(2017) 03 GUJ CK 0198

In the Gujarat High Court

Case No : 1378 of 2004

DILIPSINH BHIMSINH JADEJA — APPELLANT

Vs

THE STATE OF GUJARAT — RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 374 - Power to examine the accused - Appeals from convictions

Prevention of Corruption Act, 1947, Section 20, Section 7, Section 13(2), Section 13(1)(d), Section 13(1)(d)(i), Section 13(1)(d)(II) - Accused person to be competent witness

Citation : (2017) 03 GUJ CK 0198

Hon'ble Judges : R.P.Dholaria

Bench : Single Bench

Advocate : KB ANANDJIWALA, Krunal Shahi, KP RAVAL

Judgement

1. The appellant has preferred the present Appeal under section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction dated 09.08.2004, rendered by the learned Additional Sessions Judge (Fast Track Court No.4), Bhavnagar in Special A.C.B. Case No. 08 of 1999, wherein the appellant was ordered to undergo simple imprisonment for two years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for further 30 days for the offence punishable under Section 7 of the Prevention of Corruption Act and to undergo simple imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for further 30 days for the offence punishable under Section 13 (2) of the Prevention of Corruption Act.

2. The short facts giving rise to the present Appeal are that the accused was serving as the Talati Cum Mantri at Village - Valukad, Taluka - Ghogha, District - Bhavnagar. For installation of Bio-Gas Plant under the supervision of complainant Labhubhai Jivrajbhai Savani, 19 persons filled-in their forms for the purpose of

getting the signature and attestation by the accused. At that time, the accused demanded amount of Rs.2,500/- which was ultimately reduced to Rs.1,000/- for putting signatures on the forms. As the complainant did not desire to give any amount to the accused towards the illegal gratification, he approached before the ACB Bhavnagar and filed his complaint on 24.05.1999. After following necessary formalities in respect of trap, the trap was conducted on 25.05.1999. The accused caught red handed along with tainted currency notes during the course of trap and thereby, committed the offence punishable under Section 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988.

3. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the charge-sheet against the accused. The charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried. 3.1 In order to bring home the guilt, the prosecution has examined eight witnesses and also produced several documentary evidences.

3.2 At the end of the trial, after recording the statement of the accused under section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the appellant has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, Mr.K.B.Aanandjiwala, learned senior Counsel assisted by Mr.Krunal L. Shahi, learned advocate for the present appellant-accused has mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of conviction. It is further contended that the learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of conviction is required to be reversed, as such.

6. Mr.K.B.Aanadjiwala, learned Senior Advocate assisted by Mr.Krunal L. Shahi, learned advocate has taken this Court through the entire paper book and argued that the case of the prosecution is totally unfounded as the accused already signed over the requisite papers on 21.05.1991 which was came to be produced at exhibit 22 to 40 before the learned Special Judge clearly indicates that the accused as well as the Sarpanch of the Gram Panchayat put signatures on the papers on 21.05.1999. In view of such fact, the fact with regards the demand of illegal gratification made on 24.05.1999 is baseless. Further, he has argued that so far as the establishment of vital ingredients as regards demand and acceptance, the complainant himself has admitted that the accused had not demanded any amount at the time of trap and the amount was paid towards the outstanding dues of Rs.952/- in pursuance to the notice issued to the complainant and there was no conversation as regards the demand and acceptance on the part of the accused and therefore, the same is not

established. So far as the evidence of the P.W.No.2 who accompanied the complainant at the time of trap is concerned, he clearly and categorically admitted that he did not hear any conversation took place between the accused and the complainant and the complainant handed over the said amount to the accused towards the outstanding dues of Panchayat and therefore, the prosecution failed to establish the vital ingredients. Further, Mr.K.B.Aanandjiwala, learned Senior Counsel has drawn attention of this Court to the evidence of P.W.No.3 - Hemant Ratibhai, P.W.No.4 - Ajitbhai Maganbhai Velani and P.W.No.5 - Jayantibhai Ravajibhai who were the independent witnesses and as per the prosecution version, they were the eye witnesses of the incident who had also not supported the prosecution case and therefore, they were declared hostile.

7. On the other hand, Mr.K.P.Raval, learned APP has taken this Court to the entire materials available on record as well as entire paper book and impugned judgment. He has also supported the judgment rendered by the learned Special Judge. He has further argued that the vital ingredients as regard to the demand, acceptance and recovery are established beyond reasonable doubt by the prosecution and the finding recorded by the learned Special Judge is based upon the evidence available on record and therefore, this Court should not interfere with the judgment of conviction. He has further argued that learned trial Court has recorded ample reasons based on the evidence on record for convicting the appellant and ingredients as regards demand, acceptance and recovery are proved in accordance with law. Therefore, this Court may not disturb the findings recorded by learned trial Court.

8. This Court has heard Mr. K.B.Aanandjiwala, learned Senior Counsel assisted by Mr.Krunal L. Shahi, learned advocate for the appellant and Mr.K.P.Raval, learned APP for the respondent State.

9. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book.

10. At this stage, it would be fruitful to make reference to the decision of the Honourable Apex Court in A.Subair Vs State of Kerala, (2009) 6 SCC 587 : (2009 AIR SCW 3994), while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

11. In State of Kerala and another Vs C.P.Rao (2011) 6 SCC 450 : (AIR 2012 SC (Supp) 393), the Honourable Apex Court reiterating its earlier dictum, vis-a-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

12. In a recent enunciation by the Honourable Apex Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B.Jayraj (AIR 2014 SC (Supp) 1837) (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is expendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

13. In the present case, this Court is required to scrutinize the evidence to ascertain whether there is proper, reliable and cogent evidence beyond reasonable doubt to confirm the judgment and sentence awarded by learned trial Court. If there is no such evidence on record, in that event, the conviction cannot be sustained as the onus lies on the prosecution to prove its case beyond reasonable doubt.

14. Keeping in mind the principles laid down by the Supreme Court in the aforesaid series of decisions in light of the rival submissions made by the learned advocates for the respective parties, the question arises for determination of this Court whether the prosecution has proved beyond reasonable doubt the vital ingredients of demand, acceptance and recovery of illegal gratification of Rs.1,000/- or not.

15. P.W.No. 1 - Savani Labhubhai Jivrajbhai has been examined vide exhibit 12. He has deposed that he is the resident of Village Valukad, Taluka - Ghogha, District - Bhavnagar. At the relevant time, he was serving as a Supervisor in the Gujarat Agriculture Industries Corporation Ltd. Energy Division, Ahmedabad since 1990. It was his duty to provide information regarding Bio-gas plant and its subsidy to the beneficiaries. Printed forms are given by the company for it. The beneficiary is supposed to obtain certificate from the Talati cum Mantri of the Village with regards the plant is not being constructed over the land belonging to the Government. When he approached the accused for obtaining signature over the aforesaid filled in forms of 19 beneficiaries on 21.05.1999 at the office of the accused, his Clerk - Himmatbhai, Dileepbhai Bhimsinh and Sarpanch Ajitbhai were present in the office. When he presented 19 forms for obtaining signature and seal of the accused, he demanded the amount of Rs.2,500/- towards illegal

gratification which came to be scaled down to Rs.1,000/- and he was directed to pay the same on the next Tuesday. As he was not willing to pay the said amount, he lodged the complaint before the ACB, Bhavnagar on 24.05.1999. At that time, Mr.Sharma - Police Inspector took his complaint and arranged the trap. At the time of trap, P.W. no.1 - Paljibhai Maaru accompanied him. They reached the office of Gram Panchayat, Valukad and took their seat nearby the accused. At that time, by gesture, the accused asked as regards money, to which, he nodded head and thereafter, he took out currency notes from his pocket and handed over to the accused who received the same with right hand and thereafter, placed into the pocket of his pant and thereafter, he raised pre-arranged signal and due to which, other members of raiding party arrived there and searched and seizure were taken place as well as the test of ultraviolet lamp was carried out over the person of the accused, which was found to be positive. In the cross examination, the witness admitted that the accused put signatures over the filled-in forms on 21.05.1999 before he lodged the complaint. He also admitted that the notice issued by the Taluka Development Officer indicating outstanding dues of Rs.952/- was issued to him belonging to his three uncles. He also admitted that Mr.Sharma- Police Inspector specifically instructed him to enter into the conversation with the accused as regards the demand of illegal gratification and unless the accused raises such oral demand, no amount would be handed over to him. However, he did not make any such conversation with the accused at the time of trap. He also clearly admitted that the accused has not orally demanded any amount of illegal gratification from him. He also admitted that he did not inform the accused with regards he had brought the amount as previously agreed. He also admitted that he did not state before the Investigating Officer that the accused raised the demand by way of making gesture showing his pocket. He also admitted that the place where the test of ultraviolet lamp was carried out, was the open space with no roof and therefore, there was no possibility to carry out such experiment in this room. He further clearly and categorically admitted that at the time of trap, he handed over tainted currency notes of Rs.1,000/- to the accused stating that this amount is towards the outstanding taxes and therefore, the accused accepted the same, otherwise, he would not have accepted money. He also admitted that he did not disclose such fact to Mr.Sharma - Police Inspector. He further admitted that he was not called with the amount of illegal gratification by the accused on 25.05.1999. He also admitted that no gesture was made by the accused on that day. He also admitted that he told Mr.Ajit Velani - Sarpanch of the Village that the accused was demanding the amount of outstanding taxes, except it, he did not say anything to him.

16. P.W.No.2 - Paalji Ghooda Maroo has been examined vide Exh.19. He has deposed that he was serving as a Junior Clerk in District Industry Center, Bhavnagar. He was requisitioned as a panch by the ACB officials on 25.05.1999 and he was made to understand about the entire procedure of trap and the test of ultraviolet lamp. He was further directed to accompany the complainant at the

time of trap and to hear and view conversation which may take place between the complainant and the accused on the day of the trap. On 25.05.1999, he accompanied the complainant in the office of Gram Panchayat. The accused was present there. Other three persons were also present along with him in the office. He as well as the complainant took their seats nearby the accused. At that time, the accused as well as the complainant exchanged gesture by their eyes and he was viewing the same and the complainant handed over tainted currency notes to the accused from below the table. The accused accepted the same and thereafter, the prearranged signal was given by the complainant, due to which, other members of raiding party arrived there and the said currency notes were came to be recovered from the person of the accused through the panch no.2. The test of ultraviolet lamp was also carried out over the person of the complainant as well as the accused, which was found to be positive. He also deposed that when he visited the office of ACB in the morning on 24.05.1999, the complainant handed over the forms of 19 beneficiaries and his signature was also obtained over such forms which came to be exhibited from exhibit nos.22 to 40 in his deposition. In his cross examination, the witness admitted that he did not dictate anything in the panchnama and Mr.Sharma - Police Inspector dictated the panchnama. He also admitted that when he was proceeding along with the complainant to the place of trap, the complainant told him that he would pay the amount as illegal gratification to the accused. He also admitted that the complainant was also saying that if the accused is found to be present in the office, he would hand over tainted currency notes to him by any means. He clearly and categorically admitted that when he accompanied the complainant, the accused did not demand any amount of illegal gratification however, at that time, the complainant spoke something, but he could not recollect. At that time, he was nearby the complainant and the complainant was telling about outstanding taxes, except it, there was no conversation between them.

17. P.W.No. 3 - Himmatbhai Ratibhai has been examined vide Exh.41. He has deposed that he was serving as a Clerk in the office of Valukad Gram Panchayat. He was cited as an eye witness by the prosecution. However, he did not support the case of the persecution and therefore, he was declared hostile.

18. P.W.No.4 - Ajitbhai Maganbhai Velani has been examined vide Exh.42. He has deposed that he was a Sarpanch of Village Valukad Gram Panchayat. He was also cited as an eye - witness of the incident. However, he did not support the prosecution case and therefore, he was declared hostile.

19. P.W.No.5 - Jayanti Ravjibhai has been examined vide Exh.43. He has deposed that he was serving in the Gram Panchayat, Village - Valukad at the relevant time and he was present in the office at the time of trap. However, he did not support the prosecution case and therefore, he was declared hostile. However, he admitted in the cross examination that he served a notice for outstanding taxes to Mr.Labhubhai who was managing the land of his uncles on 05.04.1999. In his deposition, he identified the notice at Exhibit 18 which came to be served to the

complainant for outstanding amount of Rs.952/-.

20. P.W.No. 6 - Rakesh Baldevkrishna Sharma has been examined vide Exh. 50. He has deposed that he was serving as a Police Inspector, ACB, Bhavnagar at the relevant time. He recorded the complaint of the complainant on 24.05.1999. Thereafter, he arranged the trap and ultimately, he trap was carried out on 25.05.1999. He requisitioned the panchas. He also deposed that there was a matter of putting signatures over the forms of 19 beneficiaries. The said forms were handed over to him by the complainant which were at Exhibit Nos.22 to 40 and all the forms were signed by the accused as well as the Sarpanch. He carried out the trap as well as rest of the procedural aspects in respect of the trap. In the cross examination, the witness admitted that when the complainant visited him at about 15 : 15 hrs, on 24.05.1999, the complainant came along with 19 forms of beneficiaries and all were found to be signed by the Talati Cum Mantri as well as the Sarpanch on 21.05.1999. He also admitted that the work which was required to be taken from the accused, was already completed before lodging the complaint. He also admitted that even after the completion of trap, he did not inquire as to how much outstanding of tax was payable by the complainant to the accused. He also admitted in his deposition that it was revealed that at the time of trap, the accused had not demanded any amount by making oral request.

21. P.W.No.7 - Rustombhai Amirbhai Belim has been examined vide exhibit 54. He has deposed that he was serving as a Police Inspector, ACB Junagadh at the relevant time. He carried out the part of the investigation and filed the charge sheet.

22. On overall analysis of aforesaid evidence on the record in light of the complaint came to be lodged by the complainant on 24.05.1999 inter-alia stating that the accused demanded Rs.1,000/- as the amount of illegal gratification for putting signatures over the filled-in forms of 19 beneficiaries for constructing bio-gas plant. However, the evidence on record clearly discloses that the dully signed forms were already came to be exhibited at Exhibit Nos.22 to 40 which were came to be handed over by the complainant while lodging the complaint on 24.05.1999. Therefore, the accused as well as the Sarpanch of the said village had already signed over the aforesaid filled-in forms of 19 beneficiaries and hence, the work of putting signatures over the forms of 19 beneficiaries was already completed before lodging the complaint. It appears that the complainant was eager to hand over the alleged amount of illegal gratification to the accused and therefore, he lodged the complaint and in pursuance thereof, the trap was conducted.

23. During the course of trap, the evidence of the complainant is evident, the accused had not demanded any amount of illegal gratification. He deposed in the examination-in-chief that the accused raised the said demand by way of gesture, however he clearly and categorically admitted in his cross examination that the accused was not accepting any amount from him, but as he told him that he is

paying the amount towards the outstanding amount of taxes, he accepted the said amount. Further more, he admitted in the cross examination that he had handed over Rs.1,000/- towards unpaid taxes - outstanding taxes to the accused and not towards any amount of illegal gratification.

24. So far as the evidence of the panch no.1 who accompanied the complainant at the time of trap is concerned, has deposed in his examination-in-chief that the accused as well as the complainant were exchanging gesture by eyes and thereafter, the complainant handed over the amount of illegal gratification from below the table of the accused. However, he clearly and categorically admitted in the cross examination that the accused had not demanded any amount of illegal gratification from the complainant. He further admitted that the complainant was talking regarding his outstanding taxes and due to which, the accused accepted money.

25. As noted above, when the complainant as well as the panch no.1 visited the office of the accused on the day of the trap, three to four other persons were present in his office and they were examined as P.W. Nos. 3 to 4. Though they were being cited as eye witnesses of the incident, they have not supported the prosecution case. In view of the aforesaid nature of the evidence, the prosecution miserably failed to establish the demand and acceptance and the findings recorded by the learned Special Judge are not in accordance with the evidence available on the record. Therefore, as stated above, in absence of specific and clinching evidence to prove all such acts by the accused and considering the judgments referred to hereinabove, conviction recorded by learned trial Judge is not sustainable.

26. For the reasons recorded above, the appeal succeeds. The impugned judgment and order of conviction dated 09.08.2004, rendered by the learned Additional Sessions Judge (Fast Track Court No.4), Bhavnagar in Special A.C.B. Case No. 08 of 1999 is quashed and set aside. The appellant is acquitted of the charges levelled against him. Bail bond, if any, stands cancelled. R & P be sent back to the trial Court, forthwith.