(2013) 05 DEL CK 0219

In the Delhi High Court

Case No : Criminal A. 25 and 36 of 2006

Bimal Kishore Pandey — APPELLANT

Vs

C.B.I.
 Rakesh Sharma Vs State — RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2013) 6 AD 540 : (2013) 4 ILR Delhi 2785 : (2013) 3 JCC 1736 : (2013) 4 RCR(Criminal) 382

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : K.B. Andley, Mr. M.L. Yadav in Criminal A. 25 /2006 and Mr. A.P. Mohanty and Mr. P.K. Pattanaik, in Criminal A. 36/2006, for the Appellant; Manoj Ohri, Spl. PP., for the Respondent

Judgement

S.P. Garg, J.—The appellants Bimal Kishore Pandey (A-1) and Rakesh Sharma (A-2) challenge judgment dated 23.12.2005 in RC No. 56(A) & 57(A) of 1990/ CBI/ACB/ND CC No. 53 of 2004 by which they were held guilty for committing offences punishable u/s 120-B read with Section 7 & 13(1)(d) and 13(2) of the Prevention of Corruption Act 1988 and sentenced to undergo RI for one year with fine Rs. 10,000/- each in RC No. 56(A)/90 and RI for one and a half year with fine of Rs. 25,000 each in RC No. 57(A)/90. Both the complaints cases 56(A)/90 and 57(A)/90 were clubbed and tried jointly as the evidence in both the cases was common. During trial, B.K. Ahluwalia expired and proceedings against him stood abated. In RC No. 56/A/90-DLI Arun Kaushik, Proprietor, Kaushik Orthopedics Corporation, Samaypur lodged complaint with CBI on 16.11.1990 alleging demand of Rs. 14,000/- as illegal gratification for issuance of licence/ registration of his unit by Mr. B.K. Ahluwalia (since deceased), Inspector of Factories, Factory Licensing Department, MCD. He was directed to pay Rs. 2,500/- on 17.11.1990 at the office of Rural Area Manufacturers Association

(RAMA for short), Samaypur, Delhi. Investigation reveals that Mr. B.K. Ahluwalia entered into criminal conspiracy with P.C. Rastogi, his colleague, A-1 and A-2 for obtaining illegal gratification of Rs. 2,500/- from Arun Kaushik on 17.11.1990 and pursuant to the criminal conspiracy, they accepted Rs. 2,500/- produced by Arun Kaushik at RAMA office, Delhi on 17.11.1990. They were held in a trap in which S.K. Sharma and B.K. Bhuttacharjia were associated as independent witnesses. Investigation further reveals that on demand of Rs. 2,500/- Sh. Arun Kaushik handed over the bribe amount of Rs. 2,500/- to B.K. Ahluwalia who after counting the money with both hands passed it over to A-2. He counted the currency notes, recorded the amount in the diary and passed the currency notes to A-1. They were arrested by CBI team after getting pre-appointed signal. Rs. 2,500/- were recovered from A-1

2. Investigation further reveals that B.K. Ahluwalia and P.C. Rastogi also demanded and accepted Rs. 500/- as part payment of bribe amount from PW-4 (Jagdish Lal), running business under the name and style of M/s. Konark Auto Industries at the said office at about 01.00 P.M. on 17.11.1990. The tainted money was also recovered from A-1 in similar manner. After completion of investigation, B.K. Ahluwalia, P.C. Rastogi, A-1 and A-2 were sent up for trial for committing offences mentioned above. The prosecution examined 12 witnesses to prove the charges. In their 313 statements, the appellants pleaded false implication. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment acquitted P.C. Rastogi and convicted A-1 and A-2 for the offences mentioned previously. Being aggrieved, they have filed the appeals.

3. Learned Senior Counsel for the appellants urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of interested witnesses. He vehemently argued that offence u/s 120B IPC could not be established as the main culprit/ offender B.K. Ahluwalia expired during trial. The appellants had not demanded and accepted any bribe amount from the complainants with whom they were not acquainted. The hand wash bottles when produced in the court were found empty. Panch witness S.K. Sharma did not support the prosecution. The judgment is based on conjectures and surmises. The explanation offered by the appellants in their 313 statements was not given due weightage. They specifically stated that the bribe money was thrusted in their hands when B.K. Ahluwalia refused to accept it from the complainants. The appellants had gone to meet B.K. Ahluwalia who was known to them. Learned Special Public Prosecutor for CBI urged that the appellants entered into conspiracy with B.K. Ahluwalia to demand and accept bribe amount from the complainants. The tainted money was recovered from their possession. B.K. Ahluwalia''s death does not absolve the appellants of their guilt for the offence u/s 120B IPC.

4. I have considered the submissions of the parties and examined the record. The appellants have not challenged the pre-trap and post-trap proceedings

conducted by CBI on 17.11.1990. They have also not denied recovery of tainted money. In their 313 statements, their only plea is that they had gone to the office of B.K. Ahluwalia during lunch time. At that time some persons offered money to B.K. Ahluwalia who refused to accept it. Both the complainants tried to give money to A-2 and when he refused to accept, the complainants tried to hand it over to A-1 who also refused to accept it. The complainants then tried to put the money into A-1''s pant pocket and in his right hand. In the meantime the CBI officials arrived and apprehended them. Their protest had no effect on them.

5. Apparently, the appellants have admitted their presence at the spot with B.K. Ahluwalia in the room where the transaction took place. They further admitted that money was offered to B.K. Ahluwalia by the complainants and on his refusal, it was put in the pocket and hands of A-1. Their plea that they had gone to meet B.K. Ahluwalia and the money was put in their pocket/hand cannot be believed and accepted. The appellants were not regular employees. They had no occasion to visit B.K. Ahluwalia during office hours. They did not divulge the urgency to visit B.K. Ahluwalia. They did not elaborate when they had gone to see B.K. Ahluwalia. Even after meeting B.K. Ahluwalia, they did not leave the office and remained present with him after the complainants were called in the office. Even after their arrival, the appellants did not opt to go out. PW-4 (Jagdish Lal) and PW-6 (Arun Kaushik) have categorically deposed that when they went to the office of B.K. Ahluwalia, an individual met them outside the office and told that B.K. Ahluwalia would meet at about 1.30 P.M. At 01.30 P.M. B.K. Ahluwalia was taking lunch and asked them to wait for an hour and to come back at 02.30 P.M. They again went to his office. Some persons were sitting and their files were with Mr. B.K. Ahluwalia. They also deposed that both the appellants were present in the room that time. It falsifies appellants'' contention that they had gone to meet Mr. B.K. Ahluwalia during lunch hours. PW-12 elaborated that at around 03.05 P.M., the shadow witness gave pre-appointed signal and thereafter B.K. Ahluwalia and P.C. Rastogi and both the appellants were apprehended. The appellants did not offer reasonable and plausible explanation about their presence for long duration with B.K. Ahluwalia.

6. PW-4 and PW-6 not only claimed appellants'' presence in the room but also deposed that they participated in the crime and attributed specific role to each of them. PW-4 (Jagdish Lal) who had no prior animosity and was not acquainted with the appellants testified that in the room when he inquired from B.K. Ahluwalia about his file, another Inspector Rastogi, who was sitting there told him to put ''wheels'' on the file. When he inquired meaning of ''wheels'' B.K. Ahluwalia said ''give me the money''. Then he handed over Rs. 500/- to B.K. Ahluwalia. He further told him that his file would be cleared by next Friday and he should bring the balance amount. A-2 was also sitting there with him and told him not to worry as they had cleared 150 files on that table. He further deposed that B.K. Ahluwalia counted currency notes and handed over to A-2. A-2 entered it in a diary and handed over to his assistant Mr. Pandey. A-1 kept the said currency notes in the right side pocket of his pant. PW-6 (Arun Kaushik) also

deposed on similar lines and stated that when he asked B.K. Ahluwalia to take up his file, he informed that the file was not available and demanded money stating that his file would be cleared. He then handed over money to B.K. Ahluwalia who counted the same and handed over to A-2 who entered the same in the diary and gave it to A-1 who was holding the money in his right hand. Both PW-4 and PW-6 have corroborated each other on all material facts and issues. In the cross-examination, no material discrepancies emerged to discard their version. The appellants did not attribute any motive to both PW-4 and PW-6 to falsely implicate them in the incident. Material facts deposed by them remained unchallenged and uncontroverted in the cross-examination. From the testimonies of PWS 4 and 6 it stands established that both the appellants shared common intention with B.K. Ahluwalia to demand and accept bribe from the complainants. Both the appellants actively assisted B.K. Ahluwalia in the demand of bribe. They also assisted him in handling the money collected that day by making entries in diary. The bribe amount was handed over and retained after acceptance by B.K. Ahluwalia by both these appellants turn by turn.

7. PW-4, PW-6, PW-7 and PW-11 and PW-12 all have deposed that the tainted money was recovered from the possession of A-1. The numbers of recovered currency notes tallied with the number of currency notes noted in the handing over memo. Rs. 2,500/- were recovered from A-1''s pocket. Hand washes of both the appellants were taken. Both left and right hand washes gave positive tests for the presence of phenolphthalein. Wash of A-1''s pant pocket also gave positive reaction for the presence of phenolphthalein. A-2''s hand wash gave positive reaction for the presence of phenolphthalein. The diary (Ex. PW-9/F) and files (Ex. 4/E and Ex. 6/E) were seized. The cogent testimony of all these witnesses is enough to discard the defence version that the complainant forcibly put currency notes in their hands on their refusal to accept it. The complainants had no occasion to forcibly give the currency notes to the appellants who were not capable to get their work done in individual capacity. A-1 did not explain as to how and under what circumstances the tainted bribe money of Rs. 500/- happened to be in the pocket of his pant.

8. Minor contradictions and discrepancies highlighted by the Senior counsel for the appellants are not material to reject the prosecution case in its entirety. The Trial Court categorically observed that it was of no consequence that the bottles when produced in the court did not contain any liquid. It further observed that the liquid was tested in CFSL by B.K. Bhattacharya (PW-9). These bottles were produced in court on several occasions earlier and it was never pointed out that there was no liquid in the bottles. Merely because the bottles were not preserved properly in the Malkhana, it could not demolish evidentiary value of the statements of Jagdish Lal, Arun Kaushik, B.K. Bhattacharya and S.K. Sharma. Moreover, recovery of bribe money from the possession of the appellant was not under challenge.

9. Learned counsel for the appellants emphasized that due to death of main

offender B.K. Ahluwalia, the appellants could not be held guilty for hatching conspiracy with him u/s 120B IPC. I find no substance in these submissions. In State of Himachal Pradesh Vs. Krishan Lal Pardhan and Others, the Supreme Court held:-

It is wrong to think that every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial acts and only then the offence of conspiracy will be made out. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.

10. This Court in Om Prakash Vs. C.B.I., held:

It may be that there was no direct evidence on record to prove any prior consultation or discussion between the Appellant and the co-accused Manohar Lal regarding the demand and acceptance of bribe money from the complainant, but from the facts and circumstances coupled with the conduct and behaviors of Appellant, it stands established that it was in the knowledge of Appellant that the co-accused Manohar Lal had demanded money from the complainant for doing official work. Not only that, he actively aided and facilitated in commission of the offence by coming out of the office at the instance of co-accused and accepted the bribe money from the complainant. The Appellant has not come out with any believable explanation as to why he was present in the licensing office at the relevant time and sitting with co-accused Manohar Lal or as to why he had come out of the office at the saying of co-accused Manohar Lal and took money from PW 2 and accepted the same and after counting, kept it in the pocket of his pant. He has also No. explanation as to how the file pertaining to the license of the father of PW 2 was found in the dickey of his scooter. It thus stands established that the Appellant had not only conspired with co-accused Manohar Lal in the commission of offence, but had aided co-accused Manohar Lal in the commission of offence of accepting the bribe money. The authority titled as Virendranath Vs. State of Maharashtra, which was relied upon by learned defence counsel is distinguishable from the facts of the present case. In the said case while maintaining the conviction of A1 at whose instance, the bribe money was accepted by A2, the Supreme Court, in the facts and circumstances, observed as under:-

Insofar as A2 is concerned, we find considerable merit in the contention raised on his behalf that he could have received the money innocently from the complainant at the asking of A1, without realizing that it was bribe money. The argument prevails because the prosecution has nowhere led any other evidence of conduct or consistency of a behavior from which it could be spelled out that A2 was a habitual go-between in facilitating acceptance of bribe by A1. This single instance which has been brought forth does not reveal of any regularity of conduct of this nature. There thus exists an area of doubt, the benefit of which shall go to A2.

11. It is not essential that more than one person should be convicted for the offence of criminal conspiracy. It is enough if the court is in a position to find out that two or more persons were actually concerned in the criminal conspiracy. In pursuant to the criminal conspiracy, the conspirators commit several offences, then all of them will be liable for the offences even if some of them have not actively participated. In the instant case, there were specific and categorical allegations that B.K. Ahluwalia demanded and accepted the bribe amount from the complainants and subsequently handed over the same to the appellants. Merely because B.K. Ahluwalia could not be convicted due to his death during trial, it does not absolve the offence of the appellants whereby they actively participated and assisted B.K. Ahluwalia for committing the crime.

12. In the light of the above discussion, I find no illegality in the impugned judgment whereby the appellants were convicted u/s 120B IPC.

13. Regarding sentence, vide order dated 24.05.2005 the appellants were sentenced to undergo RI for one year with fine Rs. 10,000/- each in RC No. 56(A)/90 and RI for one and a half year with fine of Rs. 25,000 each in RC No. 57(A)/90. The incident is dated 17.11.1990 and charge-sheet was filed in 1992. The appellants have suffered agony of investigation and trial for about 15 years. The appeal challenging the conviction is pending since January, 2006. Again they have suffered the agony for disposal of appeal for about seven years. They are not previous convicts. They are not involved in any other criminal case. The order on sentence recorded that the convicts have taken up regular jobs and left all such activities. Taking into consideration the mitigating circumstances, sentence awarded by the Trial Court requires modification. The appellants are sentenced to undergo RI for three months each instead of one year in RC No. 56(A)/90 and one and a half years each in RC No. 57(A)/90. Both the substantive sentences shall run concurrently. Benefit of Section 428 Cr.P.C. will be given to the appellants. Other terms and conditions of the order on sentence regarding fine are left undisturbed.

14. The appellants are directed to surrender and serve the remainder of their sentence. For this purpose, they shall appear before the Trial court on 24th June, 2013. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment. The appeals are disposed of in the above terms.

