

(2011) 08 GUJ CK 0039

In the Gujarat High Court

Case No : Criminal Appeal No's. 546 and 695 of 1996

H.V. Acharya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1947 — Section 4, 5(2)

Citation : (2011) 08 GUJ CK 0039

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

Bench : Single Bench

Advocate : H.N. Joshi, for Thakkar Assoc, for the Appellant; H.L. Jani, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The Appellant was put on trial for the commission of the offences u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The learned Special Judge, Junagadh, in Special Case No. 7 of 1989 passed judgment and order of conviction and sentence dated 29.6.1996, whereby the learned Special Judge was pleased to convict the Appellant-accused and awarded sentence to the Appellant to suffer rigorous imprisonment for 1 year and to pay fine of Rs. 3000/-, i/d, to further undergo rigorous imprisonment for 6 months.

2. According to the prosecution, the accused - Hadgali Vishnutirth Acharya was working as Deputy Engineer at Gujarat Electricity Board, Keshod. About 22 agriculturists of Jamvali Village applied for new electricity connection for agriculture purpose to the office of the accused, and that work was entrusted to the accused. The complainant was looking after the work of new electricity line on behalf of aforesaid 22 agriculturists. The accused demanded Rs. 300/-per connection as illegal gratification from the complainant. It is also alleged that the complainant gave Rs. 500/-to the accused as an advance. It was also ascertained that Rs. 1500/-was to be given at Keshod Office. Thereafter, the complainant

decided to file complaint against the accused before ACB office, Junagadh and, therefore, he approached the ACB Office, Junagadh. The ACB office, after completing the formalities, decided to carry out trap. The accused accepted Rs. 1500/-at his residence from the complainant and the wife of accused, who was accused No. 2, was acquitted by the learned Special Judge, took the said trap amount and ran away from that place and therefore, the trap amount was not recovered by the ACB office. After obtaining proper sanction, the proceedings were initiated against the accused.

3. After usual investigation, the Investigating Agency submitted the charge-sheet. In order to bring home the charge, prosecution had examined the witnesses and got exhibited a large number of documents. The witnesses examined by the prosecution viz. PW-1, Hiralal Maisurbhai Chavda, at Exhibit 21, PW-2, Ramjibhai Hansrajibhai Patel, at Exhibit 23, PW-3, Jagdishbhai Mahendrabhai Thakar at Exhibit 24, P.W.4 - Thobhanbhai Panchalbhai at Exhibit 27, P.W. 5-Dilipbhai Bhikhubhai Exhibit 28, P.W. No. 6 - Danabhai Najabhai Manjariya, P.I. of ACB, Exhibit 32. Thereafter, various documentary evidence were produced before the learned trial Court. The Appellant was put on trial, where he denied the charge and claimed to be tried. The learned Judge has recorded the statement of the present Appellant-accused u/s 313 of the Code of Criminal Procedure, 1973.

4. The trial Court on appreciation of the evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts. While doing so it considered the defence version and rejected the same. Accordingly, the Appellant was convicted and sentenced as narrated above by the trial court.

5. Learned advocate Mr. H.N. Joshi appearing on behalf of the Appellant has submitted that the judgment and order is bad in law and against weight of evidence. Even charge and examination of the accused are not in conformity with the provisions of the Code. He read the oral evidence of P.W.1 Hiralal Maisurbhai Chavda at Exhibit 21 and submitted that from the oral evidence of this witness, it is not proved beyond reasonable doubt to say that after application of anthracene powder on trap amount, whether the hand was washed out by Mr. Dubey or not and also conduct of the lamp operator Mr. Dubey creates doubt. The stains of anthracene powder were not found on the place or cloth or body of the accused. From bare reading of this evidence, the demand is not at all proved. He also submitted that the first demand is not proved in presence of panch. He also submitted that when initial demand is not proved then no question of conviction arise. He further submitted that the complainant is the best witness for ascertaining the aspects of the demand and in turn acceptance, but, here in the present case, the complainant had expired and he was not examined, therefore, the conviction and sentence is required to be set aside. Learned advocate further submitted that the marks of anthracene powder were not found on the body of the accused. From the evidence of this witness, there is nothing come out about demand made by the accused. He read the oral evidence of P.W.2 Ramjibhai

Hansrajbhai Patel, Exhibit 23, who was engaged in selling electric motor, but, from his evidence also, it is not at all established that the demand was made by the accused at any time. Learned advocate has also read the oral evidence of P.W.3 Jagdishbhai Mahendrahai Thakar, at Exhibit 24. He has admitted that since long time has been elapsed, he could not properly identify the accused. He made his signature in the panchanama. Learned advocate read the evidence of P.W.4 Thobhanbhai Panchalbahi at Exhibit 27 and submitted that this witness in his cross-examination, has not admitted that the accused demanded Rs. 300/-per connection from the complainant. Even from the evidence P.W. 5 and P.W.6, the demand is not established and when the demand is not established, the conviction and sentence is required to be quashed and set aside. He further submitted that the witnesses have not supported the case of the prosecution. The complainant, who filed complaint, had expired and therefore, the material witness, the complainant was not examined and therefore, there is no reason to believe the say of the other witnesses, who were not present at the time of demand and acceptance on the part of the Appellant. Even the statement recorded u/s 313 of the Code of Criminal Procedure has not been properly appreciated by the learned Special Judge. He drew the attention to the contents of complaint as well as panchnama. He lastly submitted that the conviction and sentence passed by the learned Special Judge is required to be quashed and set aside by allowing this Appeal.

6. Learned APP Mr. H.L. Jani for the State, vehemently opposed the submissions made by the learned advocate Mr. Joshi. He has read the charge, complaint and panchnama and submitted that the prosecution has proved the case against the accused beyond reasonable doubt. He has read the oral version of panch witness and stated that in presence of this witness, the complainant talked with present Appellant regarding electricity connection and present Appellant asked complainant that as per talk, whether the complainant brought the amount and in response, the complainant told that he had brought the amount of Rs. 1500/- as per the talk. Also the accused told the complainant to put the said amount in cover and gave it to the wife of the accused. This witness also stated that the stains of anthracene powder were found on the right hand of accused. Therefore, it is crystal clear from the evidence of this witness that the accused made demand and accepted the amount on his own, which is corroborating with the complaint, panchnama. He also drew attention to the oral evidence of P.W.2 and this witness also stated that this witness went to the house of the accused. He also read the evidence of P.W.3 and P.W 4 & 5. Learned APP also read the oral evidence of P.W.6 and submitted that on the fingers and palm of the right hand of the accused, the marks of anthracene powder were found. He further submitted that if it is believed that the accused did not take amount of bribe, then how the marks of anthracene powder were found on his hand. Mr. Jani, learned APP drew the attention of this Court to Section 4 of the Prevention of Corruption Act, 1947. Here in the present case, the motive of the accused is proved through evidence because if the accused did not want to take bribe

money, then why the accused instructed the complainant to come at home and put the amount in cover. Therefore, the accused had accepted the bribe amount from the complainant is proved through the oral as well as documentary evidence. Therefore, the learned Special Judge has properly convicted the accused for the offence as alleged.

7. Learned APP Mr. Jani also relied upon the decision of the Division Bench of this Court (Coram: Ravi R. Tripathi and J.C. Upadhyay, JJ.) in Criminal Appeal No. 323 of 2009 dated 7.12.2009 and submitted that in that case, the complainant turned hostile and after considering the evidence adduced before the trial Court, this Court has confirmed the judgment and order of the trial Court. Therefore, in this case, though the complainant had expired and he was not examined before the trial Court, that does not mean that other evidence against the accused is required to be discarded. The learned APP further submitted that the conviction and sentence passed by the learned trial Judge is required to be confirmed.

8. I have examined the record and proceedings in context with the submissions made by the rival sides. It appears from the judgment that learned Sessions Judge has specifically made attempt to frame the charge in connection of the demand and acceptance. From the oral evidence of P.W. 1 Hiralal Maisurbhai Chavda at Exhibit 21, it appears that he was serving as Gram Sevak in the office of Taluka Panchayat in Junagadh Taluka, in the year 1988. He was called by the ACB office and thereafter, he went to ACB office and ACB officer Mr. Manjaria told him for arranging trap and this witness had to become panch in the trap. The complainant was very well there on next day and ACB officer introduced the complainant to the panch. As per the complainant, he and other agriculturists wanted to take new electricity connection in their fields and the accused told him (complainant) to give Rs. 300/-per connection. Thereafter, after applying anthracene powder to the notes, which were produced by the complainant, the experiment of ultra violet lamp was carried out. The numbers of notes were written in the panchnama. This witness also further stated in his evidence that the complainant and ACB members reached at the office of accused, where the conversation of Rs. 1500/-was taken. Even the accused told complainant to put the said amount of Rs. 1500/-in the cover and handed over to the wife of the accused at his residence. This witness also stated that during the experiment of ultra violet lamp, the stains of anthracene powder were found on the hand of the accused. Therefore, it is very well established that the accused had accepted the amount on his own and thereafter, he had given cover containing the amount of trap to his wife. Even from the evidence of this witness, it has come on record that at the time of trap and when the accused had accepted the bribe money, this witness, complainant and accused were only present. Even this witness also stated in his evidence that the accused told the complainant that the accused was in need of money. This witness was cross-examined before the trial Court and also the witness admitted that he had heard total talk made between the complainant and accused. I have perused the evidence of P.W. 2 Ramjibhai Hansrajibhai Patel, at Exhibit 23. The evidence of P.W.3 Jagdishbhai

Mahendrabhai Thakar at Exhibit 24 focused on the experiment on the notes before the trap and he admitted that he had made signature on the panchnama. He also admitted that after such long time, he had forgotten the face of the accused. The evidence of P.W.4 Thobhanbhai Panchalbhai at Exhibit 27 clearly says that this witness was one of the agriculturists and he was with the complainant for taking new electricity line at his field. He also stated that the deal was finalized with the accused to the tune of Rs. 300/-per connection. In his cross-examination, this witness also admitted such thing. Therefore also, it is clear that the accused made demand of bribe money. I have also perused oral evidence of P.W.5 Dilipbhai Bhikhubha at Exhibit 28. From the evidence of P.W.6, Danabhai Najabhai Manjariya, Exhibit 32, it clearly transpires that while carrying out the experiment of ultra violet lamp, the marks of anthracene powder were found on all the fingers and palm of the right hand of the accused. It has come out that the trap was carried out at the residence of the accused. It has also come from the evidence of other witnesses that the place of trap, was the residence of the accused. From the complaint, it is also established that the accused made demand of Rs. 300/-per person, for giving the electricity connection to the complainant along with other agriculturists. The complainant paid Rs. 500/-as advance to the accused. The contents of panchnama is fully corroborated with the contents of complaint. I have perused statement recorded u/s 313 of the Code of Criminal Procedure, wherein the accused did not make any attempt to controvert the allegations levelled against him. Under such circumstances, in the instant case, when the prosecution successfully proved the basic facts, which is required to be proved in the case, arising under this Act, mere fact that the complainant was not examined as he had expired, it would not be sufficient to interfere with the finding of guilt recorded by the trial Court. I have perused Section 4 of the Act, 1947 (Old Act).

9. Keeping in mind the evidence adduced by the prosecution on record, the trial Court has rightly appreciated the evidence. There is no reason whatsoever for this Court to interfere with either the reasonings assigned by the trial Court while appreciating the evidence on record or to interfere with the ultimate conclusion arrived at by the trial Court on the basis of the appreciation of evidence on record adduced by the prosecution. When such is the situation, I am of the considered opinion that the appeal is devoid of any merits and deserves dismissal.

10. All the submissions made on behalf of the Appellant being devoid of any substance, I do not find any merit in this appeal and it is dismissed accordingly. The judgment and order dated 29.6.1996 passed by the learned Special Judge, Junagadh, in Special Case No. 7 of 1989 is confirmed. Appellant is on bail and in view of dismissal of appeal, his bail bond is cancelled and he is directed to surrender before the Jail Authority within four weeks from the date of this order, failing which, the concerned Court shall issue non-bailable warrant against the Appellant - accused to effect his arrest. R & P to be sent back to the trial Court, forthwith.

CRIMINAL APPEAL No. 695 of 1996:

In the instant case, the trial Court awarded sentence of R.I for one year and fine of Rs. 3000/-and in default, S.I for six months for the offence punishable u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1947. Considering the facts and circumstances of the case and the evidence on record, I am of the considered opinion that the trial Court cannot be said to have exercised its discretionary powers while fixing the quantum of punishment either illegally or arbitrarily and there does not appear that the sentence awarded is disproportionate to the crime committed by the Appellant. In the result, the Criminal Appeal deserves dismissal. Hence, dismissed.