
(2010) 09 OHC CK 0046

In the Orissa High Court

Case No : Criminal Appeal No. 367 of 2004

Govinda Chandra Panigrahi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2011) 2 Crimes 662 : (2010) 2 OLR 915

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—This appeal is directed against the judgment and order dated 23.11.2004 passed by the learned Special Judge (Vigilance), Bhubaneswar in T.R. Case No. 36 of 1991 convicting the Appellant u/s 161 of the I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short "the P.C. Act") and sentencing him to undergo R.I. for six months and to pay fine of Rs. 1000/-, in default to undergo R.I. for one month, on each count.

2. The Appellant was working as Medical Officer of Adaspur Primary Health Centre during the period of occurrence. On 21.4.1987 P.W.1 the informant-decoy had admitted his wife in the Health Centre and in the same night she delivered a child.

The prosecution case is that the Appellant demanded bribe of Rs. 200/-to relieve P.W.1's wife from the hospital. As P.W.1 expressed inability to pay Rs. 200/-, the Appellant finally agreed to accept Rs. 100/- from him. P.W.1 paid Rs. 70/- and promised to pay Rs. 30/- later on at the time of discharge. P.W.1 lodged written report Ext.1 on 23.4.1987 before Superintendent of Police (Vigilance), Cuttack Division, Cuttack stating therein that he was required to pay the balance bribe amount to the Appellant on the following day. P.W.8 Inspector, Vigilance Cell Cuttack was directed to take up investigation. In course of investigation, P.W.8

laid a trap stated to have been prepared with the assistance and in presence of P.W.4. Executive Magistrate, P.W.5 another Inspector of Vigilance Cell, Cuttack and P.W.6 a Senior Assistant working in the Cuttack Collectorate. The Appellant was caught red handed after accepting the tainted currency notes from P.W.1 towards illegal gratification as a motive for treatment and discharge of P. Ws.1's wife. The tainted notes recovered from the Appellant were seized. Hand wash of the Appellant sent for chemical examination to the State Forensic Laboratory was examined by P.W.3 Scientific Officer. On 29.8.1987 P.W.8 made over charge of investigation to P.W.9. On completion of investigation P.W.9 submitted charge-sheet for commission of offences under which the Appellant stands convicted and accordingly charge was framed.

3. The Appellant pleaded not guilty to the charge. He took the stand that cash of Rs. 30/- recovered from him was received by him towards repayment of loan availed by P.W.1.

4. In order to substantiate the charge, prosecution examined nine witnesses and, also relied upon documents marked Exts.1 to 15 and material exhibits M. Os. I to VII.P. Ws.1, 3, 4, 5, 6, 8 and 9 have already been introduced. P.W.2 was working as a staff nurse in Adaspur Primary Health Centre and P.W.7 was examined to prove sanction for prosecution. No defence evidence was adduced.

5. It is evident from the defence plea that the Appellant does not dispute recovery of tainted money from his possession. However, it was contended by the learned Counsel for the Appellant that there is no evidence on record to show that the Appellant ever made any demand for money from P.W.1 as motive for treatment and discharge of his wife. Appellant's plea to have accepted Rs. 30/- from P.W.1 towards refund of loan amount finds support from the evidence of P.W.2. Evidence of P.W. 6, stated to have accompanied P.W.1 to overhear the conversation between the decoy and the Appellant, also does not support the allegation that the Appellant accepted the amount as bribe. The learned Court below has arrived at the findings on the basis of surmises and conjectures.2009 (I) OLR 24 In support of his contentions learned Counsel for the Appellant relied upon the decision of this Court in Arakhita Nath v. The State of Orissa: (2009) 42 OCR 34.

In reply, it was argued by the learned Counsel for the Vigilance Department that P.W.1 having substantially supported the allegations made against the Appellant in course of his examination-in-chief, the learned Court below rightly discarded his assertion made in course of cross-examination to the effect that he paid Rs. 307- to the Appellant towards refund of loan amount.

6. Specific case of the prosecution is that the Appellant demanded bribe of Rs. 2007- from P.W.1 in connection with his wife's treatment in the Primary Health Centre. P.W.1 having expressed his inability to pay Rs. 200/- the Appellant agreed to accept Rs. 100/-. P.W.1 paid Rs. 70/- and promised to pay balance amount of Rs. 307- at the time of discharge. At the time of discharge Appellant

demanded and accepted Rs. 307- in the shape of the tainted currency notes.

7. Informant P.W.1 did not support the prosecution case during trial and, therefore, he was permitted to be cross-examined by the prosecution. P.W.1 vaguely alleged in the examination-in-chief that the Appellant demanded Rs. 200/- concerning expenses for delivery. He was altogether silent regarding demand of Rs. 100/- and part payment of Rs. 70/-. In course of cross-examination by prosecution P.W.1 disowned the allegations made in the F.I.R. in that connection. He denied that P.W.6 was deputed by the investigating officer to overhear conversation between him and the Appellant. In course of cross-examination by defence, P.W.1 squarely supported the defence plea. He deposed that he purchased medicine by taking Rs. 30/- from the Appellant as he had no money to pay for the cost of medicine amounting to Rs. 26/-. P.W.2 was present when he took money from the Appellant. He categorically testified that money which was detected in course of trap was the money which he had returned to the Appellant and that the Appellant never demanded any money for his wife's delivery till date of her discharge. P.W.2 the staff nurse deposed in her cross-examination that the Appellant had given a prescription to P.W.1 to purchase medicines. As P.W.1 had no money he requested the Appellant for money on loan basis. As per the request the Appellant brought Rs. 30/- from his house and gave to P.W.1. P.W.6, who was deputed by the Investigating Officer to overhear the conversation between the Appellant and P.W.1, simply deposed to have seen P.W.1 handing over money to the Appellant after discharging P.W.1's wife.

8. Thus, positive evidence adduced by the prosecution in Court does not support the allegation of demand of Rs. 100/- made by the Appellant from P.W.1. Evidence of P.W.1 is prevaricating. Evidence of P.W.2 supports the defence plea that loan of Rs. 30/- was advanced by the Appellant to P.W.1. No other witness including P.W.6 deposed regarding demand of bribe made by the Appellant. As has been observed by this Court in *Arakhita Nath v. The State of Orissa* (supra) mere recovery of money divorced from the circumstances under which it was paid is not sufficient to convict the accused when substantive evidence in the case is not reliable. In absence of proof of demand, there is no basis to sustain the conviction of the Petitioner either u/s 161 of the I.P.C. or u/s 5(2) read with Section 5(1)(d) of the P.C. Act.

9. In the result, the appeal is allowed. The impugned judgment and order are set aside.