

(2011) 04 GUJ CK 0112
In the Gujarat High Court
Case No : Criminal Appeal No. 560 of 1997

Chimanlal Mavjibhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Prevention of Corruption Act, 1988 — Section 11, 13(1), 13(2), 14, 20

Citation : (2011) 04 GUJ CK 0112

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : K.B. Anandjiwala, for the Appellant; R.C. Kodekar, Ld. Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—By way of present appeal filed u/s 374 of the Code of Criminal Procedure, 1973, the Appellant-original accused has prayed to quash and set aside the judgment and order of conviction and sentence dated 21st May, 1997 passed by the learned Special Judge, Kutch-Bhuj, in Special Case No. 02 of 1990 whereby the learned Judge was pleased to convict the Appellant for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and sentenced him to undergo simple imprisonment for a period of one-and-half-year, and also imposed fine of Rs. 500/-, and in default of payment of fine; sentenced him to undergo simple imprisonment for a further period of three months. The Appellant was also convicted for the offence punishable u/s 13(1)(d)(i) and 13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to undergo simple imprisonment for a period of one year, and fine of Rs. 400/-, and in default of payment of fine; sentenced to undergo simple imprisonment for a further period of two months.

2. As per the case of the prosecution, the Appellant was serving as Superintending Engineer in the Gujarat Water Supply and Sewerage Board since

February, 1988 and since then he was discharging his duties at Kutch. As per the case of the prosecution, the complainant had allotted contract work of Rudramata Operator Quarter and A-one Quarter near Inspection Bungalow at Bhuj in the year 1987. It is also the case of the original complainant that thereafter he was assigned extra work of wire-fencing of Rudramata Operator and A-one Quarters. The original complainant did the said work with expectation of approval of the same. It is the case of the prosecution that the original complainant has received the bill amount of contract work assigned to him; however, the bill amount of extra work done by him was not paid to him and according to the bill amount, the complainant had done total work of Rs. 78,700.76 paisa. As per the case of the prosecution, the said bill for extra work were sent to the office of the Superintending Engineer by the Executive Engineer for sanction and the same were pending in the office of the Superintending Engineer. It is the case of the prosecution that on 03rd May, 1989 when the original complainant visited the office of the Superintending Engineer and contacted him with regard to his pending bills, the present Appellant had demanded Rs. 500/- by way of illegal gratification from him and he has paid the said amount, which was accepted by the Appellant. It is further alleged by the original complainant that on 06th July, 1989 in the afternoon, he had gone to the office of the Superintending Engineer and contacted the Appellant and requested him to sanction the pending bill. At that point of time, as alleged, the Appellant told the complainant that he should come to him on Friday in the afternoon, and if the bills are to be passed, then he would have to make the payment of Rs. 500/-. At that time, as alleged by the original complainant, he told the Appellant that he would be coming on 07th July, 1989, i.e. on Friday, in the afternoon with Rs. 500/- and left the office.

3. Thereafter, as the complainant was not willing to make the payment, he approached the ACB Office on 07th July, 1989 and lodged his FIR before the police. Thereafter, the services of two panchas were sought. The facts of the case were narrated to them and thereafter the experiment was made on the currency notes with the help of anthracene powder. The basic ingredients of the anthracene powder were made understood to the panchas as well as the complainant. After performing the experiment, preliminary part of the panchnama was drawn. The currency notes were smeared with anthracene powder, i.e. five notes of Rs. 100/- each. Thereafter, the complainant, panchs and members of the raiding party proceeded towards the office of the Appellant in two rickshaw. Thereafter, the complainant and the panch No. 1 went inside the chamber of the Appellant. The Appellant asked the complainant as to for what purpose he had come, to which the complainant replied that he had come for the bills of extra work being done by him. It is also the case of the complainant that at that time, as alleged, the Appellant told the complainant that if the bills are to be sanctioned, it would cost Rs. 1,200/-. Therefore, the complainant had given the cover containing Rs. 500/- and told that the remaining amount of Rs. 700/- would be paid after passing of the bill. Thereupon the Appellant told that his bills

would be passed and the same would be sent. Thereafter, the complainant came outside the room and gave signal to the members of raiding party. Thereafter, the amount was recovered from the pocket of the pant of the Appellant in a cover. The said cover was taken out and from that cover, amount of Rs. 500/-was recovered. Thereafter the second part of the panchnama was drawn.

4. Thereafter, the Investigating Officer lodged FIR, registered the offence and recorded the statement of the complainant. Thereafter, the Investigating Officer carried out investigation and recorded statements of various persons. Thereafter, after obtaining sanction, charge-sheet came to be filed against the Appellant-accused.

5. Thereafter, charge at Exhibit 9 was framed against the Appellant for the offences punishable u/s 7, 13(1)(d)(i) and (ii) read with Section 13(2) of the Prevention of Corruption Act. The Appellant-accused pleaded not guilty and claimed to be tried.

6. In order to bring the home the charges leveled against the Appellant-accused, the prosecution has examined nine witnesses and also produced documentary evidence in support of its case.

7. Thereafter, after examining the witnesses, further statement of the Appellant-accused u/s 313 of the Code of Criminal Procedure, 1973 was recorded.

8. After considering the oral as well as documentary evidence and after hearing the parties, the learned trial Judge vide impugned judgment and order dated 21st May, 1997 held the Appellant-accused guilty to the charges leveled against him as mentioned aforesaid.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Kheda-Bhuj, the Appellant has preferred the present appeal.

10. Heard Mr. K.B. Anandjiwala, leaned counsel for the Appellant and Mr. R.C. Kodekar, learned Additional Public Prosecutor for the Respondent-State.

11. Mr. Anandjiwala, learned Counsel appearing for the Appellant has contended that the judgment and order passed by the learned trial Judge is illegal, invalid and improper. He has also contended that the learned trial Judge has not considered the case of the defence and evidence and material produced on record. He has read the charge at Exhibit 9 and contended that demand of Rs. 1,200/-is not proved. He has read the oral evidence of PW No. 1-complainant and contended that from the cross-examination of the said witness, demand is not established. He has also contended that the second demand and recovery is also not proved beyond reasonable doubt. He has also contended that the contents of Exhibit 9-Charge is not proved. Therefore, corroboration of accomplice is necessary for the prosecution and from the oral evidence of PW No. 2, no corroboration is proved. He has further read the oral evidence of the complainant and contended that there are sufficient contradictions in the oral

evidence and FIR lodged by the complainant. The learned trial Judge has not considered the contradiction between the oral evidence and FIR lodged by him. He has also contended that even there are sufficient contradiction between the oral evidence of PW No. 1 and PW No. 2. He has also contended that as per the evidence of the prosecution, amount was given in the cover and from the oral version of the prosecution, prosecution has failed to prove the said story of the cover from the PW No. 1. He has also contended that doubt is created in favour of the present Appellant. He has also contended that from the oral version of the witness, story of the charge regarding demand of Rs. 1,200/- is not proved and even the said disputed cover is also not recovered from the Appellant, but it is recovered from the possession of the complainant. He has also read the oral evidence of PW No. 1 regarding conversation and contended that no demand was made by the Appellant of Rs. 500/-. Even PW No. 1 is also not on the same footing. The learned trial Judge has not considered the said contradiction in the evidence of PW No. 1 and No. 2. Mr. Anandjiwala has also contended that the sanction given by the Authority is without application of mind. He has contended that the Board did not pass any Resolution granting sanction to prosecute the accused, but left it to the Member Secretary to act as per the Rules. The Member Secretary has no powers to grant sanction and since the services of the accused have been transferred to the said Board, the Board has to decide about the proposed sanction for prosecution. The learned trial Judge has erred in not appreciating this aspect of granting sanction and has passed absolutely unjust and illegal order. Thus, when sanction itself is illegal, learned trial Judge has erred in convicting the Appellant. He has also contended that provision of Section 77(2)(b) as well as Section 11 and 14 of the Gujarat Water Supply and Sewerage Board is required to be considered. He has also relied upon the judgment reported in 1980 CLR 877 and contended that sanction, which is given by the Authority is without power and therefore also, present appeal is required to be allowed.

12. Mr. Anandjiwala has also contended that the prosecution has failed to establish the demand beyond reasonable doubt. Thus, when demand is not established, then no question of acceptance would arise. He has also contended that the present Appellant is innocent and he has falsely involved in the present case. Just to take revenge, the complainant has filed false complaint against the Appellant. He, therefore, contended that the judgment and order of the learned Special Judge is required to be quashed and set aside and the Appellant is required to be acquitted from the charges leveled against him.

13. As against this, Mr. Kodekar, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Special Judge is absolutely just and proper. He has contended that the prosecution has proved its case beyond reasonable doubt. He has contended that looking to the overall facts and circumstances of the case, circumstantial evidence and evidence produced on record, the order passed by the learned Special Judge is absolutely just, proper and correct and is not required to be interfered with. He has also

contended that the evidence of the panchas are supported the case of the prosecution. He has read Exhibit 29-Sanction Order and contended that the sanction is proper in eye of law and that act of the Board itself shows that proper power is given and it is proved beyond reasonable doubt. He has also read the oral evidence and contended that from the oral evidence of witnesses, demand and acceptance is proved beyond reasonable doubt. Mr. Kodekar has relied upon the judgment reported at 2010(1) GLH 597 and contended that even for the sanction, if there has been error or omission, it is not proper to set aside the conviction. If there may be some finding that sanction granted in a mechanical manner, is not sufficient to set aside the conviction. Mr. Kodekar has contended that during the trial also, Appellant has never made any attempt to say that some prejudice is caused because of sanction granted by the Authority. He has prayed that presumption u/s 20 of the Act is required to be drawn against the present Appellant. The Appellant has failed to rebut the said presumption u/s 20 of the Act. He has also explained presence of anthracene powder on the trap amount recovered from his possession. He, therefore, contended that the appeal is required to be dismissed.

14. I have heard the learned Counsel for the parties and perused the papers produced before me. I have also perused the submissions advanced by the learned Counsel for the parties. It appears from the oral evidence of PW No. 1 at Exhibit 15, I have found that demand is proved beyond reasonable doubt. I have also perused cross-examination of the complainant and from the cross-examination, acceptance of bribe money and recovery of the bribe money from the possession of the Appellant is proved beyond reasonable doubt. Even from the cross-examination of the said witness, Appellant has failed to prove his defence. From the perusal of the oral evidence of PW No. 2 at Exhibit 19, oral version of this witness has proved the contents of the panchnama. Even demand and recovery is also proved beyond reasonable doubt. It is true that there were some minor contradictions in the evidence of PW No. 1 and PW No. 2, but the base of the present case is depending upon the evidence of demand, acceptance and recovery and when it is proved from the oral evidence of the independent witness, then defence version cannot be entertained. I have found sufficient evidence to connect the Appellant-accused with the charge leveled against him. So far as sanction is concerned, I have perused oral evidence of PW No. 3 at Exhibit 28 and also perused provisions of Gujarat Water Supply and Sewerage Board and it appears from the perusal of the said provision that sanction, which is given by the Authority is as per the provision of law, proper and acceptable. I have also perused the oral evidence of Trapping Officer. He has supported the case of the prosecution. I have not found anything to accept the defence version of the Appellant. The learned Special Judge has passed the order after appreciating all the aspects of the matter. The Appellant has failed to prove its case beyond reasonable doubt.

15. As per above observation, I found that demand of illegal gratification made by the Appellant-accused is proved beyond reasonable doubt through oral

evidence of complainant and panch witness as well as through documentary evidence produced on record. Even the recovery of trap amount from the possession of the Appellant-accused is also proved beyond reasonable doubt. The presence of anthracene powder is also found from the pocket of the present Appellant and the Appellant has failed to explain how anthracene powder is found from his pocket. As per the provision of Section 20 of the Prevention of Corruption Act, presumption is required to be drawn against the present Appellant and when the Appellant has failed to rebut the presumption, no defence can be considered, which is tried to establish by the learned Counsel for the Appellant.

16. Hence, in view of the foregoing reasons, present appeal is dismissed. The judgment and order of conviction and sentence dated 21st May, 1997 passed by the learned Special Judge, Kutch-Bhuj, in Special Case No. 02 of 1990, is hereby confirmed. The Appellant is on bail. This bail bond shall stand cancelled. The Appellant-accused is, therefore, directed to surrender himself before the Jail Authority within a period of four weeks from today, failing which the trial Court concerned is directed to issue Non-bailable warrant against the Appellant-accused to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.