
(2014) 07 SHI CK 0234
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 218 of 2012

Bhuvnesh Gupta	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313 — Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 7

Citation : (2014) 07 SHI CK 0234

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Satyen Vaidya and Vivek Sharma, for the Appellant; D.S. Nainta, Additional Advocate General and Pushinder Jaswal, Deputy Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Dharam Chand Chaudhary, J.?Appellant herein is an accused, who has been tried and convicted under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (hereinafter referred to as "the Act") and has been sentenced to undergo rigorous imprisonment for six months and to pay Rs. 1,000/- as fine under Section 7 and one year rigorous imprisonment and to pay fine of Rs. 2,000/- under Section 13(1)(d) read with Section 13(2) of the Act, vide judgment dated 19.5.2012, passed by learned Special Judge, Bilaspur in Corruption Case No. 2 of 2010, under challenge in the present appeal.

2. In the year 2008, the accused was posted as Naib Tehsildar, Sub Tehsil Bharari, District Bilaspur. The complainant PW-1 Durga Ram, a resident of village Dadhol Khurd had some boundary dispute with his neighbourers Krishan Ram and Ratti Ram. On an application allegedly submitted by PW-1 Durga Ram and his son PW-9 Sanjeev Kumar to Tehsildar, Ghumarwin, the Field Kanungo was directed to carry out the demarcation. The then Field Kanungo Baldev Singh, however, did not give the demarcation to them and on his transfer Nand Lal,

(since dead) co-accused of the appellant-accused took over as Field Kanungo and fixed the date for demarcation of the land on the spot on 12.11.2008. He accompanied by the Patwari came to the spot on the date fixed, however, keeping in view the adjoining land was that of the government and as Nand Lal in the capacity of Kanungo was not competent to demarcate the land, demarcation could not be given to the complainant on that day. The complainant had approached the accused in his office on 3.12.2008. Nand Lal, Field Kanungo was also present in the office of the appellant-accused at that time. Said Nand Lal had discussed the matter with the accused and they fixed the date for demarcation of the land of the complainant on 10.12.2008. On the date fixed, the accused accompanied by his co-accused Nand Lal came and demarcated the land on the spot, however, did not fix the boundaries and to fix the same demanded a sum Rs. 1,000/- as bribe from the complainant. The accused told his co-accused, deceased Nand Lal that until and unless Rs. 1,000/- is not paid by the complainant, the boundaries will not be fixed. On 11.12.2008, deceased Nand Lal apprised the complainant over telephone about the demand of Rs. 1,000/- made by the accused and that he himself had paid Rs. 500/- to the accused and as such asked the complainant to pay Rs. 500/- to him and Rs. 1,000/- to the accused. He was asked to come to Patwarkhana, Bari (Dadhol) on 23.12.2008, on which date the accused will attest the mutations there. The complainant was not in favour of paying bribe money to the accused and as such, he left for vigilance office to lodge a complaint.

3. PW-12 Anant Ram accompanied by Dy.S.P. Vigilance and other staff met the complainant at Dadhol Chowk. He has complained the matter to the police party. Dy.S.P. had recorded the statement of the complainant Ext.PW-1/A, which later on was sent to Police Station (SV&ACB), Bilaspur for registration of case. The investigation was conducted by PW-12 Inspector Anant Ram. He explained the procedure to be followed in laying trap and also given the demonstration with regard to turning of the colour of water into pink when phenolphthalein powder and sodium carbonate mixed therein. The complainant on asking produced two currency notes in the denomination of Rs. 500/- each, whereas five currency notes in the denomination of Rs. 100/- each. The same were treated with phenolphthalein powder. The complainant was directed to hand over the same to the accused and deceased Nand Lal on demand made by them for the same.

4. PW-2 Parkash Chand was associated as shadow witness. As per the arrangement made, the currency notes were to be handed over by the complainant to both accused and giving of currency notes and receipt thereof by the accused were to be witnessed by the shadow witness PW-2, who thereafter had also to inform the police team by giving the agreed signal.

5. The police party accompanied by the complainant and shadow witness then left for the Patwarkhana. Both accused were present in the Patwarkhana. The complainant entered the room. Deceased Nand Lal asked from him that he brought the money to be given to them. The complainant answered in affirmative

and handed over two treated currency notes in the denomination of Rs. 500/- each to the accused and five treated currency notes in the denomination of Rs. 100/- each to deceased Nand Lal. They both received the currency notes and the same were counting when police party arrived there. On seeing the police, they threw away the currency notes on the table. They both, however, were apprehended there and then and on getting their hands washed and adding the mixture of sodium carbonate in the water of hand wash the same turned into pink in colour. The water of hand wash was taken in possession. The currency notes were also separately sealed and taken in possession in the presence of the shadow witness and PW-7 Raj Kumar. It is during the investigation of the case accused Nand Lal has died on 13.8.2009. It is after his death and on the completion of the investigation; Challan under Section 173 of the Code of Criminal Procedure was filed against the appellant herein on 3.12.2009.

6. Learned Special Judge on being prima facie satisfied about the commission of the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act by the accused, framed charge against him accordingly. He, however, pleaded not guilty and claimed trial.

7. The prosecution, therefore, was called upon to produce evidence in order to sustain the charge against the accused. Consequently, the prosecution has examined 13 witnesses in all. The material witnesses, however, are PW-1 Durga Ram, the decoy witness, PW-2 Parkash Chand, shadow witness, PW-6 Suresh Kumar, Patwari, Patwar circle, Dadhol, PW-7 Raj Kumar, PW-9 Sanjeev Kumar son of Durga Ram (PW-1) and also PW-12 Inspector Anant Ram, Investigating Officer. The remaining witnesses are formal and the evidence as has come on record by way of their respective testimonies can only be termed as link evidence.

8. The accused has also been examined under Section 313 of the Code of Criminal Procedure. In reply to question No. 12 he has admitted the complainant having come to Patwarkhana and entered into the room where he alongwith his co-accused deceased Nand Lal was present and attesting the mutations. Rest of the prosecution case has, however, been denied being wrong and his defence as emerges from the reply to question No. 28 reads as follows:

"I was Senior Assistant in D.C. Office, Hamirpur. I was promoted to the post of Naib Tehsildar and joined as such on 16.4.2008 at Sub-Tehsil Bharari. Since I was promoted from the clerical side, therefore, I was not aware about the demarcation proceedings and for that purpose I used to take assistance of Kanungo Nand Lal. On 23.12.2008, I was doing my official work from 10 A.M. to 2 P.M. in the Sub Tehsil Office Bharari and from 2.45 P.M. I had started attesting the mutations at Patwarkhana Dadhol at Bari. While I was attesting the mutations, one person came inside the room and he tried to insert the currency notes in my pocket, but, I resisted and pushed him and in that process, the currency notes fell on the ground and then, he picked up the currency notes and kept the same on my table and ran away from there. I raised alarm "Pakro Pakro" and also called the Patwari to catch him, but, he could not catch him and

he fled away, then, one Raj Kamal who was sitting near the fire in the premises of the Patwarkhana was asked to catch that person and he followed him, he returned after some time saying that the said person could not be caught by him. In the meantime, the police party in civil dress entered in the room and asked me to pick the currency notes from the table. I objected to it, but they forced me to pick up the currency notes and thereafter, they took my hand wash. I told the police officials that one person had kept the currency notes on the table who was trying to insert the same into my pocket. In the meantime that person also came inside the room and later on his name was found to be Durga Ram. At that time, I was Assistant Collector 2nd Grade and I had no power to demarcate the land adjoining to the Govt. land. Only Assistant Collector 1st Grade is authorized to conduct such demarcation under para 10.10 of the Land Records Manual. I had not received any orders from the Collector to demarcate the land of Durga Ram. Neither I demanded nor I accepted the bribe money from the complainant Durga Ram. I am innocent. I had not committed any offence."

9. On completion of the record and hearing learned Public Prosecutor and also learned defence Counsel, the Court below has arrived at a conclusion that the prosecution has been able to prove its case beyond all reasonable doubt against the accused and as such, he has been convicted and sentenced as pointed out hereinabove at the outset. He has assailed the legality and validity of the findings of conviction and sentence on the grounds inter alia that the same being erroneous and not based upon proper appreciation of the evidence available on record are not legally sustainable. Omissions, contradictions, improvements, infirmities and discrepancies appeared in the prosecution evidence are stated to be not taken note of and the accused is stated to be convicted and sentenced by misreading and misconstruing the evidence available on record.

10. Shri Satyen Vaidya, learned Counsel, has strenuously contended that sine qua non to bring the guilt home to the accused in a case of this nature is the demand of bribe and its acceptance as well as recovery thereof from the accused. Also that the findings of conviction can only be recorded in a case where the evidence of the decoy witness finds corroboration from the statement of independent witness. It has been pointed out that legal and acceptable evidence to prove the demand of bribe and acceptance thereof by the accused is missing from the record. Whatever evidence produced in this regard is stated to be contradictory in nature. Mr. Vaidya has also pointed out contradictions and improvements appearing in the prosecution evidence, which, according to him, go to the very root of the prosecution case.

11. On the other hand, Shri D.S. Nainta, learned Additional Advocate General, while taking this Court through the evidence as has come on record by way of the testimonies of the decoy witness (PW-1) and also shadow witness (PW-2), has urged that the judgment impugned in this appeal is based upon proper appreciation of evidence and calls for no interference.

12. On analyzing the rival submissions and the record the present, to my mind,

is a case which right from the very beginning is surrounded by suspicious circumstances. The application which the complainant filed for demarcation of the land has not seen the light of the day, as no investigation in this behalf has been conducted by the investigating agency. As a matter of fact, the matter should have been investigated to find out as to whether any such application was submitted by PW-1 either to Tehsildar, Ghumarwin or the accused, who at that time was posted as Naib Tehsildar, Sub Tehsil, Bharari and in case any such application was given, the same should have been taken into possession. Even nothing has come on record that the adjoining land was that of the Government of Himachal Pradesh and as such, as per the rules, there was need of demarcation of the land of the complainant by the Revenue Officer not below the rank of Assistant Collector 2nd Grade. Such evidence could have easily been collected by getting the Tatima prepared and the Jamabandi obtained.

13. The manner in which the report came to be lodged with the police also inspires no confidence for the reason that it is not known as to what the police party headed by Dy.S.P. State Vigilance was doing at village Dadhol. The evidence in this behalf could have been produced in the shape of entries in the Rapat Roznamcha etc.

14. Anyhow even if it is proved that the land was demarcated by the accused accompanied by deceased Nand Lal on 10.12.2008 on the spot, the record with regard to such demarcation available in the Patwar Circle or in the office of the accused would have taken into possession. Normally at the time of demarcation of the land respectable persons of the area are associated during the demarcation proceedings, however, no one has been associated from village Bari (Dadhol), where the land allegedly demarcated is situated.

15. Adverting to further case of the prosecution that the accused refused to fix the boundaries until and unless Rs. 1,000/- is given to him in bribe, it has come so in the own statement of the complainant PW-1. His son has stepped into the witness box as PW-9, who, as per his version, was present at the time of demarcation, has denied in the cross-examination about any such demand of money having been made by the accused from them. Therefore, the sole testimony of the complainant that the accused has demanded Rs. 1,000/- as bribe before the boundaries are fixed, is not proved beyond all reasonable doubt because as per settled legal principles the statement of the complainant without any corroboration thereto should not be relied upon for the reason that in a trap case the complainant is an accomplice and always interested in the success of the prosecution case. The support in this behalf can be drawn from the judgment of the Apex Court in Sat Paul Vs. Delhi Administration, . The relevant portion of this judgment reads as follows:

"23. It is true that there is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration. But where the witnesses have poor moral fibre and have to their discredit a heavy load of bad antecedents, such as those of PWs 1, 2, 7 and 8, having a possible motive to harm the

accused who was an obstacle in the way of their immoral activities, it would be hazardous to accept their testimony, in the absence of corroboration on crucial points from independent sources. If any authority is needed reference may be made to *R.P. Arora v. State of Punjab* (supra), wherein this Court ruled that in a proper case, the Court should look for independent corroboration before convicting the accused person on the evidence of trap witnesses."

16. Now if coming to the prosecution case qua the demand of the bribe money and its receipt by the accused, again it is the complainant who at the most can be said to be a witness qua the proof of this fact for the reason that the shadow witness PW-2 from the perusal of his own statement and also that of PW-1, PW-6 and PW-7, was outside the Patwarkhana speaking with other persons present there including the above witnesses. The complainant, no doubt, has stated that around 3.00/4.00 p.m. when he entered into the room of Patwarkhana, he found both the accused present there. PW-6 Suresh Kumar, Patwari, was also present there. He was asked by the accused to go out of the room. Deceased Nand Lal asked the complainant as to whether he had brought the money and the accused demanded the money from him. He handed over two currency notes in the denomination of Rs. 500/- each to the accused and five currency notes in the denomination of Rs. 100/- to deceased Nand Lal. Simultaneously, the shadow witness PW-2 gave a signal to the trap-party which arrived at the Patwarkhana and on seeing the trap-party both accused placed currency notes on the table. If coming to the version of the shadow witness PW-2, he has different story to tell, as according to him, when they reached Patwarkhana accused came there with many other people. It is when the people left that place PW-1 was called inside and he remained present at the door. The accused demanded bribe from the complainant, who handed over two currency notes of the denomination of Rs. 500/- each to the accused and five currency notes of the denomination of Rs. 100/- to the deceased accused Nand Lal. There are, therefore, contradictions in the statements of both of them for the reason that as per the version of PW-1, the complainant, both accused were inside in the Patwarkhana, whereas as per PW-2, the accused arrived at Patwarkhana after their arrival with some people gathered there and it is only when those people left that place, PW-1 was called inside and the demand qua bribe made which he fulfilled by handing over the currency notes to the accused. The presence of the shadow witness at the door of Patwarkhana is highly doubtful for the reason that as per version of PW-7 Raj Kumar, there were several persons outside the Patwarkhana and he alongwith PW-2 were amongst them gossiping each other there.

17. Above all as per the version of PW-2, he was standing with the Patwari outside the Patwarkhana. The Patwari, who has stepped into the witness box as PW-6, has, however, not corroborated this part of the statement of PW-2 because according to him, the said witness was not standing there with him. The defence of the accused as emerges from the trend of the cross-examination of the prosecution witnesses and also his statement under Section 313 of the Code of Criminal Procedure is that no doubt the complainant PW-1 entered in the

Patwarkhana, however, he never demanded any money from him. It is, however, the accused himself, who tried to insert the currency notes in his pocket which act, on the part of the accused, he resisted and it is in that process those currency notes fell down. The plea so raised by the accused in his defence seems to be nearer to the factual position for the reason that PW-7 Raj Kumar has corroborated the same, as according to him, when he was standing outside the Patwarkhana, deceased accused Nand Lal called him and he heard the alarm of "Pakro-Pakro" and noticed that the complainant was running. On asking by deceased Nand Lal to catch hold the complainant, he, though, chased him upto some distance, however, failed to locate him. In this view of the matter, the possibility of the complainant having tried to plant the money on the accused for the reasons best known to him cannot be ruled out.

18. The prosecution story qua the hand-wash even if believed to be true, is hardly of any help to the prosecution case because as per own version of the accused, he was made to pick up the currency notes which were lying on the table. Mr. Vaidya learned Counsel has argued that there being no evidence with regard to the cleanliness of the utensil in which the hand wash was collected and that the possibility of sodium carbonate having already been applied in that utensil, no credibility is attached to such evidence. Even if it is believed that the water is that of hand wash of the accused, there was an effort to pick-up the currency notes and the phenolphthalein powder having come in contact during that process with his hand, no weight-age to such evidence can be given nor any finding of conviction can be recorded on the basis thereof.

19. Learned Additional Advocate General, no doubt, has pointed out from the evidence on record that the demand and acceptance as well as recovery of the currency notes from the possession of the accused stands established, however, as noticed supra, the only evidence qua this aspect as has come on record by way of the testimony of the complainant himself without there being any corroboration thereto from some independent source, it is not safe to place reliance thereon. Otherwise also, when as per the version of the son of the complainant, who stepped into the witness box as PW-9, no demand of bribe was made by the accused on 10.12.2008, the prosecution story in this regard hardly inspires any confidence. On the other hand, as per the plea raised by the accused in his defence though he never demanded money from PW-1 and it is rather the complainant himself who tried to insert the currency notes forcibly in his pocket.

20. As discussed hereinabove, since the plea so raised by the accused seems to be plausible and nearer to the factual position being supported by the prosecution evidence itself, it cannot be said that on the day, i.e., 23.12.2008 the accused allegedly demanded the bribe and he received the same on being tendered by the complainant.

21. The remaining evidence produced to prove the procedure prescribed for laying trap, i.e., demonstration with regard to mixing the water having

phenolphthalein powder and sodium carbonate and turning its colour into pink and also production of currency notes as well as treatment thereof with phenolphthalein as well as joining of PW-2 as shadow witness, being link evidence could have been of some help to the prosecution had the demand, acceptance and recovery thereof from the accused been proved beyond all reasonable doubt. Therefore, being unnecessary such link evidence is not required to be discussed in detail.

22. Therefore, on re-appraisal of the evidence available on record and also analyzing the rival contentions, I find the present a case where learned trial Judge has failed to appreciate the evidence in its right perspective and recorded the findings of conviction against the accused erroneously.

23. As a matter of fact, the present is a case, where the prosecution has miserably failed to bring the guilt home to the accused with the help of cogent and reliable evidence. The present, therefore, is a case where the accused is entitled to the benefit of doubt and consequently acquittal.

24. This appeal, therefore, succeeds and the same is accordingly allowed. Consequently, impugned judgment is quashed and set aside and the accused is acquitted of the charge under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. The amount of fine, in case deposited by the accused, be refunded to him against proper receipt. Personal bond furnished by the accused stands cancelled and the surety bond discharged.