

(2012) 08 JH CK 0055

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 337 of 2006

Gangadhar Dubey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Evidence Act, 1872 — Section 62

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2012) 4 JLJR 60

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : B.M. Tripathy, Nutan Sharma, for the Appellant; Md. Mokhtar Khan, Amit Kumar, Awadhesh Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Jaya Roy, J.—The appellant has filed this appeal for setting aside the judgment of conviction and order of sentence dated 9.3.2006 passed by the Additional District and Sessions Judge VIII-cum-Special Judge, C.B.I., Dhanbad in R.C. Case No. 14(A)/90(D) whereby the appellant has been convicted for the offence under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he is sentenced to undergo R.I. for one years together with fine of Rs. 250/-under Section 7 of the P.C. Act and further convicted for the offence under Sections 13(2) read with 13(1)(d) of the P.C. Act and sentenced him to undergo Rigorous Imprisonment for one year together with a fine of Rs. 250/- and both the sentences will run concurrently. The prosecution case in brief is that the informant of this case namely Gafar Khan lodged a written complaint to the S.P. (CBI) at Dhanbad on 8.10.1990 alleging therein that the appellant had demanded a sum of Rs. 20,000/- as illegal gratification from him. It was further stated in the complaint that the complainant was facing a departmental enquiry in which the appellant was the Enquiry Officer. The appellant had threatened the complainant and he was asked to pay the aforesaid sum otherwise he would be dismissed from his service. The appellant had agreed to accept a sum of Rs.

4,000/- as part payment of the illegal gratification out of Rs. 20,000/- at his quarter No. C-1/7, Koyla Nagar in the evening of 9.10.1990. The above complaint was endorsed to one T.J. Ghosh, the C.B.I. Inspector to verify into the matter and submit a report. The verification report by the aforesaid CBI Inspector was submitted on 9.10.1990 confirming the allegations of the complainant. On this basis a regular case was registered u/s 7 and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against the appellant who was at the relevant time posted at Bastakola area IX of B.C.C.L., Dhanbad as Personnel Manager i.e. R.C. Case No. 14(A)/90(D) dated 9.10.1990.

2. After completion of the investigation, charge-sheet has been filed under the aforesaid Sections of the Prevention of Corruption Act. The appellant pleaded not guilty to the charge and claimed to be tried.

3. The prosecution has examined nine witnesses in this case. P.W. 1 C.K. Raman, P.W. 2 Suraj Ram, P.W. 3 T.N. Ghosh, P.W. 4 Gaffar Khan (complainant), P.W. 5 Sarabjeet Singh, P.W. 6 Tapan Jyoti Ghosh, P.W. 7 Sanat Kumar Mukhopadhyay, P.W. 8 Bal Krishna Birdi. P.W. 9 Jyoti Kumar, I.O.

4. The prosecution has brought several documents on records which are marked as Exhibit as Exhibit-1 is sanction order, Ext.-2 is series running from Exts.-2 to Ext.-2/79 are signatures on different documents, Ext.-3 is complaint, Exts.-4 and 4/1 are report of F.S.L. and 4/1 is forwarding copy, Ext.-5 is preliminary memorandum, Ext.-6 memorandum of recovery, Ext.-7 is F.I.R., Ext.-8 is search list, Exts.-9 is examination of Exhibits dated 6.12.90, Ext.-9/1 is certificate of Superintendent of Police, Ext.-10 is Arrest memo, beside these materials Exts. are Ext.-I is bottle containing solution of the hand wash, Ext.-II envelop containing tainted paper Exts.-III to III/1 are bottles, Ext.-II/1 is sealed envelope containing notes, Ext.-IV to IV/39 tainted 40 notes of Rs. 100/- total Rs. 4,000/-. The defence has not examined any witness. However, at the request of the defence "Ext.-A" the second complaint petition, Ext.-B.C.D. are the files containing Exts.-1,1/1 and 1/2 beside this "X" is photocopy of the verification report and Y to "Y/2" are three files have been marked for identification.

5. Mr. B.M. Tripathy, the learned Sr. Counsel appearing in this case has submitted that the trial court has failed to appreciate the appellant's case right from the beginning i.e. from the stage of submission of the written complaint, as the written complaint is full of cutting and interpolation and does not bear the signature of the court showing receipt of the same in the court on a particular date. In this connection the evidence of P.W. 4, the complainant, has totally been ignored by the Trial Court. It is also submitted that two written complaints were found in the record and the second complaint petition (Ext.-A) neither in the pen of the complainant (P.W.-4) nor his signature appears there. Thus, the same has made the whole case to be doubtful. It is also contended that P.W. 6 who is the verification officer and in view of his evidence the verification and its report are totally doubtful and further more the verification report was never brought on record, only the photocopy of the said verification report was produced for the

first time in the court which could not have been admitted as evidence according to the Section 62 of the Evidence Act.

6. Mr. Tripathy has further argued that the trial court has completely ignored the major contradictions with regard to the acceptance and recovery of the tainted money from the accused appellant is concerned.

7. Regarding the sanction order, it is submitted that the sanctioning authority never appeared before the court and thus the defence has suffered a great prejudice due to the non-examination of the authority concerned who had accorded the sanction for the prosecution of the accused appellant.

8. Mr. Tripathy has further submitted that the complainant P.W. 4 himself was a Coal thief and a Departmental Enquiry was pending with the appellant and therefore, he had sufficient motive to implicate the appellant falsely, prior to the conclusion of the Enquiry in which the complainant was sure to be held guilty and may face dismissal from his service.

9. Mr. Tripathy has further pointed out that the trial court completely ignored the evidence of the witnesses to prove the entire trap proceeding against the appellant, giving their own story which are contradicting with the evidence of the each other.

10. Mr. Tripathy has lastly contended that the accused appellant earlier remained in jail custody for nearly 45 days in the year 1990 and thereafter he was on bail and never misused the privilege of bail granted to him. He has further submitted that the age of the accused appellant is more than 78 years and he is suffering from various ailments at present.

11. Mr. Khan, the learned counsel appearing for the C.B.I. has submitted that P.W. 8 who is the Dy. Superintendent of Police, C.B.I. Mr. B.K. Birdi has accompanied the complainant to the house of the accused appellant and all transactions were made in his presence and he has supported the prosecution case in all score. He has supported the fact that the tainted money was recovered from the possession of the appellant. In para-9 of the evidence of P.W. 8 has said that pre-trap memorandum was prepared and numbers of the currency notes were noted in the said memorandum and the notes were treated with philanthropic power and was given to the complainant. The pre-trap memorandum was also prepared in his present and documents were signed by him also. In para no. 20 of his evidence, he has said that complainant took out the money from his upper pocket and he handed over the same to the appellant on his demand which the appellant counted and further in para-21 he has stated that the appellant also demanded rest of the amount of Rs. 16,000/- from the complainant and in para-25 he has stated that Inspector Jyoti Kumar has recovered the money from the appellant's possession and in para 26 he has categorically said that the currency notes which were recovered were tallied with the number mentioned in pre-trap memorandum which was found correct. Further in para-27 he has stated that the currency notes which were recovered

were kept in sealed covered at the spot itself and the witnesses signed there-on. In para 28 he has said that he has identified the said currency notes in the court which are the material Exts.-IV to IV/39.

12. Mr. Khan has further contended that P.W. 9 Jyoti Kumar who is I.O. in this case, has also supported the prosecution case. He has categorically stated in his evidence at paras 28, 29 and 30 that the money was taken by the accused appellant and the same were tallied with the numbers of recovered currency notes mentioned in the pre-trap memorandum. He has identified the signatures and also the material Exts. i.e. IV to IV/39 and stated these are the same notes which are recovered from the possession of the accused appellant. He has further stated that he had taken statements of all the witnesses at the investigation including P.W. 5 Dy. Chief Manager (Personnel) who has appointed the accused appellant as an enquiry officer in the departmental proceeding initiated against the complainant. It is also contended that P.W. 4 who is the complainant has thoroughly supported the prosecution and also supported the statement of P.W. 8 (B.K. Birdi) that he was also present inside the house of the accused appellant with him when the money was paid. P.W. 4 in para-10 of his evidence that he has paid Rs. 4,000/- and the appellant received the amount by his right hand and counted the same by both the hands and on signal, all the members of the trap team entered into the house and the C.B.I. Inspector, the I.O. (P.W. 9) immediately caught hold the hand of the appellant and in presence of the witnesses. After recovery the money was kept in the envelope and it was sealed where he alongwith others witnesses signed. This witness has identified the signature i.e. Ext.- 2/33, further he identified the money which was recovered which is Exts.-IV to IV/39 is material Ext. (Tainted notes).

13. Mr. Khan has further submitted that P.W. 6 who is the verification officer, has also stated in his evidence that on verification, he has found the allegation is genuine even he visited the accused person alongwith the complainant on 9.10.90 and heard about the discussion regarding the allegation made in the F.I.R. Mr. Khan has also contended that as admittedly the accused appellant was appointed as Enquiry Officer in the departmental proceeding started against the complainant, there is every chance of demanding illegal gratification by the accused appellant. The trial court has rightly convicted the accused appellant as stated above.

14. Perused the evidence of the witnesses and the materials on record as well as the impugned judgment. In this case, the scrutinizing of the evidence of the witnesses regarding demand, acceptance and recovery is very much necessary. P.W. 4 is the complainant and P.W. 8 Inspector of the C.B.I. who accompanied the complainant and entered into the room of the accused appellant. Both the witnesses have very categorically stated in their evidence regarding demand, acceptance and recovery. P.W. 8 has clearly stated in his evidence regarding pre-trap proceeding and post-trap proceeding also. I find from the evidence that he stands very firmly at the cross-examination and there is nothing to disbelieve

him. P.W. 4 has also proved the prosecution case in his evidence regarding demand of bribe, acceptance of the same and also the recovery. I further find from the evidence of the P.W. 6 that he has stated in paras-4, 5 and 6 that on 9.10.90 he and Gaffar Khan (complainant) went to the house of Gangadhar Dubey (accused appellant) and heard the talk between Gangadhar Dubey and Gaffar Khan and Gangadhar Dubey demanded the bribe money. He has further stated that he has submitted the verification report on the same day. Admittedly, the original verification report is not in the record but from the perusal of the record, I find a list of document is attached with the charge-sheet in which verification report dated 9.10.90 of T.J. Ghosh (P.W. 6) is also mentioned. Therefore, there is no doubt that the verification report was submitted by the verification officer (P.W. 6) but same may be lost during the such a long period of trial i.e. more than a decade.

15. I find from the record the sanctioning officer has not been examined by the prosecution but the P.W. 1 who was working in the office of the Chairman Coal India Ltd. at the relevant time, has proved the sanction order and has stated in his evidence that this sanction order was dictated to him by Mr. M.P. Narayan who was the Chairman and appointing authority and competent to discharge the accused appellant and he (P.W. 1) has typed the same. He has further stated that Mr. Narayan after perusing certain documents, dictated him the sanction order and signed it. Therefore, I do not find any illegality in the sanction order.

16. P.Ws. 2 and 3 who are the independent witnesses and P.Ws. 4 and 8 are the witnesses regarding demand, acceptance of the bribe money and also regarding the recovery of the same of the accused appellant. As stated earlier P.W. 4 and P.W. 8 have clearly proved the demand acceptance and recovery of the bribe amount. P.W. 2 who is an independent witness has also stated in his evidence that in his presence tainted currency notes were recovered and tallied with the numbers of the currency notes mentioned in the pre-trap memorandum. He has also stated in his evidence that though he was not inside the room but he was in a such a position, he had heard the conversation of the complainant with the accused appellant and also heard the demand of illegal gratification by the accused appellant from the complainant. The another independent witness P.W. 3 have also stated in his evidence that tainted currency notes were recovered from the table of the accused appellant. Therefore, regarding the demand acceptance and the recovery of the bribe amount from the accused appellant have been proved by the witnesses though there are minor contradictions but these are not of such nature which can cast any doubt on the prosecution case when the witnesses have been examined by the prosecution after a decade of the occurrence.

17. As it is submitted by Mr. Tripathy that the material exhibits i.e. the bottles when produced before the court were found empty. But I find in this regard, the P.W. 7 has stated in his evidence and clarified that the chemical solution which was kept in the bottles due to long period, it might have evaporated and that is

why the bottles were found empty.

18. In the instant case it is submitted that the complaint petition (Ext.-3) is having numbers of cutting and overwritings. Perusal of Ext.-3, I find the cuttings are mainly on the figures and it cannot be said that the C.B.I. authority has done it. It has also come at para 20 of the evidence of the complainant where he has said after seeing the Ext.-3 that he got the complaint written by his friend and gave it to C.B.I. after putting his signature on the same. In para 27 the complainant has also accepted that there are some cutting and overwriting on the complaint petition. Therefore, there is no doubt the complainant has filed the complaint petition which is Ext.-3. In my opinion the prosecution case has rightly not relied on the other complaint petition which is Exhibit-A as the same is not having the signature of the complainant. Thus, the second complaint petition is produced by the accused appellant only to create a confusion.

19. In the light of the fact and circumstances and the discussion made above, I find that the prosecution has proved its case against the accused appellant beyond all reasonable doubt. Accordingly, I confirm the conviction of the appellant passed by the Additional District and Sessions Judge-VIII-cum-Special Judge, C.B.I., Dhanbad in R.C. Case No. 14(A)/90(D).

20. I find from the record of the case that the accused appellant is more than 78 years of age and he is suffering from various ailments at present. Considering the age and ill-health of the accused appellant who is suffering from various ailments at present and he is not a previous convict, in my opinion it will not be proper to send him to jail after two decades. Though the Act has provided the minimum sentence for the offence related to Sec. 7 is six months and for Sec. 13(1)(d) is one year but for a person who is aged more than seventy eight years and suffering from various ailments, the principle of natural justice definitely demands lenient view or sympathetic view towards him. Definitely these are circumstances which can justify the awarding of minimum sentence prescribed in the Act. I am of the view that the ends of justice would be met if the sentence of one year imposed on the appellant is reduced to the period already undergone. Therefore, I modify the sentences awarded to him to the period undergone and instead of imprisonment, he is sentenced to pay a fine of Rs. 15,000/- (fifteen thousand) within a period of three months from the date of this judgment in the trial court. If he does not pay the said amount of fine within the aforesaid period, the sentence of imprisonment awarded by the trial court by the impugned judgment will revive automatically and the court below will proceed according to the law and arrest the accused appellant for serving the remaining part of the sentence. As the appellant is on bail, he is discharged from the liabilities of the bail bonds. With the aforesaid modification in the sentence, the appeal is dismissed.