

(2015) 04 GUJ CK 0126
In the Gujarat High Court
Case No : Criminal Appeal No. 422 of 1999

Govindsinh Karansinh Jadeja and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 120(B), 120B
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2), 7

Citation : (2015) GLH 2450

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : Kandrap H. Dholkia, for the Appellant; Monali Bhatt, P.P., Advocates for the Respondent

Final Decision : Allowed

Judgement

Kaushal Jayendra Thaker, J—The present appellants have preferred this appeal under Sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 28.4.1999 passed by the learned Special Judge (CBI), Court No. 3, Ahmedabad in Special Case No. 15 of 1993, whereby, the learned Judge has convicted the appellants under Sec. 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentenced to undergo S/I for one year. The appellants are also convicted under Sec. 7 of Prevention of Corruption Act and sentenced to undergo S/I for a period of six months and to pay a fine of Rs. 200/-, in default, to undergo further S/I for fifteen days. The appellants further convicted under Section 120(B) of IPC and sentenced to undergo S/I for six months, which is impugned in these appeal. The brief facts of the prosecution case is as under:--

2.1 It is the case of the prosecution that in the year 1992, the appellant No. 1 was working as U.D.C. And appellant No. 2 was working as Peon in the Income Tax Department, at Jamnagar. The complainant was residing at Jamnagar and his

father was residing at Padana village and was doing construction work. As the father of complainant wants registration as an approved Contractor, the Income Tax Clearance Certificate was must, and therefore, he approached the Income Tax Office along with complainant where the complainant had come in contact with peon, who told him that if he wants certificate, he has to pay Rs. 100/- to which, complainant was agreed, and therefore, he gave a form to be signed by the father of the complainant. The complainant had after obtaining the signature of his father on the said and gave it back to the peon who had come to him after twenty minutes with a Income-tax Clearance Certificate and demanded Rs. 100/-. The complainant had no money, therefore, peon told him to come tomorrow with money and take the certificate. Since the complainant do not wants to give money, he approached the ACB Office, Jamnagar and lodged the complaint on 30.11.1992. Thereupon, the said department had arranged for two independent panch witnesses. The complaint was read over to the panch witnesses after their arrival. Thereafter they went to the office of appellants for trap. When complainant went inside the office, where the person wearing red colour - shirt (sweater)(Accused No. 1) had demanded Rs. 100/-. The complainant gave him one note of denomination of Rs. 100/- to him and he kept the said note in his right hand. Thereafter, the complainant gave pre-arranged signal, the raiding party apprehended the accused. On asking he told his name V.K. Jadeja. Thereafter during personal search of the accused the tainted currency note of Rs. 100/- was recovered from him, number of which was found to be tallied with number that has already been noted down in the first part of the trap panchnama. Thereafter, necessary procedure of anthracene powder was carried out and final panchnama was prepared in presence of the panch witnesses and papers relating to the case were also seized in presence of the panch witnesses. Thereafter further investigation was carried out and then charge sheet has been filed against the accused for the above said offences, which was numbered as Special Case No. 15/1993.

2. The accused was charged vide at Ex. 5. The appellants - accused pleaded not guilty and claimed to be tried.

3. In order to bring home the charge leveled against the appellants-accused, the prosecution has examined the following witnesses:-

1. Anil Chhaganlal Dattani Ex. 26
2. Desabhai Maghabhai Makwana Ex. 37
3. Bhikhusa Alisha Shahmadar Ex. 44
4. Babulal Thakorji Chauhan Ex. 49
5. Noorali Abbasali Fakir Ex. 50
6. Sunilkumar Indrasing Kapur Ex. 56

4. To bring home the charge levelled against the accused, the prosecution has

also produced the following documentary evidence before the trial Court.

1. Complaint Ex. 38
2. CBI Chargesheet Ex. 1
3. Medical certificate Ex. 12
4. Trap Panchnama Ex. 27
5. Receipt Ex. 28
6. Income Tax Clearance Certificate Ex. 40
7. Muddamal Receipt Ex. 45
8. FIR Ex. 48
9. Letter of ACB Ex. 58
10. Receipts Ex. 59 & 60

5. Thereafter, after examining the witnesses, further statement of the appellants-accused under Sec. 313 of Cr.P.C. was recorded in which the appellants accused have denied the case of the prosecution.

6. After considering the oral as well as documentary evidence and after hearing the parties, learned Judge, vide impugned judgment and order dated 22.4.1999 held the appellants - accused guilty to the charge leveled against them under Sec. 13(1)(d) read with Sec. 13(2) of the Prevention of Corruption Act and under Section 120B of IPC, convicted and sentenced the appellants accused, as stated above.

7. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Judge, the present appellants have preferred this appeal.

8. Heard Mr. N.S. Dafatari learned Advocate with Mr. Jiten M Budhhbhatti for the appellant No. 2, Mr. Kandarp H. Dholakia learned Advocate for appellant No. 1, Mr. R.C. Kodekar learned Counsel for CBI and Ms. Monali Bhatt learned APP for the respondent-State.

9. Mr. Dafatari learned Advocate appearing for the appellant No. 1-accused has vehemently submitted that the evidence on record goes to show that the offence under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act and under Sec. 120B of IPC is not made out, and therefore, the impugned judgment and order of conviction and sentence may be quashed and set aside and the appeal be allowed. Mr. Dafatari learned Advocate for the appellant No. 1 has submitted that the trial Court has erred in believing the prosecution case and evidence on record. He has further submitted that the judgment and order of conviction is based on improper appreciation of the evidence of prosecution and based on improbabilities and therefore the same deserves to be quashed and set

aside.

10. Per contra, learned Counsel Mr. R.C. Kodekar appearing for CBI has taken this Court through the entire evidence on record and submitted that the impugned judgment and order passed by the learned trial Judge is just and proper. Mr. Kodekar learned Counsel further submitted that in view of the evidence on record, it cannot be said that the learned trial Judge has committed any error in convicting and sentencing the accused, and therefore, the present appeal deserves to be dismissed.

11. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the appellant. I have also considered the submissions made by the learned Advocates appearing for the parties. On a very short point this appeal requires to be allowed. Can a conviction be recorded by the trial Court where the complainant is hostile. The answer is yes, but it should be corroborated by other piece of evidence. It is apparent that PW-2 who was complainant, has not supported the case of the prosecution. At the out-set, though Mr. Kodekar learned Counsel for CBI has vehemently submitted that the evidence of hostile witness who is non-inimical to the accused nor was interested to see that the accused is brought to book, turns hostile, his evidence has been considered by the learned trial Judge, and therefore, both the accused have been rightly convicted. This takes this Court to the evidence of prosecution witnesses. In the evidence of PW-1, 2, 5 and 6, there are many contradictions. The learned trial Judge has held that they had demanded Rs. 100/- when they given Income-tax Clearance Certificate. The issue is that whether the peon and U.D.C. Clerk have any right to issue any Income-tax Clearance Certificate. There is doubt of demand and acceptance. The complaint is dated 30.11.1992, however, the so-called incident occurred on the day on which day there was not demand, and therefore, it appears that it is well designed trap to rope the accused. Both the accused are not named in the FIR and demand is not proved. The evidence of prosecution at length has been discussed by the learned trial Judge, but he has fallen in error as the demand is not proved. The complainant turned hostile. His hostility has been used by the learned trial Judge in convicting the accused. On this short point, without delving further into the evidence of other witnesses, I am unable to concur with the view taken by the learned trial Judge. The judgment of the learned trial Judge is against the settled principle of law and against the recent decision of the Apex Court in the case of " Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 and in the case of B. Jayaraj Vs. State of A.P., (2014) AIRSCW 2080 : (2014) CriLJ 2433 : (2014) 7 JT 381 : (2014) 4 SCALE 81 . Mr. Kodekar learned Counsel for CBI has vehemently submitted that the decision of the Apex Court in the case of Vinod Kumar Vs. State of PunjabAIR 2015 SC 1206 : (2015) CriLJ 1442 : (2015) 1 RCR(Criminal) 647 : (2015) 1 SCALE 542 : (2015) 3 SCC 220 : (2015) 1 SCC(L&S) 712 will enure for the benefit of the State. The said decision would not apply to the facts of this case. In that case, the Apex Court has held that absence of any evidence

of demand and acceptance of money as illegal gratification will not amount to proving the case under Sec. 13 or 7 of the Act. Thus, the decision of the Apex Court in the case of M.R. Purushotham Vs. State of Karnataka, (2014) AIRSCW 5740 : (2014) 3 SCC 721 will have to be made applicable to the facts of this case and the conviction requires to be upturned. I am not going into the facts whether the sanction was proper or not. PW-2, 5 and 6 also do not corroborate the fact that there was any demand by the accused, and therefore, the prosecution fails to prove the case beyond reasonable doubt. Therefore, when initial demand and demand at the time of raid is not proved, this Court cannot concur with the view taken by the learned trial Judge. It is cardinal principle that demand and acceptance are required to be proved without any doubt and if one of them is not proved, being the vital part, the offence cannot be said to have been constituted and conviction cannot be sustained. Hence, the present appeal deserves to be allowed.

12. In the totality of the facts and circumstances and considering the judgment in the case of Kanwarjit Singh Kakkar Vs. State of Punjab and Another, (2011) 2 Crimes 235 : (2011) 3 JCC 1917 : (2011) 5 JT 214 : (2011) 4 RCR(Criminal) 127 : (2011) 5 SCALE 37 : (2011) 13 SCC 158 : (2011) 2 UJ 1855 and Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 and the decisions cited hereinabove, a decade old decision of the Apex Court in the case of State of Gujarat Vs. Maheshkumar Dhirajlal Thakkar, AIR 1980 SC 1167 : (1980) CriLJ 919 : (1980) 2 SCC 322 : (1980) SCC(Cri) 442 : (1980) 12 UJ 579 will also enure for the benefit of the accused. In that view of the matter, this appeal deserves to be allowed. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence dated 22.4.1999 passed by the learned Special Judge, (CBI), Court No. 3, Ahmedabad in Special Case No. 15/1993 is hereby quashed and set aside. The appellants-accused are hereby acquitted from all the charges levelled against them. Bail and bail bond stands cancelled. Surety, if any given, shall stand discharged. R & P to be sent back to the trial Court.