

(2011) 02 GUJ CK 0037
In the Gujarat High Court
Case No : Criminal Appeal No. 392 of 1998

Pratabdan Ravjidan Gadvi

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

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

Citation : (2011) 02 GUJ CK 0037

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

Bench : Single Bench

Advocate : K.B. Anandjiwala, for Prakash K Jani, for the Appellant; R.C. Kodekar, APP, for the Respondent

Final Decision : Allowed

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 and sentence dated 17th April, 1998 passed by the learned Special Judge, Ahmedabad, in Special Case No. 12 of 1996, whereby the learned Judge was pleased to convict the Appellants-accused under Sections 13(1)(d) and 13(2) read with Section 7 of the Prevention of Corruption Act (for short "the Act") and awarded sentence to the Appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs. 500/-i/d to further undergo SI for three month for the offence under Sections 7 of the Prevention of Corruption Act (for short "P.C. Act") and the learned Judge also awarded sentence to the Appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs. 500/-i/d to undergo SI for three months for the offence under Sections 13(1)(d) read with Section 13(2) of the P.C. Act.

2. It is the case of the prosecution that on 21.7.1995 one Shri Amrutbhai Naranbhai Solanki approached Shri A.A. Khan, Police Inspector, A.C.B., Ahmedabad, and informed him that in the city of Ahmedabad, at different places,

the traffic Police as well as the people from the Tying Squad are stopping the rickshaw and demanding illegal gratification. It is alleged that on 22.7.1995 said Amrutbhai Solanki went to the office of ACB and disclosed the said facts in presence of panchas and stated that he is ready and willing to remain present in the trap which is to be laid by the ACB. It is alleged that on the same day, in the after-noon, when the Appellant - accused was on duty at Wadaj, the informant Amrutbhai Solanki was proceeding with his rickshaw, at that time, the accused stopped his rickshaw and asked the informant to show the licence. When the informant Amrutbhai Solanki stated that he was not having licence, the accused demanded Rs. 10/-, or in the alternative threatened that he will issue Memo for driving the vehicle without licence. Then the trap was laid and the accused was arrested. Though, originally the complaint was given to the ACB by Amrutbhai, necessary complaint for prosecution against the present Appellant came to be filed by one Police Inspector Mr. Khan, who was the person instrumental in laying the trap.

3. Thereafter the police completed the investigation by recording statements of witnesses and after obtaining the sanction, submitted charge-sheet against the present Appellant.

4. Thereafter the trial was conducted before the learned Judge. To prove the case of the prosecution, prosecution has examined three witnesses and also produced oral as well as documentary evidence in support of the prosecution case. After filing of the closing purnis, the learned Judge has recorded the statement of the present Appellant-accused u/s 313 of the Code of Criminal Procedure, 1973.

5. After hearing both the sides at length, the learned Special Sessions Judge, by judgment and order dated 17.4.1998, passed in Special Case No. 12 of 1996, has held the Appellant - accused guilty of the charges levelled against him and awarded the sentence, as narrated herein above.

6. Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence dated 17.4.1998 passed by the learned Special Judge, Ahmedabad in Special Case No. 12 of 1996, the Appellant above-named has preferred the present appeal.

7. Heard Mr. K.B. Anandjiwala, learned Counsel for the Appellant and Mr. R.C. Kodekar, learned Additional Public Prosecutor for the Respondent-State.

8. Mr. Anandjiwala has contended that the judgment and order of conviction passed by the learned Judge is erroneous, illegal and unwarranted on the facts and circumstances of the case. He has also contended that the Appellant has led probable defence before the learned Judge, but, the learned Judge has not considered the probable defence of the Appellant. He has contended that the complainant - Informant Amrutbhai Solanki has not supported the case of prosecution and on the contrary categorically supported the case of the Appellant and has stated that the ACB squad had forcibly implanted Rs. 10/- in the pocket of the Appellant - accused. The complainant has categorically stated that the

Appellant has never demanded Rs. 10/- from him. He has contended that the Panch is selected by the Trapping Officer. The panch has categorically deposed that in the past, he had acted as panch in two cases and in the present trap also he has acted as Panch. The panch has also categorically stated that he ventilated his grievances before the officer of his Department that why he alone is to be selected as Panch? From the evidence of Panch, it becomes clear that the panch is a selected panch and in the past also he has acted as a panch in trap cases and, therefore, no reliance can be placed on the evidence of Panch. He has contended that from the deposition of Panch witness, it appears that the Panchas went to ACB Office at about 11.30 P.M. and at that time rickshaw driver Amrutbhai was present. Said Amrutbhai told in specific words that against specific policeman by naming him the complaint has been lodged. He has contended that, in the present case, the complaint lodged by PI Khan would clearly show that it was a running trap which was to be carried out in the afternoon hours on 21.7.1995 and the charge also shows that the trap was carried out in the afternoon hours, however, the panch is very clear that both the panchas were called at 11.30 or 12.00 mid night at ACB office and, therefore, the time to trap also differs on material aspect. He has contended that from the deposition of Panch, it appears that constable asked the complainant as to why four persons are travelling in rickshaw and licence was demand. The driver replied that he was not having licence and thereupon the policeman took out the Memo Book and told the driver to take the Memo. However, the Memo Book is not examined under ultra-violet lamp rays, which clearly shows that no demand of illegal gratification had been made by the Appellant and on the contrary he told the rickshaw driver Amrutbhai to take the memo. Therefore, the panch is not supporting the prosecution case with regard to the demand of illegal gratification of Rs. 10/-. The complainant, in his deposition has categorically stated that no demand is made by the accused and, on the contrary, he told that he will issue memo. No doubt, this decoy witness has been confronted by his police statement; however, he has not been treated hostile. Mr. Anandjiwala has also contended that in the present case, the decoy witness lodged the complaint against specific constable Chhaganbhai Parmar and as Chhaganbhai Parmar could not be found out, the trap was converted into a running trap and as per the evidence of the complainant, the accused told to issue Memo and at that time, as per the evidence of decoy witness, he thrust the money forcibly. He has contended that in the present case, the Trapping Officer was Mr. Khan and thereafter he lodged the complaint and further investigation was also carried out by him and, therefore, the case would fail on that count alone. Mr. Anandjiwala has also relied upon a decision of this Court in the case of Kanubhai Kantibhai Patel v. The State of Gujarat, reported in 1998 (1) GLH 194. He, therefore, contended that looking to the facts of the case, circumstantial evidence produced on record of the case, conduct of the complainant and other witnesses and the documentary evidence produced on record of the case, the judgment and order of conviction passed by the learned Judge is illegal, unjust and bad in eyes of law and hence, the same is required to be quashed and set aside in the interest of

justice.

9. Mr. Kodekar, learned Additional Public Prosecutor, has supported the judgment of the trial Court and contended that the learned Judge has not committed any error in holding the Appellant guilty of the charges levelled against him. He has contended that looking to the evidence produced on the record, the demand, recovery and acceptance by the accused is proved and, therefore, no interference is called for by this Court. He has read the oral evidence of the witnesses and also the documentary evidence produced on record of the case and vehemently argued that when demand, acceptance and recovery of bribe amount is proved beyond reasonable doubt, no question would arise to say that the learned Judge has erred in passing the judgment and order of conviction. He has also contended that the learned Judge has considered each and every aspect of the matter and has passed absolutely just and proper order. He, therefore, contended that the judgment and order of conviction passed by the learned Judge is required to be confirmed.

10. I have gone through papers produced before me and the judgment and order of conviction passed by the learned trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions advanced by learned Counsel for the parties.

11. It appears from the record that the decoy witness- P.W.2 Amrutbhai Solanki (Exh.13) has not supported the case of prosecution and he has been confronted with his police statement. He has also deposed in his cross examination by the learned APP that it is not true that the accused demanded the amount of illegal gratification, but, he told to issue Memo. He has also admitted that he forcibly put one note of Rs. 10/- in the pocket of the Appellant. From the evidence, it is also clearly established that the trap was to be carried out against some another police constable, named, Chhaganbhai Parmar, who was not found out and for carrying out the trap the raiding party travelled from Shahibaug till Panchvati Circle, Stadium, income tax area. Even, looking to the evidence, it clearly appears that the panchas are selected. Panch witness P.W.1 - Maheshbhai Maganbhai Solanki (Exh. 10) has categorically deposed in para - 4 that in the past he had acted as Panch in two cases and in the present case also he has acted as Panch. This witness has also deposed in his deposition that he ventilated his grievances before the officer of the Department that why he alone is to be selected as Panch? Looking to the evidence, the trap was to be carried out in the afternoon on 21.7.1995, however, both the panchas have been called at ACB on the previous day at about 11.30 PM in the mid-night and, therefore, time to trap also differs on material aspect. The panch witness has also admitted that when they reached the ACB office, at that time, rickshaw driver Amrutbhai (complainant) was present and he told in specific words that against a specific policeman by naming him, the complaint has been lodged. He also deposed that complainant has lodged complaint against Head Constable Chhaganbhai Kalubhai Parmar, who was discharging his duty on C.G. Road.

12. It also appears that in the present case, the trap was carried out by Mr. Khan, thereafter the complaint was lodged by Mr. Khan and after registering the office he carried out further investigation. This Court, after relying on the decision of the Hon''ble Supreme Court in the case of Bhagwan Singh Vs. The State of Rajasthan, has held that if everything is done by the Police Officer, it would be an infirmity in the case which is bound to reflect on the credibility of the prosecution. In that case, the complaint was recorded by the Investigating Officer, raid was also carried out by the I.O., search and seizure were also made by the same Investigating Officer and thereafter investigation was also carried out by the same Investigating Officer till the charge-sheet was filed. Here, in the present case also the Investigating officer has carried out the running trap, subsequently lodged the complaint and after registering the offence, carried out further investigation which itself would be an infirmity which is bound to reflect on the credibility of the prosecution case and would undoubtedly create suspicion and raise a reasonable doubt that the investigation was biased.

13. In the present case, in the further statement recorded u/s 313 Cr. P.C., a specific question has been put to the accused that as per the evidence of decoy witness Amrutbhai Solanki, the amount was thrust in to his pocket, to which the accused has answered in affirmative. However, that statement itself would not be sufficient to satisfy the necessary ingredients of Section 20 of the Act that accused accepted or obtained or has agreed to accept or attempted to obtain any gratification other than legal remuneration so as to be able to raise the presumption. Acceptance or obtaining or agreeing to accept or attempting to obtain is a voluntary act. In the present case, the main thrust is not voluntary acceptance of money and also initial demand by the accused. The only conclusion that can be drawn that the story of demand of bribe by the accused from the complainant is not proved and the payment of money by the complainant is not established. In the instant case, as per settled legal position, investigation is biased, the prosecution has failed to prove the demand of money, acceptance of money by the accused, especially when the complainant himself has said that he made a complaint against another police man, that the accused did not demand money and on the contrary, he told that he would issue Memo and the fact that the amount in question was thrust upon in his pocket, which fact has also been stated by the accused in his further statement u/s 313 Code of Criminal Procedure Hence, it is crystal clear that the entire investigation is biased and, therefore, the learned Judge has grossly erred in convicting and sentencing the Appellant - accused as aforesaid. The impugned judgment requires to be quashed and set aside and the applicant accused is required to be acquitted. It is the duty of the learned Judge to consider the defence version of the present Appellant, however, he has not considered at all the defence version. I am, therefore, of the opinion that the learned Judge has erred in holding the Appellant - accused guilty of the charges alleged against him.

14. From the perusal of the papers and oral as well as documentary evidence, I am not in agreement with the reasons assigned by the learned Judge for

convicting the Appellant - accused and I am of the opinion that the learned Judge has committed error in convicting the Appellant. Hence, the judgment and order of conviction passed by the learned Judge is required to be quashed and set aside.

15. In view of above observations, present appeal is allowed. The judgment and Order of conviction and sentence dated 17th April, 1998 passed by the learned Special Judge, Ahmedabad in Special Case No. 12 of 1996, is hereby quashed and set aside. The Appellant is hereby acquitted from all the charges levelled against him. Fine, if paid, be refunded to the Appellant - accused. Bail bond, if any, shall stand cancelled. Record and Proceedings, if any, be sent back to the trial Court forth with. The case diary be handed over the learned A.P.P.