
(2015) 05 GUJ CK 0001
In the Gujarat High Court
Case No : Criminal Appeal No. 300 of 2000

Dashrathbhai Vadilal Nayak	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

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

Citation : (2015) CriLJ 3928

Hon'ble Judges : K.J. Thaker, J.

Bench : Single Bench

Advocate : K.J. Shethna and Adil Mehta, for the Appellant; M.D. Mehta, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.J. Thaker, J.—This is an appeal by the original accused, challenging the judgment and order of the learned Addl. Sessions Judge, Banaskantha at Palanpur (for short, "the trial Court"). Dated: 03.03.2000, rendered in ACB Special Case No. 254 of 1996, whereby, the trial Court convicted accused for the offence punishable under Section 7 of the Prevention of Corruption Act ("the Act", for short) and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs. 1,000/- and in default to undergo further simple imprisonment for one month. Further, the trial Court also convicted the accused for the offence punishable under Sections 13(1)(d) and 13(2) of the Act and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs. 1,000/- and in default to undergo further simple imprisonment for one month. For the sake of convenience, the parties shall be referred to as they stood before the trial Court, i.e. the accused, the complainant etc.

2. The brief facts of the case of the prosecution, as set out before the trial Court, are that the original complainant approached the accused, who was discharging duties as Medical Officer at Primary Health Centre, Bhabhar, at the relevant point

of time, for obtaining license for opium poppy and it is alleged that the accused demanded Rs. 200/- for issuing the same. Since, the complainant did not want to given the aforesaid amount, he approached the ACB officials and a trap was arranged, wherein, the accused was allegedly apprehended. At the end of the investigation, on finding sufficient evidence, charge-sheet was filed against the accused. In order to prove the guilt of the accused, the prosecution examined the following witnesses;

3. Over and above the oral evidences, the prosecution also produced the following documentary evidences in support of its case;

4. At the end of the trial, the further statement of the accused under Section 313 of the Cr.P.C. came to be recorded, and then, the trial Court passed the impugned judgment and order, Preferred to hereinabove. Hence, the present appeal.

5. Mr. Shethna, learned Sr. Advocate, with Mr. Mehta, learned Advocate for the accused, submitted that the trial Court committed a grave error in convicting the accused, inasmuch as it failed to appreciate the material on record in its proper perspective. He submitted that the trial Court ought to have appreciated that there was no demand on the part of the accused. He, further, submitted that the trial Court ought to have appreciated the fact that the prosecution failed to prove beyond doubt the charges leveled against accused. He, hence, prayed that the appeal be allowed.

6. On the other hand, learned APP for the Respondent-State, herein, opposed the appeal and submitted that the trial Court convicted the accused after perusing the entire material on record, and hence, no interference is called for at the hands of this Court and the appeal be dismissed.

7. Heard the learned Advocate for the original accused as well as the learned APP for the Respondent-State and perused the material on record with their assistance.

8. Having heard the learned Counsels for the parties and having perused the material on record, it appears that the learned trial Court committed an error in convicting the accused-doctor, who appears to be wrongly roped in the trap. The evidence on record, itself, goes to show the contradictions in the case of the prosecution. One thing, which clearly emerges from the record, is that the complainant nowhere states that the accused had demanded Rs. 500/-. The FIR is antedated. The second aspect is that it was the complainant, himself, who conveyed that he had brought the money, and therefore, the question arises as to why the accused, even after hearing what is said by the complainant, ask him, "Have you brought money?", and thereby, again demand the money. Thus, the story narrated by the complainant does not inspire confidence. The evidence of other witnesses examined by the prosecution also falsifies the same. Therefore, the ground urged in Paragraph-F of the memo of the appeal, which reads as under ought to have been accepted by the trial Court;

"(F) PW. 4 is PI Pathan Ex. 25. In para-4 of his cross-examination he says that he has not made any note at his residence when the complainant went to his house on 19/10/1995. He was residing on the first floor. He cannot say whether the complainant knew his residence. Important admission given by him is that he knows Vinod Ravji of Bhabhar. It is not true that of and on he used to come for making out these cases. Earlier he was Reader PSI and at that time Vinod Ravji was an informant in NDPS cases and at that time of an on he was coming to him for seeking protection. Also he had come with a complaint through some other person at Godhra, that is how he knows him. But so far as that complaint is concerned it did not succeed. It is true that this Vinod is put in the Black List by the ACB Department. He (PI) did not ask the complainant as to who had sent him. He does not know that Vinod Ravji was with him. In para-6 he says that it is not true for the license of Poshdoda the medical certificate is not required. Under Rule-3 of the Gujarat O.P. Capsules Rule, 1963, the medical certificate is required, as he so believes. In Para-9 he says that it is not true that earlier the complainant produced two currency notes of Rs. 100/- each. It is true that at Bhabhar the bush shirt of the complainant was not seen in the light of U.V. Lamp. In para-7 he says that he has not recorded any statements of the staff who were present there at the time of carrying-out the raid. A separate letter was not written to the S.T. Corporation to give to them the services of the panchas, but behind his Yadi the note was made. No conductor was present there and that the man was not introduced as conductor who had come to serve as the Panch. In Para-9 he also admits that on the upper portion of the right hand of the complainant and even on its fingers and thumb the powder marks were seen. There is a parapet of 8" height in the Eastern direction when one enters into the dispensary. But he says that he does not know whether it is 8" high. At the relevant time he had not information as to in which room the doctor was sitting. It is true that until the complainant returned after going to the accused and he gave the pre-arranged signal, he could not know as to where the complainant had gone. The complainant had raised both his hands and had given a pre-arranged signal. It has not so happened that he has raised his handkerchief or napkin and given the signal. It is not true that from the bush shirt of the complainant he (PI) had taken-out the moneys. It is not true that the accused had put-on a white bush shirt, which is put on by the doctors and it was half sleeve (the proper word for it should be "Apron") and that one bush shirt was hanging on the peg. It is true that the moneys were seized from the full sleeved bush shirt. It is not stated in the Panchnama as to through whom the alternative arrangement was made for the bush-shirt. He has not made any inquiries about the endorsement made by the accused in the case papers of the complainant and the Panch-1. It is not true that the accused told him that the complainant had planted moneys in the bush shirt and had told him that they were for hire charges of the jeep and the he had gone away. It is not true that he had accepted this fact, but at the time of giving his evidence, he was not accepting the same in order to see that the trap does not fail. In Para-12 he says that he had made inquiry from Anjana Trivedi - a staff member. But on that very day he

did not record her statement. It is not true that afterwards on 1-11-1995 he had recorded the statement of Anjana Trivedi on his own (meaning to suggest that in fact the averments in the statement of Anjana Trivedi recorded by him were not her statements, but they were created evidence by PI Mr. Pathan). It is not true that on the day of the incident Anjana Trivedi told him that the complainant had planted the moneys in the pocket of the Doctor and had run away and therefore, he did not record her statement on that day. He does not know whether the Driver Pegatar was present there at that time. It is not true that he also informed him just as Anjana Trivedi informed him. He does not know whether D.V. Parmar and Bariya-peon were present there. Contradictions in the panchnama, PI Pathan is confronted with in Para-13 of his evidence about the complainant and the Panch-1 being together."

9. The learned trial Court, therefore, ought to have considered the aforesaid aspects. But, instead the learned trial Court misinterpreted the evidence and passed the impugned judgment and just because the notes were found from the shirt of the accused, he could not have been convicted. In that view of the matter, here, it would be relevant to refer to a decision of the Apex Court in Subash Parbat Sonvane Vs. State of Gujarat, , observed that Section 13(1)(d) (i) of the Act contemplates an element of effort or initiative on the part of the receiver of the advantage. In that case, according to the panch witness, when accused asked the complainant to come in the evening and started going towards toilet, complainant followed him and gave him something from his pocket, which accused put in his pocket, and therefore, the Apex Court held that from this evidence, it cannot be inferred that accused had demanded any amount from the complainant or that he had obtained the same, as the panch witness never stated that the accused had demanded any amount from the complainant nor the panch witness supported the case of the prosecution on the aspect of "demand" and "acceptance" and the Apex Court set aside the conviction of the original accused. In this case, it has come on record that the accused had refused to issue licence to the complainant, without examining the brother of the complainant, which the learned trial Court has recorded at Pages 18 and 19 of the impugned judgment and order. Section 7 of the Act, reads as under;

"7. Public servant taking gratification other than legal remuneration in respect of an official, act.--Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2 , or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and

shall also be liable to fine.

10. This Court in "Kanubhai Kantibhai Patel v. The State of Gujarat", , 1998 (1) GLH 924 (H.R. Shelat, J.) , held that the "demand" and "acceptance" being vital ingredients, they must be proved by the prosecution. In "B. Jayraj v. State of Andhra Pradesh" (2014) 13 SCC 55, the original accused-appellant came to be prosecuted on the basis of a complaint filed by PW-2. Later on, PW-2 turned hostile and despite that trial Court convicted the accused-appellant on the basis of the evidence of panch witness (PW-1) and recovery of tainted currency notes from appellant-accused. The Apex Court, hence, hold that once the original complainant (PW-2) turned hostile and no other person, who had witnessed the transaction between the complainant and the accused-appellant, was examined, the contents of the complaint cannot be relied on and in absence of proof of demand for illegal gratification, mere recovery of tainted currency notes from the accused-appellant did not establish commission of offence, and thereby, set aside the conviction of the accused-appellant. In the case on hand also, from the material on record, the demand on the part of the accused is not clearly coming out. If, we go by the omissions and contradictions in the complaint, men, there is not demand of Rs. 500/-. On the contrary, it is the complainant, who, himself, stated that he had come with money. However, Why he had come with money, for what purpose, nothing is coming on record. Further, the complainant, himself, does not possess a sterling personality, and therefore, his evidence cannot be believed in the absence of corroboration. Therefore, me submission of Ms. Mehta that there are no omissions or contradictions in the evidence of the witnesses and that the learned trial Court rightly convicted the accused and that the demand, acceptance and recovery are proved cannot be accepted, as from the record it is clear that the apron was not put on by the accused-doctor, but, it was hanging on the peg. Thus, the case put forward by the prosecution cannot be accepted. Once, the edifice is gone, the entire case of the prosecution falls on the ground. Hence, the accused is entitled to be given him the benefit of doubt and the appeal requires to be allowed. In the result, this appeal is allowed. The judgment and order of the trial Court, dated 03.03.2000, convicting the accused-appellant, herein, for the offence punishable under Section 7 , Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988, is quashed and set aside and accused is acquitted by giving him the benefit of doubt. His bail bonds stand discharged. The amount of fine, if any paid, be refunded to him. R & P be sent back to the concerned Court, forthwith.