

(2013) 10 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1551 of 2005

M.V.S. Vara Prasad

APPELLANT

Vs

The Inspector of Police, A.C.B.

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2014) 2 ALD(Cri) 26 : (2014) 1 ALD(Cri) 429

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : Sangeeta Deshmukh, Legal Aid, for the Appellant; Ghani Musa, Special Public Prosecutor and Standing Counsel for A.C.B., for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—This criminal appeal is preferred by the accused aggrieved by the conviction and sentence passed by the Additional Special Judge for S.P.E. and A.C.B. Cases, City Civil Court, Hyderabad in his judgment dated 26.09.2005 in C.C. No. 14 of 2000 whereunder the learned judge sentenced him to undergo Rigorous Imprisonment for a period of two(2) years and to pay fine of Rs. 1,000/- on two counts for the offences u/s 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short "P.C. Act"). The facts led to file the present appeal are succinctly thus:

a) The accused worked as a Mandal Revenue Inspector, Kothapalli Mandal in Kurnool District. The prosecution case is that the family of PW.1 purchased land in S. No. 880/B admeasuring Ac. 5-40 cents situated in Dudyala Revenue Village from one Boya Laxmaiah of M. Lingampally village and they have been in possession and enjoyment of the same. During the year 1977 when the grandsons of Boya Laxmaiah applied for pattadar pass book in respect of the land sold away by Boya Laxmaiah ignoring the sale, PW. 1 met the accused at his office on 24.08.1998 and requested to issue pattadar pass book in the name of his father, brother and himself for the land purchased by them. The accused asked PW. 1 to meet him at his residence at Atmakur. When PW.1 met him at his

residence on 25.08.1998, the accused demanded illegal gratification of Rs. 5,000/- from PW.1 to do official favour i.e., making necessary enquiry and submitting favourable report to M.R.O. for issuance of pattadar pass book to PW.1. On that day, it is alleged, the accused demanded and accepted Rs. 1,000/- as a part payment of bribe. On 29.08.1998, the accused visited M. Lingampally village and enquired neighbouring land owners about the disputed land and at that time, he again demanded and accepted Rs. 2,000/- as further part payment. The accused directed PW.1 to pay the balance bribe amount within a week as otherwise he would not submit his report in their favour. Unwilling to pay bribe, PW.1 lodged Ex.P.1 complaint with PW.10, the Inspector of Police, A.C.B. on 03.09.1998 which was registered as case in Crime No. 6/ACB/KUR/98. On 04.09.1998, PW.10 laid trap against accused with the help of mediators. On 04.09.1998, PW.1 approached the residence of accused at Atmakur at about 8:35 am. The accused demanded and accepted the tainted currency of Rs. 2000/- from PW.1. When fingers of his both hands were subjected to sodium carbonate solution test, they yielded positive result. The tainted currency of Rs. 2000/- was recovered from the possession of the accused at the instance of accused from a black rexine handbag. On completion of formalities and obtaining sanction from the Government, the Investigating Officer filed charge sheet against the accused u/s 7 and 13(1)(d) read with 13(2) of P.C. Act.

b) On appearance of accused, the trial Court framed charges u/s 7 and 13(1)(d) r/w 13(2) of P.C. Act.

c) During trial, prosecution examined PWs.1 to 11 and exhibited documents marked as Exs.P.1 to P.20 and produced M.Os.1 to 20. On behalf of accused, Ex.D.1 was marked.

d) While denying the demand and acceptance of bribe, the contention of accused is that one Chandra Sekhar Reddy, who is resident of M. Lingampally Village, set up PW.1 to wreak vengeance against accused. The said Chandra Sekhar Reddy took a hand loan of Rs. 2,000/- from the accused and failed to repay the same and the accused officer chastised Chandra Sekhar Reddy several times in that context. On the date of trap i.e., on 04.09.1998, Chandra Sekhar Reddy repaid the said amount of Rs. 2,000/- through PW.1 and implicated the accused by dubbing the said amount as bribe. To establish his defence plea, the accused referred the 164 Cr.P.C. statement of PW.1 wherein PW.1 stated that the accused never demanded and accepted any bribe from him and on the date of trap, he gave Rs. 2,000/- to the accused towards repayment of hand loan obtained by Chandra Sekhar Reddy. Besides, the accused also produced Ex.D.1 which is the deposition of PW.1 in C.C. No. 1 of 1996. The said case was instituted by A.C.B. Police against one Subba Rayudu at the instance of Chandra Sekhar Reddy. In that evidence, PW.1 deposed as DW.1 that he paid Rs. 2,000/- to the accused/appellant as the amount repaid by Chandra Sekhar Reddy. Thus, the accused relied upon the 164 Cr.P.C. statement and Ex.D.1 to buttress his claim.

e) However, the trial Court did not believe the defence plea of accused and

ultimately convicted and sentenced him as stated supra. Hence, the appeal.

2. Heard Smt. Sangeeta Deshmukh, learned legal aid counsel for appellant and Sri Ghani Musa, learned Special Public Prosecutor and Standing Counsel for A.C.B.

3. Fulminating the judgment of trial Court, the learned counsel for appellant argued that the evidence of the de facto complainant i.e., PW.1 which was mainly relied upon by the trial Court to convict the accused is not at all trustworthy inasmuch as PW.1 gave different versions at different stages. Expatiating it, learned counsel submitted that though in the chief examination PW.1 deposed in tune with the prosecution case and stated that on the fateful day he gave Rs. 2,000/- to accused at his residence as a bribe, in his previous statements i.e., in his earlier 164 Cr.P.C. statement and also in his previous deposition in C.C. No. 1 of 1996 marked as Ex.D.1, he presented altogether a different version to the effect that on that day he gave Rs. 2,000/- to accused as a repayment of debt due from one Chandra Sekhar Reddy to accused. Learned counsel pointed out that the aforesaid admission on the part of PW.1 in his previous statements would show that his evidence before this Court regarding alleged demand and acceptance of bribe by accused is improvisation and utter false. PW.1 projected a lame excuse for his previous version in his 164 Cr.P.C. statement and deposition in C.C. No. 1 of 1996 as if because he was threatened by the brothers-in-law of the accused. In the cross examination he deviated from that stand and stated as if he was threatened by somebody. Learned counsel thus argued that PW.1 changed his versions on crucial facts from stage to stage and hence his evidence ought to have been rejected by the trial Court but unfortunately the trial Court did not appreciate his evidence in a proper manner. Omitting PW.1, no other evidence on record is sufficient to establish that PW.1 paid an amount of Rs. 2,000/- to accused on 04.09.1998 as bribe but not as repayment of debt due by Chandra Sekhar Reddy to accused. She thus prayed that appeal may be allowed and conviction and sentence may be set aside.

4. Per contra, learned Special Public Prosecutor argued that PW.1 in his evidence has consistently deposed that the accused in order to send a favourable report to M.R.O. for issuance of pattadar pass book to the family of PW.1 has demanded Rs. 5,000/- as bribe and received Rs. 1,000/- and Rs. 2,000/- from him on two occasions and accepted the balance amount of Rs. 2,000/- from PW.1 on 04.09.1998 at his residence. Learned Special Public Prosecutor argued that it is the consistent case of PW.1 that he paid Rs. 2,000/- to accused only as bribe and not otherwise. That the accused received Rs. 2,000/- from PW.1 is proved by recovering the same from his rexine bag at his instance and also by conducting chemical test which yielded positive result and also through mediators. Of course, the accused did not deny having received Rs. 2,000/- from PW.1. Learned Special Public Prosecutor argued that in view of these facts presumption u/s 20 of P.C. Act squarely applies against the accused and it is for him to establish that he did not receive the amount as bribe. He argued that except relying on the two previous statements of PW.1, the accused did not produce any

cogent material to the satisfaction of the trial Court to establish that he received the amount as a repayment of loan by Chandra Sekhar Reddy. Learned Special Public Prosecutor vehemently argued that accused did not give any spontaneous explanation before trap party members to that effect which is evident from Ex.P. 12 post trap proceedings dt. 04.09.1998. Hence the theory of receiving amount as a repayment of loan put forth by accused is only an afterthought. Learned Special Public Prosecutor submitted that PW.1 who was a rustic villager was threatened by the brother-in-law of the accused and some others to give a favourable statement and that was why he stated in his previous statement i.e., in his earlier 164 Cr.P.C. statement and in his deposition in C.C. No. 1 of 1996 as if he paid the amount to accused towards the loan repaid by Chandra Sekhar Reddy. The trial Court accepted his explanation and did not give weight to his previous statements and rightly convicted the accused and hence there is no need to interfere with its judgment in this appeal.

5. In the light of above divergent arguments, the point for determination in this appeal is:

Whether PW.1 paid amount of Rs. 2,000/- to accused at his residence on 04.09.1998 as a part of bribe demanded by accused or towards repayment of loan of Chandra Sekhar Reddy?

6. POINT: Prosecution to establish its case mainly depended on the evidence of PW.1, PW.2 and PW.10. PW.1 Boya Raghu Ramudu is the de facto complainant. In his evidence we will find that when he approached the accused, who was MRI of M. Lingapuram of Kothapalli Mandal for issuance of pattadar pass book in respect of the land purchased by his father from one Boya Laxmaiah, the accused demanded bribe of Rs. 5,000/- for sending a favourable enquiry report. PW.1 expressed his inability on the ground of his poverty. On the insistence of the accused, PW.1 paid Rs. 1,000/- on one occasion and Rs. 2,000/- on another occasion to him as part of the bribe. Upon that the accused went to the fields and made enquiry. He insisted for payment of balance amount of Rs. 2,000/- in order to send the report to M.R.O. Unwilling to pay any more amount, PW.1 lodged Ex.P.1 complaint with the A.C.B. police and then a trap was laid against accused by PW.10 on 04.09.1998. He went to the residence of accused. On seeing him, the accused enquired whether he brought the money and the forms and photographs. PW.1 affirmed and handed over the tainted currency notes which the accused received and counted and kept in a rexine bag. He then handed over the forms and photographs to accused. He then came out and gave prearranged signal to trap party and they rushed inside and caught hold the accused.

7. The above is precisely the evidence of PW.1 regarding the demand and acceptance of bribe by accused. His evidence could not be shattered in the cross examination. However, his credibility is sought to be impeached with reference to his earlier 164 Cr.P.C. statement and his evidence in C.C. No. 1 of 1996 marked as Ex.D.1. In those previous statements PW.1 admitted to have stated that he

paid an amount of Rs. 2,000/- to accused on 04.09.1998 towards repayment of loan of Chandra Sekhar Reddy. However he tried to give an explanation that due to threat offered by somebody, he deposed in such a fashion on earlier occasions. Now the question is how far the evidence of PW.1 is reliable in view of different versions given by him at different stages.

8. The two previous statements which are sought to impeach the credibility of PW.1 are his 164 Cr.P.C. statement and his evidence in C.C. No. 1 of 1996 as DW.3. Admittedly PW.1 gave a different reason in those previous statements for payment of Rs. 2,000/- to accused. The evidentiary value of the statement of a witness under 164 Cr.P.C. is concerned, it is not substantive evidence but it can be used only to corroborate or contradict that witness at a later stage u/s 157 of the Indian Evidence Act, 1872. We will find this proposition of law in the following decisions: State of Delhi Vs. Shri Ram Lohia, Ram Kishan Singh Vs. Harmit Kaur and Another, . So also the previous statement of a witness can be used to contradict him and impeach his credibility u/s 155(3) of the Indian Evidence Act, 1872. Hence the accused pressed into service the two aforesaid previous statements of PW.1.

9. Generally when a witness gives different versions on same facts at different stages of a case, his credibility will be doubted and the Courts before accepting his evidence, seek for corroboration on material particulars. When a witness submits cogent explanation to the satisfaction of the Court as to under what compelling circumstances he had earlier given a statement which is different from the version in his evidence subsequently, the Court can accept the same. In the present case, the trial Court accepted the explanation of PW.1 to the effect that due to the threat given by somebody, he did not give correct statement before the Magistrate at Atmakur and that in fact he gave Rs. 2,000/- to the accused as bribe but not otherwise. Further, the trial Court found corroboration of this material fact from Ex.P.12- post trap proceedings by observing that accused did not give a spontaneous explanation in Ex.P-12 that PW.1 paid him Rs. 2,000/- towards discharge of loan by Chandra Sekhar Reddy. The trial Court observed that had the accused officer received the said amount as loan amount, he would have stated so in his spontaneous explanation before PW.10. It must be noted that PW.1 is a rustic, illiterate and a poor villager. Such a person, due to the threat and coercion applied by somebody must have given different version in his previous statements. The trial court rightly rejected the defence plea based on the previous statements of PW.1 and convicted the accused. This Court finds no illegality or irregularity in the judgment of the trial Court. Accordingly this criminal appeal is dismissed by confirming the conviction and sentence passed by the trial Court.