

(2011) 05 GUJ CK 0012
In the Gujarat High Court
Case No : Criminal Appeal No. 345 of 2003

Ranchhodbhai Bavabhai Thakore

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374

Evidence Act, 1872 — Section 8

Penal Code, 1860 (IPC) — Section 107, 108

Prevention of Corruption Act, 1988 — Section 12, 13, 13(1), 13(2), 20

Citation : (2011) 05 GUJ CK 0012

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

Bench : Single Bench

Advocate : H.N. Brahmbhatt, for the Appellant; H.L. Jani, Assistant Public Prosecutor for Opponent 1, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The Appellant - original accused No. 1 has preferred this appeal u/s 374 of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 13.03.2003 passed by the learned Special Judge, Banaskantha at Palanpur, in Special Case No. 33 of 1998, whereby, the learned Special Judge has convicted the Appellant-accused No. 1 for the offence u/s 7 read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment of 18 (eighteen) months and to pay a fine of Rs. 5,000/-, in default, to undergo R.I. for further three months. Vide the said judgment, the learned Special Judge has acquitted original accused No. 2 from the offences charged against him.

2. The brief facts of the prosecution case is as under:

That the accused No. 1 (Appellant herein) was discharging his duties as Talati-cum-Mantri in Group Gram Panchayat of village Didarda, Taluka Tharad and the accused No. 2 was working as Chowkidar. It is the case of the prosecution that

the complainant and his three brothers were staying separate. It is alleged that, at the relevant time, the possession of the land in the sim of village was running in the name of father of the complainant. It is alleged that at their own the complainant and other brothers have separated the land in the name of each brother. Thereafter, on 12.6.1997 the complainant and his brothers contacted the accused No. 1 (Appellant) at Panchayat Office and made an application, signed by all of them and submitted the same to the Talati - accused No. 1. It is alleged that, at that time, for doing this work the accused No. 1 has demanded Rs. 500/- and thereafter, on bargaining, Rs. 400/- was paid to the accused No. 1 on the spot. It is alleged that thereafter on 24.9.1997 the complainant contacted the accused No. 1 and made an inquiry as to whether accounts are separated or not and at that time the accused No. 1 has demanded more amount of Rs. 500/- to complete the work. The complainant, therefore, agreed to pay Rs. 500/- at his house on the next day. As the complainant was not willing to pay Rs. 500/- as illegal gratification to the accused, he lodged the complaint on 25.5.1997 before A.C.B. Office. Thereafter, on receipt of said complaint, the concerned Officer called two panchas from the office of Superintending Engineer, Irrigation Department, Palanpur and made all the arrangements for trap to catch the accused red-handed. Panch No. 1 was directed to remain with the complainant. Thereafter, first part of the panchnama was prepared at the office of A.C.B., in presence of panch witnesses and thereafter the complainant, along with panchas and the memebtrs of raiding party, including, Trapping Officer, left for Tharad. The complainant and Panch No. 1 went to the house of accused No. 1. The accused No. 1 was present in house and was doing the work. It is alleged that on being asked by the complainant, the accused told him that his work is completed and he asked for money. The complainant informed him that he has brought the amount and, therefore, the accused informed the complainant to give the money which he accepted and in turn passed the same to the person (accused No. 2) who was sitting there. Thereafter, the complainant went out and raised pre-arranged signal. The raiding party thereafter rushed to the place of the Appellant and caught the accused. Thereafter the second part of the panchnama was completed and the currency notes which were recovered from the physical and conscious possession of the accused No. 2 were taken into custody of the police. Thereafter, investigation was carried out and after completing the necessary procedure, and on receipt of sanction, the charge-sheet against the accused came to be submitted before the Court.

3. Thereafter, the charge (Exh.8) was framed against the Appellant. Thereafter, learned A.P.P. Has prayed to amend the charge and the charge was amended vide Exh.94. The Appellant-accused has pleaded not guilty to the charge and claimed to be tried.

4. In order to bring home the charge levelled against the Appellant- accused, the prosecution has examined six witnesses and also produced documentary evidence on record before the trial Court. The accused have also examined witness Dashrathbhai Devidas (Exh.74) as defence witness.

5. Thereafter, after examining the witnesses, further statement of the Appellant-accused No. 1 u/s 313 of Code of Criminal Procedure was recorded in which the Appellant-accused No. 1 has denied the case of the prosecution.

6. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, Banaskantha District at Palanpur, vide impugned judgment and order dated 13.3.2003, held the Appellant-accused No. 1 guilty to the charge levelled against him and awarded the sentence as referred herein above, however, acquitted the accused No. 2 from the charges levelled against him.

7. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Jamnagar, the present Appellant - original accused No. 1 has preferred this appeal.

8. Heard Mr. S.R. Divetia, learned advocate for the Appellant and Mr H.L. Jani, learned APP for the Respondent-State.

9. Learned Advocate Mr. Divetia for the Appellant has contended that from the oral evidence of P.W. 1 - Anvarkhan Lalkhan - complainant (Exh.12) the demand is not proved beyond reasonable doubt. He has contended that looking to the record the work of the complainant is not entrusted to the present Appellant and it was not within his duty and, therefore, the question regarding demand and acceptance cannot arise. He has contended that in cross examination of the complainant, sufficient discrepancy is established vis-a-vis the contents of complaint (Exh.13). He has contended that from the cross examination of P.W. 1 - complainant the prosecution has failed to prove that the Appellant has demanded any money from the complainant as illegal gratification. He has contended that when the demand is not proved beyond reasonable doubt then there is no question to wrongly book the Appellant for the offence punishable under Sections 13(2) read with Section 13(1)(d) of P.C. Act. Mr. Divetia has read the oral evidence of P.W. 2 - Kalidas Sankalchand Mevada (Exh.45), who was called as Panch witness, and contended that this witness has not supported the case of prosecution, and even during the cross examination, by the learned A.P.P., the prosecution could not establish its case beyond reasonable doubt through the oral evidence of this witness whether any demand was made by the Appellant from the complainant and whether he has accepted any money from the complainant. He has contended that this witness (P.W. 2) is material and independent witness and from his oral evidence the demand and acceptance is not proved and even the recovery is not proved beyond reasonable doubt and, therefore, the judgment and order of the trial Court is required to be quashed and set aside. Mr. Divetia has also read the oral evidence of P.W. 3 - Natvarlal Amrabhai (Exh.53), who was panch witness of the incident and contended that this witness is also not a reliable witness. He has also read the contents of Panchnama (Exh.55) and contended that this witness was Panch No. 2 and he has not seen anything and, therefore, the contents of Panchnama (Exh.55) is not proved beyond reasonable doubt. Mr. Divetia has contended that from the oral

evidence of P.W. 1, 2 and 3 it is clearly established that the Appellant has not made any demand from the complainant and even the trap amount is also not recovered from the Appellant, but, the same was recovered from the original accused No. 2, who is acquitted by the learned Judge. Mr. Divetia has read the evidence of P.W. 4 - Sarfarjkhan Hayatkhan (Exh.60) and P.W. 5 - Bedidan Kishandas Charan (Exh.64), both the witnesses were members of raiding party, and has also read the evidence of P.W. 6 - Prabhudas Badaji Pandav (Exh.66), who was the Trapping Officer in the said trap, and contended that their evidence cannot be considered as genuine and trust-worthy. He has contended that from the cross examination of all these three witnesses there are material contradictions in their versions. He has contended that, looking to the evidence of prosecution witnesses, when the demand, acceptance and recovery is not proved beyond reasonable doubt, through the evidence of independent witnesses, then the evidence of Police witnesses is required to be considered with great care and caution. Mr. Divetia has also read the judgment and order of the trial Court and contended that main ingredients of provision of Sections 7 and 13 of P.C. Act are not proved through the oral as well as documentary evidence. Mr. Divetia has contended that Section 12 of P.C. Act is a special provision for the abettor. He has contended that in the present case the alleged trap amount was accepted by the original accused No. 2 and even recovery is also made from the possession of accused No. 2 and, therefore, the main ingredients of Section 12 - abettor and abetment is not proved and accused would not fall within the definition of "abettor" as defined under the provisions of Section 107 and 108 of I.P. Code. He has contended that the charge is framed against the accused, which is not as per the provision of law and ingredients of said offences are also not covered and, therefore, it is fatal to the prosecution case. Mr. Divetia has, therefore, contended that looking to the facts and evidence on record the trial Court has committed grave error in holding the Appellant guilty of the charges levelled against him and, therefore, the judgment and order of the trial Court is required to be quashed by this Court. Lastly, Mr. Divetia has submitted that the present Appellant is an old aged and poor person. The judgment and order of the trial Court is very harsh and, therefore, if the submission of the Appellant is not considered, then the sentence awarded by the learned Judge may be reduced. He has also placed reliance upon the decisions of this Court in the case of (i) Kanubhai Kantibhai Patel v. State of Gujarat, reported in 1998 (1) GLR 924, and (ii) Gopal Lal Ghisulal Chhipa and Ors. v. The State of Gujarat, reported in 1998 (1) GLH 943.

10. On the other hand, learned APP Mr H.L. Jani supported the judgment and order of the Special Court and contended that the trial Court has fully appreciated the evidence produced on record by the prosecution and, therefore, no interference may be called for by this Court. He has read the oral evidence of prosecution witnesses and also the documentary evidence produced on the record. He has contended that the sanction given by the Sanctioning Officer was given with application of mind. Mr. Jani has read Section 7 of the P.C. Act and

contended that from the oral version of the complainant the demand which is made by the Appellant from the complainant is proved beyond reasonable doubt. Mr. Jani has contended that in cross examination, the complainant has categorically stated that the Talati (Appellant) has informed him that he (complainant) should give money then his work of entry will be cleared. It is also stated by the complainant that due to the demand made by the Appellant for clearance of entry, he has filed the complaint. He has contended that the complainant has explained the whole story before the A.C.B. Officer and then the complaint was lodged. So, the contents of complaint (Exh.13) are proved beyond reasonable doubt that the first demand was made by the present Appellant and, therefore, there is no question to disbelieve the version of the complainant. He has contended that in cross examination of this witness, a specific question was put to this witness about the demand made by the Appellant and he has admitted that he has paid the amount to the Appellant-accused No. 1 and, in turn, he has given the amount to accused No. 2, in presence of panch witness. Mr. Jani has contended that looking to the evidence of this witness (complainant), it is clear that the Appellant has demanded Rs. 500/- as illegal gratification from the complainant and accepted it and in turn passed the said amount into the hands of the accused No. 2, which was found from his pocket. Mr. Jani has contended that during experiment of ultra-violet lamp, which has been carried out by the Investigating Officer, presence of anthracene powder was found on both the fingers of the Appellant as well as of the fingers of accused No. 2. Mr. Jani has also read the evidence of P.W. 4, P.W. 5 and P.W. 6 and contended that all these witnesses are the members of raiding party. He has contended that when sufficient corroborative evidence is produced on the record, then the evidence of Police officials is required to be considered as trustworthy and reliable. Mr. Jani has also read the oral evidence of defence witness, examined by the Appellant-accused, and contended that the evidence of this witness is of no help to the Appellant-accused. Mr. Jani has also read the provision of Section 20 of P.C. Act and contended that from the further statement recorded u/s 313 Code of Criminal Procedure the Appellant has never explained anything regarding presence of anthracene powder found on the fingers of his both the hands. Mr. Jani has contended that the original accused No. 2 has been acquitted by the trial Court and the State has not preferred acquittal appeal against the said judgment. He has fairly admitted that from the oral as well as documentary evidence produced on record the charge against the original accused No. 2 is not proved and, therefore, the trial Court has rightly acquitted the accused No. 2. Mr. Jani has contended that no doubt the amount was recovered from the possession of original accused No. 2, but, the said amount was accepted by him, under the instruction of the Appellant. Mr. Jani has also relied upon the decision in the case of *Madhukar Bhaskarrao Joshi v. State of Maharashtra* reported in AIR 2001 SC 147 and contended that non-explanation regarding presence of anthracene powder as well as recovery of trap amount from the Appellant would prove the case of prosecution beyond reasonable doubt. He has contended that the sanctioning Authority has given sanction with full application of mind after

considering the papers produced before him and, therefore, the sanction is valid sanction. He has contended that the learned Judge has considered each and every aspect of the matter and after considering the documents and the evidence produced on record, the learned Judge has rightly held the Appellant-accused guilty of the offence charged against him.

11. Heard the learned Counsel for the parties. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness and also perused the charge framed against the Appellant and considered the submissions made by learned Counsel for the parties. It is true that the first charge was framed and then later on when it came to the knowledge of learned Public Prosecutor that the charge was not properly framed, he made a request to the trial Court to amend the charge and, therefore, at the request of learned Public prosecutor the charge was amended by the learned Judge. I have perused the contents of the application as well as the charge and I have not found any substance in the submission that the learned Judge has committed any irregularity or illegality in amending the charge. The learned Judge has followed the proper procedure. I have also perused the evidence of P.W. 1 - complainant, who is a star witness of the prosecution. From the evidence of this witness it clearly appears that he made demand from the complainant and the amount was accepted by him in presence of P.W. 2 - Panch witness. It is also evident from the record that in presence of panch witness certain questions were put to the complainant by the Appellant. Therefore, it is the duty of the Appellant to explain the same or deny the said evidence of witnesses in cross examination of these witnesses. No doubt the amount was recovered from the possession of original accused No. 2, who has been acquitted by the trial Court, but, it is evident from the record that the accused No. 2 has accepted the said amount under the instruction of the Appellant-original accused No. 1. Therefore, the demand, acceptance and recovery is proved beyond reasonable doubt. From the perusal of record, it appears that after the raid was carried out, experiment of ultra-violet was done in which presence of anthracene powder on the fingers of both the hands of the Appellant was found and the same is not explained by the Appellant. I have also perused the further statement of the Appellant, recorded u/s 313 Code of Criminal Procedure and from statement also, I have not found anything to say that said presumption is rebutted by the present Appellant. Even the Appellant has not explained anything to say that he has never made any demand or has not accepted any amount from the complainant and he has even not explained the presence of anthracene powder on the fingers of his hands.

12. I have gone through the evidence of P.W. 2 and 3. No doubt, P.W. 2 has not supported the case of prosecution and he has been declared hostile, but, he has admitted that he had accompanied the complainant and gone to the house of Appellant and in his presence the complainant has informed the Appellant that he has brought the money. From the evidence of this witness, it clearly appears that he had accompanied the complainant at the place of occurrence and in his

presence the complainant had given the amount which he had accepted and in turn he had given the said amount to accused No. 2. It is, therefore, clear that the Appellant had accepted the amount by way of illegal gratification to do the work of the complainant for making separate entries for mutation of land. On experiment of ultra-violet lamp, on the fingers of both the hands of the Appellant mark of anthracene powder was found Both the panchas are the Government servants and they have signed the Panchnama. The prosecution has also examined three members of raiding party as prosecution witnesses. I have perused their evidence also. Looking to the evidence produced on the record, it clearly transpires that the Appellant has failed to establish his probable defence.

13. I have also gone through the evidence of the complainant. Looking to the oral evidence of complainant, the first demand is proved beyond reasonable doubt. This witness has categorically deposed that the Appellant has demanded Rs. 500/- for mutation of the land in the name of each brother and with regard to separation of account. I have compared first part of the panchnama and the oral evidence of the complainant as well as the evidence of Panch witnesses. It appears from the oral as well as documentary evidence that in connection with the demand made by the Appellant, trap was arranged. It has also come on record that in presence of Panch No. 1, the demand was made by the Appellant and the amount was also accepted by him and the Appellant, in turn, gave the said amount to original accused No. 2. It appears that the defence has never bothered to establish any probable defence in connection with the demand, acceptance and recovery. It is the duty of defence to rebut the presumption, but, from the perusal of whole evidence the defence has failed to establish probable defence and has also failed to rebut the presumption.

14. I have also considered the conduct of the present Appellant-accused. From the evidence of prosecution witnesses, it is clearly established that he has accepted amount by way of illegal gratification and, in turn, gave it to the original accused No. 2. It is true that the evidence regarding the demand and acceptance is required to be corroborated by some other independent evidence. In the present case, panch witnesses who are independent witnesses, have fully supported the case of the prosecution, though the panch No. 1 (P.W. 2) has been declared hostile to the case of prosecution. Even it is not a case of Appellant that he has any enmity with the panch witnesses. It appears from the deposition of this witnesses that after the raid, the trap amount was collected and in the light of ultra-violet lamp the anthracene powder was found on the fingers of both the hands of the Appellant-accused. This is sufficient to prove the guilt of the Appellant-accused. The Hon'ble Apex Court has also held in catena of decisions that the evidence of independent witness cannot be discarded mainly branding it as that of a cached or tutored witness. The evidence of Government servant cannot be rejected mainly because he is called to associate the raiding party. When the Court is satisfied from the facts and circumstances of the case that the witnesses are the witness of truth, then their evidence cannot be discarded. I have also found that the Appellant-accused has abused his position as "public

servant" and the abuse of position was also dishonest and it is also proved that the Appellant has deliberately caused wrongful act by obtaining pecuniary benefit and his pecuniary benefit is also proved beyond reasonable doubt.

15. Mr. Jani has also contended that looking to the facts of the case presumption u/s 20 of the P.C. Act is required to be drawn against the present Appellant-accused. Section 20 of the P.C. Act reads as under:

20. Presumption where public servant accepts gratification other than legal remuneration -

(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or Clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable u/s 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in Sub-section (1) and (2), the Court may decline to draw the presumption referred to in either of the said Sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

16. Looking to the evidence produced on record it appears that the illegal gratification was accepted by the Appellant-accused. It also appears that the Appellant-accused has not properly explained the presence of anthracene powder. From the perusal of evidence on record, I am of the opinion that the Appellant-accused has failed to rebut the presumption drawn u/s 20 of the P.C. Act. Even from the cross-examination of witnesses also, I have found that the Appellant has failed to prove his probable defence beyond reasonable doubt before the trial Court.

17. As per Section 8 of the Evidence Act, the conduct of the accused is required to be considered. From the record it is clearly established that at the place of occurrence, the accused No. 2 was found and from his possession the trap amount was recovered in presence of panch witness and hence that conduct of

the accused can be considered that there was motive of the accused to commit the offence and just to get some illegal gratification. Therefore, the contention of the Appellant-accused that the accused was wrongly involved in the commission of offence is not believable.

18. This Court has also gone through the latest decision of the Hon"ble Supreme Court in the case of Banarsi Dass Vs. State of Haryana, In the case before the Hon"ble Supreme Court, the complainant and another independent witness have not supported the case of the prosecution and, therefore, the Hon"ble Supreme Court has quashed and set aside the judgment of the High Court and acquitted the accused of the charges levelled against him. In the present case, all the witnesses have supported the case of the prosecution and their evidence is fully corroborated with the circumstantial evidence. In Banarsi Das (Supra) the Hon"ble Supreme Court in Para - 20 has also observed that... "It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence." In the present case before me, the panch witness has fully supported the case of prosecution and even by circumstantial evidence each link of the chain of events is established to prove the case of prosecution.

19. Looking to the facts of the case, I am of the opinion that the prosecution has proved that the Appellant - accused, being a public servant, has demanded the amount and also accepted the bribe amount from the complainant, The accused has not explained by discharging his burden of rebutting the statutory presumption of guilt against him. From the facts and evidence on record it is clearly established beyond reasonable doubt that the amount by way of bribe was demanded by the accused and he accepted that amount voluntarily as an illegal gratification.

20. In view of above, I am in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and I am of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence.

21. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 13.03.2003 passed by the learned Special Judge, Banaskantha District at Palanpur, in Special Case No. 33 of 1998, against the Appellant-original accused No. 1, is hereby confirmed. Bail bond stands cancelled. R and P to be sent back to the trial Court forthwith. The Appellant-accused No. 1 is directed to surrender before the Jail Authority to undergo sentence within a period of 4 (four) weeks from the date of this order, failing

which the concerned Sessions Court shall issue non-bailable warrant to effect the arrest of the Appellant - original accused No. 1.