

**(2009) 09 GUJ CK 0050**

**In the Gujarat High Court**

**Case No :** Criminal Appeal No's. 532 and 769 of 1998

Mafaji Sardarji Vaghela

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 15-09-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 374  
Penal Code, 1860 (IPC) — Section 408

**Citation :** (2009) 09 GUJ CK 0050

**Hon'ble Judges :** K.A. Puj, J;A.L. Dave, J

**Bench :** Division Bench

**Advocate :** Nitin M. Amin, C.B. Dastoor and K.S. Jhaveri, for the Appellant; L.R. Pujari, Additional Public Prosecutor, for the Respondent

## **Judgement**

A.L. Dave, J.—These two Appeals arise out of the judgment and order rendered by Special Judge, Banaskantha, Palanpur in Special Case No. 45 of 1993 under the Prevention of Corruption Act.

2. Mafaji Sardarji Vaghela came to be arrayed as accused No. 1 before the trial Court alongwith one Firdosali Akbarali Saiyed as accused No. 2. As per the prosecution case both these persons were working as Armed Police Constable at Chhapi Police Station. PSI - Shri I.D. Valamiya was working as such at Chhapi Police Station and, was investigating at Chhapi Police Station, CR No. 39 of 1991 for the offence punishable u/s 408 of Indian Penal Code. In connection with that Motiji Mohanji Parmar was called for interrogation on 10.5.1991 and to expedite the work it is alleged that both the persons demanded illegal gratification of Rs. 1,000/- by way of bribe. However, after some hackling the amount was fixed at Rs. 500/- with Hemraj Chetrajji and Motiji Mohanji. On that day accused No. 2 was approached at about quarter past three in the afternoon who in turn asked Hemraj Chetrajji to pay Rs. 500/- at a stall but the complainant refused to do so as he did not know the owner of the stall. The complainant, however, said that he did not know therefore, how to give money was the question, therefore

accused No. 2 Firdosali Akbarali Saiyed called him at the room of accused No. 1. The complainant, therefore, lodged a complaint with the ACB who in turn called panch witnesses, prepared panchnama while keeping notes of denomination of Rs. 100/- each totaling to Rs. 500/- and when he approached accused No. 1 at his residence he demanded and accepted the bribe and put the money between two mattresses lying on the cot and then went for taking bath. The panch who was accompanying the first informant was standing outside the door, gave a signal to the rest of the members of the raiding party. They came and found two currency notes lying between the mattresses on the cot. Accused No. 1 was thereafter examined under ultra-violet lamp but no marks were found on his hands. The currency notes were seized, detailed panchnama in this regard was drawn and after obtaining sanction, charge-sheet was filed and Special Case No. 45 of 1993 came to be registered. Both the accused persons pleaded not guilty to the charge and came to be tried.

3. The trial Court came to the conclusion that the prosecution was successful in proving case against accused No. 1 - Mafaji Sardarji Vaghela and as such convicted him for the offence punishable under Prevention of Corruption Act and sentenced him R.I. for one year with a fine of Rs. 1,500/- in default S.I. of one year. The trial Court, however, concluded that the prosecution was not successful in proving the case against accused No. 2 - Firdosali Akbarali Saiyed.

4. Aggrieved by the judgment and order accused No. 1 - Mafaji Sardarji Vaghela has preferred Criminal Appeal No. 532 of 1998 whereas the State of Gujarat has preferred Criminal Appeal No. 769 of 1998 u/s 374 of the Criminal Procedure Code.

5. Since both the Appeals arise out of the same order they are both heard together and they are disposed of by this common judgment.

6. For the sake of convenience appellant in Criminal Appeal No. 532 of 1998 is addressed as accused No. 1 and the respondent in the State Appeal No. 769 of 1998 is addressed as accused No. 2 in this judgment.

7. We have heard learned advocate Mr. Amin for accused No. 1 and learned Additional Public Prosecutor Mr. L.R. Pujari for the State.

8. For the sake of convenience we take up the case in respect of accused No. 2 first. Upon examining the record and proceeding we find that the involvement of accused No. 2 is nowhere to be found in the evidence, neither at the time of first demand nor at the time of trap was he present and, therefore, trial Court was justified in recording his acquittal. The learned Additional Public Prosecutor is not in a position to controvert this factual aspect in the case.

9. This leaves us to consider the case of accused No. 1. In this regard it may be noted that so far as first demand is concerned, as usual there is no evidence except that of the first informant. There is no corruption in that regard.

10. Since first demand is not proved through corroborative evidence we have to

examine the evidence in respect of second demand and so called acceptance. In this regard it may be appreciated that the first informant has ascertained that accused No. 1 made a demand when he approached him at his residence and after inquiring as to why they had come late he accepted the bribe and put the money between the mattresses lying on the cot. Thereafter, accused No. 1 went into the bathroom for taking bath. During this entire transaction it has come in the evidence that panch No. 1 was standing outside the room. He has stated in his deposition that he could not hear what transpired between accused No. 1 and the first informant. Resultantly, the so called second demand is also not properly proved by the prosecution through independent evidence.

11. So far as acceptance part is concerned, it is the case of the first informant that the accused No. 1 accepted the money in his hand and then put them under the mattresses lying on the cot and then went for bath. The first informant did not do anything, even thereafter to call the witness although he was supposed to give the signal immediately on acceptance of the money. It is panch No. 1 who gave the signal to the remaining members of the raiding party.

12. When person of accused No. 1 is examined under ultra-violet no stains of anthracene powder are found either on person or on his cloth. The currency notes are recovered as lying between two mattresses on the cot. The evidence of the eye witnesses centered a cloud of doubt when circumstantial evidence in the form of stains of the anthracene powder are not found on the hands of accused No. 1. If he had accepted the money his hands would certainly have stained with the anthracene powder and that has not happened. Under the circumstances, the factum of acceptance of money cannot be said to have been proved upto the hilt.

13. The trial Court has overlooked this lacuna in the prosecution evidence and has recorded conviction of accused No. 1 on the ground that the transaction took place in the house of accused No. 1 and the currency notes were found beneath the mattresses. When the independent panch witness admits that he stood outside the room during the entire transaction he could not hear what transpired between accused No. 1 and the complainant. Mere finding of currency notes in absence of any other evidence is of no consequence for the reason that admittedly accused No. 1 went into the bathroom to take bath, the complainant therefore had ample opportunity to plant currency notes beneath the mattresses.

14. We may add here that complainant was treated hostile and did not support the prosecution case. The evidence of independent witnesses in the form of panch, as discussed earlier, would not inspire confidence. The trial Court, therefore, committed error in convicting accused No. 1. The benefit made available to accused No. 2 also should have been made available to accused No. 1. In these set of circumstances we are of the view that the Appeal against conviction bearing Criminal Appeal No. 532 of 1998 deserves to be allowed and the same is allowed. The conviction of the appellant recorded by Special Judge, Banaskantha, Palanpur in Special Case No. 45 of 1993 is hereby set aside. Accused No. 1 is acquitted of charges levelled against him. His bail bond shall

stand cancelled. Fine if paid shall be refunded to him.

15. So far as Criminal Appeal No. 769 of 1998 is concerned, as discussed earlier, presence of accused No. 2 is not proved either at the time of first demand or at the time of second demand and acceptance and, therefore, his involvement is not proved by the prosecution. The trial Court was justified in recording his acquittal. Under the circumstances, we do not find any merit in the Appeal by the State bearing No. 769 of 1998 against acquittal of accused No. 2. We do not find any perversity in the order. It cannot be said that the prosecution has proved that the accused No. 2 was involved in the offence in any manner. No interference is called for in exercise of appellate jurisdiction in the State Appeal. Criminal Appeal No. 769 of 1998 stands dismissed.