 has been filed by the prosecution to prove that prior to the date of demand and receipt of the bribe amount, the accused-Officer came

and inspected the properties in question to know about the nature of the lands and that Ex.P-2 cannot be said to have been properly proved, since

it does not contain the signature of the accused. No details have been given as to when and where from Ex.P-2 was seized.

(ii) P.W.2 had an axe to grind against the accused, as the accused had been demanding P.W.2 to pay back the money said to have been given to

P.W.2 in order to send his relative to Gulf country and threatening to take police action against P.W.2, in case he fails to pay the money back.

Therefore, P.W.2 cannot be said to be a reliable witness and there are contradictions in the evidence of P.Ws.2 and 3.

(iii) Though there is a little difference between the plea of the accused in the statement made in Ex.P-6 and the statement given u/s 313 Cr. P.C, it

cannot be said that the earlier statement of the accused in Ex.P-6, which could be made use of in favour of the accused, and which is admissible as

per the decision of this Court in Mottai Thevan v. State, (1951 M.W.N. (CrL.) 274, is to be completely ignored.

(iv) P.W.2's brother, Varadarajan, who has written the complaint, has not been examined. There is contradiction in the evidence of P.Ws.2 and 8

with regard to various aspects.

7. Learned Government Advocate, while repelling the above submissions of learned counsel for the appellant/accused, would contend that the

materials available on record, would clearly show that the accused received the money as ""bribe"" and the same has been recovered from his pant-

pocket and that the explanation given by the accused, which is not consistent, cannot be accepted, and therefore, the conviction and sentence

imposed upon the appellant/accused by the trial Court are liable to be confirmed. In support of this submissions, learned Government Advocate

relied on various decisions.

8. I have carefully considered the rival contentions of learned counsel for the parties and also gone through the records.

9. At the outset, it shall be stated that the contention of learned counsel for the appellant/accused that mere recovery of the tainted money and the

positive result of the Test stated above, are not enough to establish the guilt of the accused, cannot be rejected, in view of the decisions of the

Supreme Court rendered in *M. Narasinga Rao v. State of A.P.*, 2001 S.C.C. (Cri.) 258:2000(2) SC (Cri.) 553 :2000 (8) SC 498 and *Meena v.*

State of Maharashtra, 2000 S.C.C. (Cri.) 878:2000 (1) SC(Cri.) 389:2000 (3) SC 334.

10. It is settled law that when there is mere recovery of certain money from the person of the accused without proof of his payment by the

person's to whom the official favour was to be shown, the presumption u/s 20(1) of the P.C. Act would not arise. In other words, mere recovery

of money divested from the circumstances under which it was paid, is not sufficient to hold that the accused is guilty when the substantive evidence

in the case is not reliable. In other words, unless it is proved that the money was paid to the accused in order to show his official favour, as

gratification, other than legal remuneration, the presumption u/s 20 of the P.C. Act would not arise, even when there is a recovery of certain money

from the accused.

11. Section 20(1) of the P.C. Act would provide as follows:-

20(1). Presumption where public servant accepts gratification other than legal remuneration - (1) Where in any trial of an offence punishable u/s 7

of Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has

agreed to accept or attempted to obtain for himself, or for any other persons, any gratification (other than legal remuneration) or any valuable thing

from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that

gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without

consideration or for a consideration which he knows to be inadequate.

12. A reading of the above section would make it clear that if the accused person has accepted the gratification other than the legal remuneration, it

shall be presumed unless the contrary is proved, that he accepted as a motive or reward for showing the official favour. Therefore, the initial

burden is on the prosecution to prove that the money was paid as gratification and when once it is proved that it has been paid and the same was

accepted, then, the presumption u/s 20(1) of the P.C. Act shall at once arise, as the wordings contained in that section ""unless the contrary is

proved"" would reveal that the presumption raised u/s 20(1) of the P.C. Act has to be rebutted by proof and not by bare explanation.

13. Of course, it is true that the required proof need not be such, as expected from the prosecution that when sustaining the criminal conviction, it

needs only to establish the high degree of probability. Therefore, this Court is constrained to find out firstly as to whether the amount has been paid

by the complainant as a gratification so as to raise the presumption.

14. In this case. P. W.2 has been examined to show that in regard to the registration of the exchange deeds with reference to the landed

properties, the accused-Officer came and inspected the properties in question and informed both P.W.2 and other persons that they have to pay

Rs.7,000/- as stamp duty. When P.W.2 and others told him that the lands are punja lands and not anaikattu, which would attract more stamp duty,

he asked P.W.2 to come and meet him at Nagapattinam Office, Accordingly, P.W.2 met him twice. On both the occasions, the accused stated

that unless the bribe amount is paid, the documents will not move from his Office. Though initially he demanded Rs.3,000/-, on the second visit, i.e.

on 30.4.1994, he demanded Rs. 1,500/- only. He was also specifically asked to come and meet him at Thiruthuraipoondi Sub-Registrar Officer

on 2.5.1994. In the meantime, P.W.2 went and informed his father and brother and they said that they should not give any money as bribe.

Therefore, P.W.2 came to the Thanjavur Vigilance Office and gave the complaint on 1.5.1994 evening.

15. P.W.8, on receipt of the said complaint, registered the same and asked P.W.2 to stay in the Office itself, so that the trap can be laid on the

next day itself. The prosecution has relied on Ex.P-2 to show that the accused-Officer came, visited and obtained the signature of P.W.2/Arul

Prakasam and Irulappa Konar/P.W.5 in two forms which are Ex.P-2 series.

16. It is contended that Ex.P-2 series have been belatedly created by the Police,

as there are no details regarding the seizure of the documents and also because of the fact that those documents have reached the Court only on the date of filing the charge-sheet. This contention has to be rejected, in view of the evidence of Office Assistant of the Sub-Registrar Office, who has been examined as P.W.4. According to him, the documents/Ex.P-2 series relating to the inspection of the lands have been perused by the Investigating Officers and some of the documents were taken for perusal and the file relating to the inspection is file No.813/91. Therefore, it cannot be contended that Ex.P-2 series have been created for the purpose of this case. The prosecution need not create those documents/ Ex.P-2 series, in view of the fact that both P.Ws.2 and 5, who were the witnesses for inspection of the lands, would specifically state that when the accused-Officer came and inspected the lands in question, he told them that they have to affix the stamp duty to the extent of Rs.7,000/-. This aspect of the evidence which has been spoken to by P.Ws.2 and 5, need not be disbelieved, in view of the fact that P.W.4 referred to the file relating to the inspection of the lands.

17. Nextly, relating to the aspect of the demand made by the accused, it has to be seen as to whether the evidence of P.W.2 is reliable.

18. P.W.2 came to the vigilance Office on 1.6.1994 and gave the complaint, giving full details of inspection, initial demand of Rs.3,000/- and subsequently, the same was reduced to Rs. 1,500/-. The contents of Ex.P-4/ complaint have been duly corroborated by the evidence of P.W.2.

Admittedly, there is no enmity between P.W.3, who was working as an Agricultural Officer, and the accused-Officer. Therefore, there is no reason to reject the evidence of P.W.3, who spoke about the demand made by the accused on the date of trap.

19. According to P.W.3, when both P.Ws.2 and 3 went inside the Office of the Sub-Registrar, on noticing P.W.2 standing at the entrance, the accused came near P.W.2 and asked him as to whether he has brought the money and when he said that he brought the money, the accused asked P.W.2 about P.W.3 as to who was standing nearby. Then, P.W.2 said that he is his brother-in-law. After few minutes, when the accused was informed that the district Registrar comes, the face of the accused got changed and swiftly, turned to the side of P:W.2 and asked him to give the

money by giving the signal. Thereupon, the money was handed over by P.W.2 in the presence of P.W.3 to the accused, who in turn, took the currency notes in the hands and put the same in his pant-pocket.

20. On receiving the pre-arranged signal, P.W.8 came and took the accused inside the Sub-Registrar Office and conducted the Phenolphthalein

Test (hereinafter referred to as "the Test"). As noted above, the Test proved positive on both the hands. Then, when the accused was asked to

take out the money that he received from P. W.2, he took the tainted money of Rs. 1,500/- from his left pant-pocket and handed over the same to

the Investigating Officer/P. W.8. Thereafter, the Test was conducted on the pant-pocket also, which proved positive.

21. The above facts would make it clear that the demand as well as the receipt of the money have been clearly established by the evidence of

P.Ws.2, 3 and 8. Under those circumstances, the presumption u/s 20 of the P.C. Act would certainly arise and consequently, the burden shifts on

the accused to rebut the presumption.

22. Now. we have to see whether the presumption has been rebutted by the accused by placing materials to establish his defence with high degree of probability.

23. In this case, the accused gave the explanation even at the time of preparation of the trap mahazar. According to that explanation, as mentioned

in Ex.P-6, when the accused went to the village to inspect the properties belonging to P.W.2 and other parties, and he come to know about the

fact that his brother was working in Arab countries and he was arranging to send persons for job and ten days later, when P. W.2 came to his

Office, he requested him to help his relative to send him for job to Arab countries through his brother and in turn, P.W.2 told him that for arranging

the same, Rs.40,000/- has to be spent and agreeing for that, the accused gave Rs. 1,500/- as advance, and thereafter, he came to know that the

job at Arab countries would not be suitable to his relative, and therefore on 30.5.1994, when P.W.2 met him in his Office, he asked him to return

the amount of Rs. 1,500/- on 2.6.1994 at Thiruthuraipoondi. Unfortunately, the accused did not stick to this stand, but has taken a different stand

during the course of trial.

24. However, it is contended by learned counsel for the appellant on the strength

of the decision reported in 1951 M.W.N. (Crl.) 274) (supra)

that the statement which is the earliest one. and which is in favour of the accused, has to be taken into consideration in preference to the

subsequent statements made by the accused before the Court. If the said contention is accepted, it is clear that from the explanation that the

accused admitted that he went to the village for inspecting the properties belonging to P.W.2 and others and he met P.W.2 on 30.8.1.994 at

Nagapattinam Office and P.W.2 was asked to come and meet him on 2.6.1994 at Thiruthuraipoondi Office. This aspect of the matter is in

consonance with the prosecution case. However, we are only concerned with the question as to whether the explanation given by the accused is

consistent with high degree of probability. Therefore, this Court would consider not only the explanation given at the earliest point of time, but also

the stand taken by the accused during the course of trial.

25. When P.W.2 was cross-examined, it was suggested to him that the advance of Rs. 1,500/- out of Rs.40,000/- was asked to be returned and

since it was not returned, he was threatened by the accused that if the money is not returned, he would be sent to jail, and therefore, false

complaint has been filed against the accused. At the same breadth, another suggestion was put to P.W.2 that even though P.W.2 came and told

him that he had brought Rs. 1.500/- to return him, he trusted the money in the pant-pocket even without the knowledge of the accused. Even this

suggestion was not put to P.W.3 who is another witness, who speaks about receipt of the money.

26. Unfortunately, the stand taken by the accused in the written statement filed at the time of questioning u/s 313, Cr. P.C, is that W.2 received Rs.

15.000/- from one Rajendran, who is the relative of the accused, and since the money of Rs. 15.000/- was not returned, when it was demanded,

P.W.2, with the help of his brother, filed the false complaint. He would further state that when the accused was talking with P.W.2, and while P.

W.2 was telling him that he would return the money received from Rajendran. he stuffed the money into the pant-pocket of the accused. This

shows that the accused had taken three different stand.

27. Admittedly, Rajendran's name has not been referred to either in the explanation or in the suggestion put to P.W.2 in the cross-examination.

Earlier stand taken by the accused is that he gave the amount of Rs. 1,500/- towards advance to P. W.2. But, in the written statement filed on

8.8.1995 during Section 313 Cr. P.C. questioning, he mentioned the name of one Rajendran, his relative and stated that the said Rajendran gave

Rs. 15,000/- to P. W.2. This would show that the accused made improvement in his defence case, which would make it clear that his explanation

on all the three occasions, would give a contradictory version.

28. On going through the entire materials available on record, it is clear that the demand and recovery have been clearly proved by the evidence of

P.Ws.2, 3 and 8. As noted above, the evidence of P.W.3 would fully corroborate the evidence of P. W.2 who need not speak falsehood against

the accused. P.W.3 is an Agricultural Officer working in the Department of Agriculture, holding responsible post.

29. Under those circumstances, this Court is of the view that the prosecution has established its case beyond reasonable doubt. On the other hand,

the explanation given by the accused for rebutting the presumption which has arisen in this case by virtue of Section 20 of the P.C. Act, cannot be

accepted as true, with high degree of probability. Consequently, the conviction and sentence imposed on the appellant/accused are liable to be

confirmed.

30. Accordingly, the conviction and sentence imposed on the appellant/accused by the trial Court are confirmed. The trial court is directed to take

steps to secure the custody of the accused to undergo the remaining period of sentence. The appeal is therefore dismissed.