
(2010) 03 GUJ CK 0045
In the Gujarat High Court
Case No : Criminal Appeal No. 818 of 1996

Himmatsing Badjibhai Pargi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Evidence Act, 1872 — Section 8
Prevention of Corruption Act, 1947 — Section 4
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2010) 03 GUJ CK 0045

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : J.B. Pardiwala, for the Appellant; R.C. Kodekar, Ld. Addl. Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The appellant has preferred this Appeal u/s 374 of the Code of Criminal Procedure, 1973 against the Judgment and order of conviction dated 19th August 1996 passed by the learned Special Judge, Panchmahal at Godhra in Special (Corruption) Case No. 08 of 1993, whereby the learned Judge has convicted the appellant-accused of the charges levelled against him.

2. The Short facts of the case are as under:

2.1 The original complainant had some disputes with regard to taking water from the well. It is the case of the original complainant that he was beaten by his brother and his sons at the time of doing agricultural work. Because of intervention of the neighbours, the original complainant was saved. The original complainant had lodged a complaint with Santrampur Police Station for the said assault of his brother and sons of his brother. After filing the complaint, the original complainant was admitted in the hospital for treatment.

2.2 The investigation was carried out by the present appellant-accused in respect of the complaint filed by the original complainant. It is also the say of the

complainant that when the original complainant went to the appellant-accused with his treatment certificate, the appellant-accused told the original complainant that his brother had also filed a complaint against him, therefore, the original complainant should come along with his wife at Gothib Outpost on Monday. On 16th November 1992 the complainant along with his wife and witnesses went to Gothib Outpost where their statements were recorded. It is also the case of the original complainant that after recording statements, the appellant-accused told the original complainant that he will be taken on remand. The appellant-accused further added that if the original complainant wants to escape from the remand, he will have to give an amount of Rs. 500/- to the appellant-accused. It is also the case of the original complainant that as he was not having money, the appellant-accused arrested the original complainant and was produced before the Santrampur Police Station, from where the original complainant got himself released on bail. At that time also the appellant-accused demanded an amount of Rs. 500/- from the original complainant. It is also the case of the original complainant that he stated the accused that he would give the appellant-accused an amount of Rs. 500/- on the next day.

2.3 The original complainant therefore, approached the Anti Corruption Bureau on 17th November 1992 at about 11:00 a.m. and filed the complaint against the appellant-accused. Thereafter, the Investigating Officer called two panchas and after completing necessary procedure, the raid was carried out.

2.4 It is also the case of the original complainant that when he reached to Gothib Outpost, the appellant-accused asked the original complainant that whether the original complainant had brought Rs. 500/- as demanded or not and told him to handover Rs. 500/-. At that time the original complainant had handed over the powdered currency notes, which were given to him by the Anti-Corruption Bureau, to the appellant-accused. Thereafter, the appellant-accused went to the adjacent room and placed the said currency notes in one of the books lying in that room. Thereafter, the original complainant went outside the room and gave signal to Police Inspector Shri Pathan. Police Inspector Shri Pathan along with his staff members and panch witness No. 2 immediately rushed inside the room. Thereafter, procedure of examining under ultra-violet lamp was carried out and search of the accused was also carried out. Thereafter, panch witness No. 1 brought the said diary from the adjacent room, from wherein the currency notes of Rs. 500/- were traced out. The said notes were also examined in the light of ultra-violet lamp. It is found that the notes were shining blue. The fingers of the appellant-accused and original complainant were also shining blue and the pages of the diary, in which the currency notes were placed, were also shining blue. Thereafter, panchnama was prepared and the currency notes were seized. The statements were recorded and thereafter, the offence was registered against the appellant-accused.

2.5 After investigation was over, the Deputy Superintendent of Police had given sanction for filing the charge-sheet against the appellant-accused and

accordingly, the accused was charge-sheeted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (hereinafter referred to as "the Act").

2. Thereafter the trial was conducted before the learned Magistrate. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence. The prosecution has examined complainant at Exh. 10 as a Prosecution Witness No. 1, Panch Witness No. 2 was examined at Exh.12, Police Inspector Pathan has been examined at Exh.14 and also produced documentary evidence in support of the prosecution case.

3. After hearing both the sides, the learned Special Judge, Panchmahal at Godhra, has been pleased to convict the appellant-accused by his judgment and order dated 19th August 1996 in Special (Corruption) Case No. 08 of 1993 and sentenced the appellant-accused to suffer Rigorous Imprisonment for one year and to pay fine of Rs. 1,000/- (Rupees One Thousand Only) for each offence and in default, to suffer Rigorous Imprisonment for three months for each offence. It was ordered that substantive sentence shall run concurrently.

4. Being aggrieved by and dissatisfied with the said judgment and order dated 19th August 1996 passed by the learned Special Judge, Panchmahal at Godhra in Special (Corruption) Case No. 08 of 1993, the appellant has preferred the above-mentioned Criminal Appeal before this Hon"ble Court.

5. I have heard Mr. Rushabh Shah for Mr. Pardiwala, learned Counsel for the appellant-accused and Mr. R.C. Kodekar, learned Additional Public Prosecutor, appearing on behalf of the Respondent-State. I have also gone through the papers and the Judgment and order passed by the Trial Court.

6. Mr. Rushabh Shah has taken me through the evidence of prosecution witnesses and the documentary evidence and submitted that from the above evidence it is established that the prosecution has failed to prove its case beyond reasonable doubt. He has contended that there was a family dispute between two brothers. The original complainant was under impression that the appellant-accused is supporting the other side and because of that impression only, the appellant-accused was wrongly booked by the original complainant. He has also contended that the contention of the complaint is also not proved beyond reasonable doubt. Even total contradictory version was established and oral evidence of the panchas is also not in corroboration with the evidence of the present complainant. He has also read the depositions of the panch witnesses and vehemently contended that the evidence of the panch witnesses is also doubtful. Mr. Shah also contended that trapping officer has committed so many wrong during the so-called trap. He has also contended that the money was not recovered from the possession of the accused. The trapping officer has not considered the defence made to him during the interrogation of the appellant-accused. He has also contended that demand of bribe is not established beyond reasonable doubt and explanation given by the original complainant is also

doubtful. He has contended that the appellant-accused has 22 years of dot less service and award was also given to the appellant-accused for his performance. No departmental inquiry was ever conducted against the appellant-accused. He has also read the oral as well as documentary evidence and vehemently contended that sufficient contradiction is proved before the learned Judge and the judgment and order of conviction is not legally tenable and hence, judgment and order of conviction is required to be set aside.

7. Mr. R.C. Kodekar, learned Additional Public Prosecutor, for the respondent-State has supported the judgment and order of the Trial Court. He has read the oral evidence of the panch witnesses and trapping officer and vehemently argued that the prosecution has proved its case beyond reasonable doubt. He has also contended that the panch witness No. 2 is a public servant and he has no grudge against the appellant-accused and he is an independent witness. He has also contended that the defence has never bothered to put any question to this witness and there is no reason for panch witness to wrongly involve the appellant-accused in the case. He has also read the oral evidence of the trapping officer and contended that the trapping officer has successfully carried out the raid. He has further contended that after receiving signal from the original complainant, the trapping officer immediately rushed to the place of the offence and search was carried out by the trapping officer. The trap amount was recovered from the possession of the appellant-accused. He has also contended that the Hon''ble Apex Court has observed in catena of decisions that such type of cases are required to be dealt with heavily.

8. I have gone through the judgment and order passed by the Trial Court. I have also perused the oral as well as documentary evidence led before the Trial Court and also considered the submissions made by learned Advocate for the appellant.

9. The Trial Court, has after appreciating the facts and evidence on record, found that the sanction to file complaint against the appellant-accused was given as per the law. It is also observed that the defence has never tried to establish that sanction was not given as per the law. From the oral evidence of the original complainant, it is found that the prosecution has proved his case beyond reasonable doubt. Even from the perusal of oral evidence of the panch witness Nos. 1 and 2 it can be seen that panchas had proved beyond reasonable doubt that the appellant-accused demanded Rs. 500/- as bribe. It is also held by the Trial Court that trapping officer has recovered the said amount of Rs. 500/- from the possession of the appellant-accused in presence of panchas. The Trial Court has also perused the statement of the appellant-accused recorded u/s 313 of the Code of Criminal Procedure. It is the duty of the appellant-accused to rebut the presumption. The Hon''ble Division Bench of this Court has also considered that it is the duty of the accused to rebut the presumption.

10. In case of State of Gujarat Vs. Laxmansinhji Dansinhji Gohil and Another, this Court has held as under:

We have also considered Section 8 of the Evidence Act and the statements recorded u/s 313 of Cr.P.C. Accused had never bothered to explain the presence of anthracene powder as well as recovery of trap amount. From the evidence of complainant and panch witness, it is clear that the accused No. 1 has demanded illegal gratification and also made a statement to the complainant that without money his work will not be done by him. From the conduct of accused No. 1, it appears that he has not explained anything to deny the allegations regarding demand as well as acceptance of trap money by accused No. 2. Therefore, from the conduct of accused No. 1 and accused No. 2, who was present with accused No. 1, it is clear that at the event of direction given by accused No. 1 to complainant to give the trap amount to accused No. 2 on the spot. Without any hesitation, the trap amount was accepted by the accused No. 2 in the presence of panch, then, it was counted by him and again it was placed before accused No. 1, therefore, accused No. 1 told him that "keep it with you, he will see later on". So, conduct of both the accused is established from the oral as well as documentary evidence. So far as Section 4 of the Prevention of Corruption Act, 1947 is concerned, it was the duty of accused to remove the presumption, but we have not found that they were removed the presumption in a convincing manner.

Even the Hon''ble Supreme Court of India in the recent decisino in the case of State represented by CBI, Hyderabad v. G. Prem Raj reported in (2010) 1 SCC 398, has reiterated the same ratio.

11. In these type of cases, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance. It is true that only demand is not sufficient to establish the offence. There must be acceptance and it is required to be proved with cogent evidence. In the present case, from the panchnama, oral evidence of the panchas, complainant and trapping officer, it is proved beyond reasonable doubt that demand was made and bribe was accepted by the appellant-accused. The trapping officer has recovered the trap amount from the possession of the appellant-accused. The premise is to be established on the fact from drawing presumption that there was payment and acceptance of illegal gratification and once the premise is established, inference to be drawn that said illegal gratification was accepted "as motive and resort for doing unofficial work in official capacity in a wrong way." Just not to arrest the original complainant in a bogus case, the appellant-accused had demanded an unlawful gratification in the form of Rs. 500/- as a bribe amount. These circumstances lead to the conclusion that the accused has demanded bribe amount and it was accepted by him. When it is established demand and acceptance of illegal gratification beyond reasonable doubt, the Court would certainly be entitled to draw the presumption under the Prevention of Corruption Act and when the appellant-accused failed to produce any iota of evidence to rebut the said presumption, the learned Trial Court has rightly convicted the appellant-accused.

12. Learned Counsel for the appellant is not in a position to show any evidence

to take a contrary view in the matter or to show that the approach of the Trial Court is vitiated by some manifest illegality or that the decision is perverse or that the Trial Court has ignored the material evidence on record.

13. In above view of the matter, I am of the considered opinion that the Trial Court was completely justified in convicting the appellant-accused of the charges levelled against him. I find that the findings recorded by the Trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

14. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of conviction recorded by the court below and hence find no reasons to interfere with the same. Hence, the present appeal is required to be rejected and is hereby rejected. The judgment and order dated 19th August 1996 passed by the learned Special Judge, Godhra in Special (Corruption) Case No. 08 of 1993 holding the appellant-accused guilty of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 sentencing the appellant-accused to suffer Rigorous Imprisonment for one year and to pay fine of Rs. 1,000/- for each offence and in default, to suffer Rigorous Imprisonment for three months for each offence and substantive sentences to run concurrently, is hereby confirmed. The appellant-accused is on bail. This bail bonds shall stand cancelled. The appellant-accused is, therefore, directed to surrender himself before the Jail Authority within a period of six weeks from today, failing which the Trial Court concerned is directed to issue Non-bailable warrant against the appellant-accused to effect his arrest. Record and Proceedings to be sent back to the Trial Court.