

(2011) 10 GUJ CK 0030
In the Gujarat High Court
Case No : Criminal Appeal No. 31 of 1999

Narendra Champaklal Trivedi and 1 Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2), 20, 7

Citation : (2011) 10 GUJ CK 0030

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

Bench : Single Bench

Advocate : K.J. Shethnas 1-2, for the Appellant; H.L. Jani, Ld. Addl. Public Prosecutor, for the Respondent

Judgement

Z.K. Saiyed, J.—The present appeal, filed u/s 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 01st December, 1998 passed by the learned Additional Special Judge, Bhavnagar, in Special Case No. 06 of 1994 (A.C.B.) whereby the learned Special Judge was pleased to convict the appellants for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and sentenced them to undergo rigorous imprisonment for a period of six months with fine of Rs. 5,000/- each, and in default of payment of fine; sentenced them to undergo simple imprisonment for a further period of one month. The appellants were also convicted for the offence punishable u/s 13(2) of the Prevention of Corruption Act, 1988 and were sentenced to undergo rigorous imprisonment for a period of one year with fine of Rs. 5,000/- each, and in default of payment of fine; sentenced them to undergo simple imprisonment for a further period of one month. However, both the sentences were ordered to run concurrently. As per the case of the prosecution, the complainant was residing in Plot No. 1 in Virbhadrnagar Society. In the City Survey record, that premises was standing in the name of his grandfather, who is not alive. The complainant want to obtain property card and the sketch of those premises and therefore, submitted an

application in the office of the City Survey, Bhavnagar. On 11th March, 1994 the complainant met one Mr. Jagani, Clerk in the said office, who asked him to come on the next day, but as it was holiday, asked the complainant to come on 15th March, 1994. On 15th March, 1994 at about 13.30 hours the complainant went to the City Survey Office and met Mr. Jagani and gave the application for the property card and sketch. Thereafter, Mr. Jagani told the complainant to handover the said application to one Mr. Trivedi, who was sitting in the room opposite to his room. Mr. Trivedi told the complainant that it would take about 7 to 8 days to prepare the said copies. Therefore, again the complainant met Mr. Jagani and told him that he had to go his native place on Thursday and had to show those copies to his father and therefore, asked Mr. Jagani that if he would receive the copies before Thursday, then it would be better. Therefore, Mr. Jagani replied that in such haste the work could not be done. Again the complainant asked Mr. Jagani that it would be better if he get the copies before Thursday, to which Mr. Jagani replied that it would dearly costing. The complainant therefore asked him how much, to which Mr. Jagani replied that it would be Rs. 50/-. The complainant asked Mr. Jagani that he would be able to get the copies on the same day if he makes payment of Rs. 50/-, to which Mr. Jagani replied that if he paid him money, then immediately he would prepare the copies and hand it over to him. Thereafter, the complainant told Mr. Jagani that he had not brought the money. Mr. Jagani told the complainant to meet Mr. Chauhan and Mr. Trivedi and tell them that Jagani had asked him to get the copies. Mr. Chauhan and Mr. Trivedi were sitting in the said room. Thereafter, the complainant met Mr. Chauhan and told him accordingly and Mr. Chauhan told Mr. Trivedi that on the very day the copies were to be given to the complainant and asked him that he should take in the evening between 16.30 hours and 16.50 hours.

2. Thereafter, as the complainant was not willing to make the payment, he approached the office of the Anti Corruption Bureau, which is situated on the ground floor of his residence, and gave his complaint to Police Inspector of A.C.B. Thereafter, services of two panchas were sought for. The facts of the case were narrated to them and thereafter experiment of U.V. Lamp was carried out with the help of anthracene powder. The basic ingredients of the anthracene powder were explained and made understood to the panchas as well as the complainant. Thereafter, the complainant produced the currency notes. Thereafter, the Investigating Officer gave necessary instructions to the complainant as well as to the panchas. Thereafter, preliminary part of the panchnama was drawn and signature of the panchas were taken below the panchnama. Thereafter, the complainant, panchas and members of the raiding party proceeded towards the City Survey Office.

3. Thereafter, the complainant and panch No. 1 met Mr. Jagani who told-that he should go to Mr. Chauhan and pass-on the money to him and that copies must have been ready. Thereafter the complainant along with panch No. 1 went to Mr. Chauhan, who was busy with the work and therefore, asked them to sit for some time. Thereafter Mr. Chauhan told the complainant to make payment of fees and

get the receipt. Therefore, the complainant make the payment of fees, i.e. Rs. 7.10 paisa and obtained receipt from Mr. Trivedi. Thereafter, after some time, Mr. Trivedi handed over the copies as demanded by the complainant by making entries in the register. Thereafter, when Mr. Chauhan demanded money from the complainant as decided, the complainant asked as to whom the money should be given. Therefore, Mr. Chauhan told the complainant to give the said money to Mr. Trivedi, who had given him receipt, and told Mr. Trivedi "Narendrabhai, accept it". Therefore, the complainant took out the amount of Rs. 50/- from left pocket of his shirt and handed over to Mr. Narendrabhai Trivedi, which was accepted by Mr. Trivedi by his right hand, counted the same by both the hands and put the said currency notes in his left side pocket of shirt. Thereafter, the complainant gave pre-decided signal to the members of raiding party. Thereupon the members of the raiding party rushed to the place of incident. Thereafter, after giving his identity, P.I. asked Chauhanbhai and Trivedibhai about their name and post. Thereafter, experiment of U.V. Lamp was carried out. On fingers of both the hands and on palm of Mr. Trivedi and on pocket also, light blue fluorescent marks were found. Thereafter panch No. 1 took out the currency notes from the pocket of Mr. Trivedi; out of which on three notes of Rs. 10/- and one note of Rs. 5/-, light blue fluorescent marks were found. Number of three notes of Rs. 10/- were got tallied with the number mentioned in the first part of the panchnama. Thereafter, P.I. asked Mr. Trivedi about other notes, to which Mr. Trivedi replied that he had given Rs. 25/- to Mr. Chauhan. Thereafter experiment of U.V. Lamp was carried out on the hands of Mr. Chauhan. On one hand of Mr. Chauhan, light blue fluorescent marks of anthracene powder was found. Thereafter when Mr. Chauhan was asked about the notes, Mr. Chauhan produced Rs. 25/- from one full-scape lying in the table. Number of two currency notes of Rs. 10/- were got tallied with the number mentioned in the first part of panchnama. On both these notes and on handkerchief, in which Rs. 25/- was covered, marks of anthracene powder was found. Thereafter the second part of the panchnama was drawn.

4. Thereafter, panchnama of above-stated facts came to be prepared. Thereafter, the Investigating Officer carried out investigation and recorded statements of various persons including the complainant and the panchas. Thereafter, after obtaining sanction, on 25th August, 1994, charge-sheet came to be filed against appellants-accused.

5. Thereafter, charge was framed at Exhibit 4 against the appellants for the offences punishable u/s 7 and 13(2) of the Prevention of Corruption Act, 1988 and read over to the appellants. The appellants pleaded not guilty and claimed to be tried.

6. In order to bring home the charges levelled against the appellants, the prosecution has examined in all three witnesses and also produced documentary evidence in support of its case.

7. Thereafter, after filing closing pursis by the prosecution, further statement of the appellants u/s 313 of the Code of Criminal Procedure, 1973 came to be

recorded wherein appellants have denied the case of the prosecution and submitted that they had never asked for amount towards illegal gratification and never accepted the amount. They have been falsely involved in the present case.

8. After considering the oral as well as documentary evidence and after hearing the parties, the learned Additional Special Judge vide impugned judgment and order dated 01st December, 1998 held the appellants-accused guilty to the charges levelled against them as mentioned hereinabove.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Additional Special Judge, Bhavnagar, the appellants have preferred the present appeal.

10. Heard Mr. K.J. Sethna, learned senior counsel for the appellants and Mr. H.L. Jani, learned Additional Public Prosecutor for the respondent-State.

11. Mr. Sethna, learned senior counsel appearing for the appellants, has contended that the judgment and order passed by the learned Additional Special Judge is illegal, invalid and improper. He has also contended that the learned Additional Special Judge has not considered the case of the defence and material evidence produced on record. He has contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, yet the learned Additional Special Judge has not considered the probable defence of the appellants and wrongly convicted the appellants. Mr. Sethna has read charge at Exhibit 4 and contended that prima-facie demand made by the appellants is not established. He has also contended that it is the duty of the prosecution to establish ingredients of Sections 7 and 13 of the Act. He has contended that when demand is not established beyond reasonable doubt, then no question can arise to convict the appellants. He has read evidence of P.W. No. 2 at Exhibit 24 and contended that when the complainant came to the office of appellants, Mr. Chauhan asked him as to whether he came with money or not, to which the complainant relied in affirmative. Mr. Chauhan therefore told the complainant that give it to Narendrabhai Trivedi and in the same room, the amount of Rs. 50/- was given to Narendrabhai by the complainant and that amount was inserted in his pocket by Narendrabhai. Mr. Sethna has further contended that from the oral evidence of P.W. No. 2, demand is not established. He has again read charge at Exhibit 4 and contended that in connection with the said contention, the prosecution has failed to prove its case. Mr. Sethna has read oral evidence of P.W. No. 1-complainant at Exhibit 10 and contended that demand is not proved beyond reasonable doubt. He has further contended that Mr. Jagani is the main accused but he is not cited as an accused in the present case. He has contended that investigation is biased and both the appellants are arrested in a false case. He has contended that the FIR does not disclose anything regarding demand. He has contended that it is a cognizable offence and demand made by the appellants is required to be established beyond reasonable doubt. Mr. Sethna has read cross-examination of P.W. No. 1 and contended that office of A.C.B. is situated in the premises of complainant. The said office is given on lease to

A.C.B. by him to the Government since 1981. Thus, just to oblige the landlord, A.C.B. has carried out bogus trap and falsely implicated the appellants in a bogus case. He has further read the cross-examination of P.W. No. 1 and contended that Mr. Trivedi has never made any demand of Rs. 50/- from the complainant. Mr. Sethna has further contended that in the morning when he went to Mr. Trivedi is different than the person whom he met in the evening, who is sitting on the chair of Mr. Trivedi. The investigating office has not at all investigated the matter on that line. He has also contended that when the complainant and panch No. 1 went to Mr. Chauhan's table, there was no talk between them except that of payment of the fees for the copy. He has further contended that there is distance between Mr. Chauhan and Mr. Trivedi's table. The prosecution has failed to prove its case beyond reasonable doubt on these points and therefore, both the appellants are entitled for benefit of doubt. He has also contended that presumption also cannot be drawn against the appellants. Mr. Sethna has also read the contents of the panchnama as well as oral evidence of P.W. No. 2 and contended that recovery of the trap amount is also not proved beyond reasonable doubt. He has further contended that the panchas are not independent witnesses. Panchas are not trustworthy and their evidence is not reliable and acceptable. He has further contended that panchnama is dictated by the investigating officer and not by the panchas. Merely witnesses have signed the panchnama dictated by the investigating officer, which is fatal to the case of the prosecution. The depositions of the complainant as well as panchas established that it was the Investigating Officer who did everything from recording of the complaint to search and seizure followed by the investigation. All the reports and other documentary evidence have been prepared by the Investigating Officer in complete disregard of the law. This creates infirmity in the case and reflects non-credibility of the prosecution case. Thus, from the oral evidence of the Investigating Officer it clearly appears that the judgment and order of conviction and sentence is erroneous and is required to be set aside. He has also contended that Mr. Jagani is the main accused in the present case, who is not before the Court. This was pointed out before the learned Special Judge, but the learned Special Judge has failed to consider this aspect of the matter and has committed grave error in convicting the appellants. Mr. Sethna has further contended that in that room other persons were also present, but for the reasons best known to the prosecution, they were not investigated. The prosecution has examined only three witnesses, who are interested witnesses. Mr. Sethna has referred judgment in the case of Gulam Mahmood A. Malek Vs. State of Gujarat, wherein it is observed that when no independent witnesses have been examined, though available, accused could not be convicted.

Mr. Sethna, therefore, contended that the prosecution has failed to prove the case of demand and acceptance beyond reasonable doubt. Looking to the evidence produced on the record and circumstantial evidence, prosecution has failed to prove the case beyond reasonable doubt against the appellants and therefore, prayed that present appeal is required to be allowed and appellants

are required to be acquitted from the charges levelled against them.

12. As against this, Mr. Jani, learned Additional Public Prosecutor, has contended that the judgment and order passed by the learned Special Judge is absolutely just and proper. He has contended that the prosecution has proved its case beyond reasonable doubt. He has contended that looking to the overall facts and circumstances of the case, circumstantial evidence and evidence produced on record, the order passed by the learned Special Judge is absolutely just and legal and is not required to be interfered with. He has also contended that the panchas have supported the case of the prosecution. Mr. Jani has read the charge and contended that it is true that Mr. Jagani is not before the Court, but at the same time it is also true that Mr. Jagani has never made any demand from the complainant. Therefore, the investigating agency had given Mr. Jagani clean-chit and he is not before the Court as an accused. Mr. Jani has read the complaint at Exhibit 11 and contended that from the complaint itself, first demand is proved beyond reasonable doubt. He has contended that appellant No. 2 has made demand from the complainant. He has also contended that the complainant has no enmity with the appellants so as to involve them in a false case and it is not even the case of the appellants. Mr. Jani has further contended that Mr. Jagani told the complainant to see Mr. Chauhan and Mr. Trivedi and not otherwise. Thus, when Mr. Jagani is not charge-sheeted, it cannot be said that Trapping Officer has committed any wrong and has committed any illegalities or irregularities. He has read the oral evidence of P.W. No. 2 at Exhibit 24 and contended that this witness has clearly stated in his evidence the roll of Mr. Chauhan and Mr. Trivedi and demand and acceptance from the complainant. This witness has clearly stated in his evidence that Mr. Chauhan told the complainant to give Rs. 50/- to Mr. Trivedi and simultaneously told Mr. Trivedi to accept the amount of Rs. 50/- from the complainant. Mr. Chauhan has made a specific question to the complainant that "have you bring the money?" This witness has also categorically stated in his evidence that when the complainant took out the money from his pocket and handed over to Mr. Trivedi, Mr. Trivedi has accepted the said amount and put it in his pocket. Thus, from the evidence of this witness, demand and acceptance is clearly established. Mr. Jani has further contended that P.W. No. 2 is a government servant and is an independent witness. He has no enmity with the appellants to falsely implicated them in a bogus case. Evidence of P.W. No. 2 is trustworthy, reliable and acceptable. Mr. Jani has further read the oral evidence of P.W. No. 2 and contended that recovery of the amount is also proved beyond reasonable doubt. The said amount is recovered from the pocket of appellant No. 1-original accused No. 1. When experiment of U.V. Lamp was carried out on the hands of appellant No. 1, light blue fluorescent marks of anthracene powder was found on both the hands of appellant No. 1 as well as on the pocket also anthracene powder was found. Mr. Jani has contended that this witness has supported the case of the prosecution and evidence of this witness is in corroboration with the evidence of the complainant, i.e. P.W. No. 1. Thus, the prosecution has proved its case of demand beyond reasonable doubt through the

oral evidence of P.W. Nos. 1 and 2. Mr. Jani has further contended that P.W. No. 2 is an independent witness and his evidence is trustworthy, reliable and acceptable and is in corroboration with the evidence of the complainant. Mr. Jani has further contended that in furtherance of the demand, appellant No. 1 had accepted the said amount from the complainant and put the same in his shirt's pocket. He has further contended that the conduct of the appellant No. 1 shows that he has committed wrong and he is wrongdoer. This conduct of the appellant No. 1 is required to be looked into. This shows that just to obtain illegal gratification and pecuniary advantage from the complainant, appellant No. 1 had made demand. This shows that appellant No. 1 is guilty of the charge levelled against him. Mr. Jani has further contended that thus when the trap amount was recovered from the possession of the accused, it is the duty of the accused to explain how the trap amount is found from his possession. Mr. Jani has read the statement of appellant No. 1 recorded u/s 313 of the Code of Criminal Procedure and contended that appellant No. 1-original accused No. 1 has failed to explain as to how from his possession the trap amount is recovered and also failed to explain as to how anthracene powder was found from his both the hands and on his pocket. Mr. Jani has further contended that both the appellants are identified by the complainant. He has further contended that demand is made by appellant No. 2-original accused No. 2 and then he directed the complainant to handover the amount of illegal gratification to appellant No. 1-original accused No. 1. Thus, both the appellants have committed the offence with consenting mind. He has also read oral evidence of PW No. 5-Trapping Officer and contended that from the oral evidence of this witness, contents of panchnama as well as complaint is proved beyond reasonable doubt. Mr. Jani has contended that no doubt this witness is a Trapping Officer, but he is an independent witness and he has no ill-intention to falsely implicate the present appellants in a case. Even it is not the case of the appellants that the Trapping Officer is biased. He has further contended that during the search, light blue fluorescent marks were found on both the hands of appellant No. 1 and on the hand of appellant No. 2. He, therefore, contended that presumption u/s 20 of the Prevention of Corruption Act, 1988 is required to be drawn against the present appellants that appellants have accepted the amount and it is the duty of the appellants to rebut the said presumption by offering reasonable and probable defence. In the instant case, the appellants were not able to offer any probable defence regarding presence of anthracene powder on hands and even on shirt's pocket of appellant No. 1. Mr. Jani has contended that thus, the prosecution has successfully proved the ingredients of Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Mr. Jani has also contended that thus when the appellants have not come out safely from the provision of Section 20 of the Act, judgment and order of conviction and sentence can be confirmed on that point only.

Mr. Jani has relied upon judgment in the case of T. Shankar Prasad Vs. State of Andhra Pradesh, and contended that both the appellants are equally responsible for the said act. Mr. Jani therefore, contended that thus the first demand, second

demand, acceptance and recovery is proved beyond reasonable doubt and when the appellants have failed to rebut the said presumption drawn against them u/s 20 of the Act, present appeal is required to be dismissed and judgment and order of conviction and sentence is required to be confirmed.

13. I have heard learned counsel for the respective parties and perused the papers produced before me. I have also considered the submissions advanced by the learned counsel for the parties. I have also perused the Case Diary of this case, which is produced by Mr. H.L. Jani, learned Additional Public Prosecutor. It appears from the oral evidence of P.W. No. 1-complainant, demand and acceptance is proved beyond reasonable doubt. It appears that both the appellants were present in the room and in presence of panch No. 1, appellant No. 2 had demanded the money from the complainant and directed the complainant to hand it over to appellant No. 1. Thus, there is consenting mind of both the appellants and in consenting mind, both the appellants have committed the said act. I have also perused oral evidence of P.W. No. 2. This witness has clearly deposed in his evidence that appellant No. 2 specifically made a question to the complainant that "have you bring the money?", this shows the conduct of appellant No. 2. Therefore, the complainant has handed over the amount, as demanded by appellant No. 2, to appellant No. 1, which was accepted by him. Thus, both the appellants with consenting mind committed the said wrong act. This witness is an independent witness and a public servant. This witness has supported the case of the prosecution and deposed that in his presence, the appellant No. 2 had made the demand. The PW No. 2 is not having any enmity with the appellants. He is not biased and he has no interest to involve the appellants in a false case. The evidence of P.W. No. 2 suggests that this witness has not made any mistake in narrating the entire episode in his deposition, which inspires confidence about his credibility and reliability. In the instant case, main part of the prosecution in relation to the demand raised by the appellants in consenting mind is corroborated by the evidence of P.W. Nos. 1 and 2 coupled with the contents of the complaint. I have no hesitation to say that when substance of the depositions appears to be same so far as demand is concerned, I am in agreement with the judgment and order passed by the learned Special Judge. The prosecution has proved its case beyond reasonable doubt so far as demand, acceptance and recovery is concerned. The appellants have demanded money from the complainant in the form of illegal gratification. Thus, ingredient of Section 7 of the Act is proved beyond reasonable doubt.

I have further perused the oral evidence of P.W. Nos. 1 and 2 in connection with the acceptance and recovery. It clearly transpires from the evidence of both these witnesses that on being demanded by the appellant No. 2, the complainant-PW No. 1 took out the currency notes from his pocket, which were accepted by appellant No. 1, on the direction given by appellant No. 2, and had put the said notes in his shirt's pocket. This conduct of the appellants clearly suggest that they have committed wrong. Thus, it is proved that the appellants are wrongdoer and it can be said that ingredients of Section 13(1)(d) read with Section 13(2) is

proved. I have further perused the papers and it is evident from the papers produced before me that the said currency notes were recovered from the possession of the appellants. It also appears from the papers that light blue fluorescent marks of anthracene powder was found on the hands of appellants and on the shirt's pocket of appellant No. 1. Therefore, presumption u/s 20 of the Act is required to be drawn against the appellants. It is the duty of the appellants to rebut the said presumption. In this connection, I have perused further statement of the appellants recorded u/s 313 of the Code of Criminal Procedure. In the further statement the appellants have tried to explain their defence version but the appellants have failed to establish the defence version beyond reasonable doubt. The appellants have failed to explain as to how the amount in question was found in their possession and as to how light blue fluorescent marks of anthracene powder was found on their hands and outside shirt's pocket of appellant No. 1. The appellants have failed to rebut the said presumption by leading probable defence. Thus, when demand and acceptance is proved and when the appellants have failed to rebut the presumption u/s 20 of the Prevention of Corruption Act, 1988, I am of the opinion that prosecution has proved its case beyond reasonable doubt. I have also perused the oral evidence of Trapping Officer. It is true that he is a police officer, but the defence has not produced any evidence to suggest that the Trapping Officer is biased or that he has committed any illegality. Trapping Officer is an independent witness and he is not having any ill-intention to involve the appellants falsely. He has supported the case of the prosecution. The defence has failed to prove the probable defence. I have not found anything to accept the defence version of the appellants. I am of the opinion that the learned Special Judge has passed the judgment and order after appreciating all the aspects of the matter.

So far as argument of Mr. Sethna that A.C.B. office is situated in the premises of the complainant and therefore, just to oblige the landlord, said bogus trap was carried out by the A.C.B. is concerned, I have not found anything on record to consider the said argument of learned counsel for the appellants. There is nothing on record to suggest that the complainant or A.C.B. officials have any enmity with the appellants to falsely implicate them in a bogus case. The prosecution has proved its case beyond reasonable doubt against the appellants.

A public servant is expected to serve or to perform his/her duties with utmost honesty and devotion. In the instant case, the appellants, who are public servants, had demanded the amount of Rs. 50/- and accepted the same from the complainant. This conduct of the appellants are required to be looked into. This shows that the appellants are guilty of criminal misconduct.

14. As per above observation, I found that demand of illegal gratification made by the appellants-accused is proved beyond reasonable doubt through the oral evidence of complainant and panch witness as well as through documentary evidence produced on record. Presence of anthracene powder is also found on the hand and outside of the shirt's pocket of the appellant No. 1 and the

appellants have failed to explain as to how the amount in question is found from their possession and as to how anthracene powder is found on their hands. As per the provision of Section 20 of the Prevention of Corruption Act, 1988, presumption is required to be drawn against the present appellants and when the appellants have failed to rebut the said presumption, defence version cannot be considered, which is tried to establish by the learned counsel for the appellants. Hence, in view of the foregoing reasons, present appeal is dismissed. The judgment and order of conviction and sentence dated 01st December, 1998 passed by the learned Additional Special Judge, Bhavnagar, in Special Case No. 06 of 1994 (A.C.B.), is hereby confirmed. The appellants are on bail. Their bail bonds shall stand cancelled. The appellants-accused are, therefore, directed to surrender themselves before the Jail Authority within a period of four weeks from today to undergo remaining sentence, if any, failing which the Court concerned is directed to issue Non-bailable warrant against the appellants-accused to effect their arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.