
(2012) 11 AP CK 0073

In the Andhra Pradesh High Court

Case No : Criminal As. No. 1387 of 2005

Reparla Venkata Gopala Ratnam

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1988 — Section 11, 13, 13(1)(d), 13(1)(d)(ii), 13(2)

Citation : (2012) 11 AP CK 0073

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—Criminal Appeal No. 1387 of 2005 is filed by A1, Criminal Appeal No. 1420 of 2005 is filed by A2 and Criminal Appeal No. 1440 of 2005 is filed by A3 against the judgment dated 05th August, 2005 passed by the Special Judge for SPE and ACB cases, Vijayawada in C.C. No. 23 of 1992. The appellants were convicted by the trial Court for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") and were convicted for the said offences. Each of them were sentenced to undergo rigorous imprisonment for a period of two years and also to pay a fine of Rs. 10,000/- each for the offence u/s 7 of the Act and also further sentenced to undergo rigorous imprisonment for a period of two years each and to pay a fine of Rs. 10,000/- each for the offence u/s 13(2) read with 13(1)(d) of the Act. The substantive sentences passed against them were directed to run concurrently.

2. Challenging the said order of conviction and sentence, the appellants/A1 to A3 filed the aforesaid appeals separately. For the convenient sake, the appellants in the above appeals will be referred as A1 to A3 as was done by the trial Court. A1 was the Executive Engineer, C.E.R.P., Special Sub-division, Machilipatnam, A2 was the Deputy Executive Engineer, C.E.R.P., Sub-Division III, Challapalli and A3

was the Assistant Executive Engineer, C.E.R.P., Sub-division, Challapalli at relevant time. They were indicted of having taking the amount of Rs. 25,000/- each from PW.1, a civil contractor as illegal gratification for passing the pending bill in relation to the work executed by him and accepted on 22.07.1991 and accordingly, they were tried for the charges under Sections 7 and 13(1)(d)(ii) read with 13(2) of the Act. At the conclusion of the trial, they were convicted and sentenced by the trial Court to punishment as mentioned above.

3. Briefly, the prosecution case, which led to the conviction of the appellants, is the following:

PW.1 was a civil contractor and Managing Partner of M/s. Sri Radha Krishna and Company, Vijayawada. He secured the work to make improvements from KM 10.370 to KM 28.680 on 9th Peda-Yadara channel for Rs. 17 lakhs. It is said that after partly executing work, PW.1 approached the appellants for passing of the bills, each of them demanded an amount of Rs. 25,000/- i.e. total amount of Rs. 75,000/-. Ultimately, it was agreed upon among them that the accused have to pass the bill and after encashing the bill, PW.1 had to pay the amount of Rs. 75,000/- to them as agreed. Ultimately, A1 to A3 passed the bill partly on 20.07.1991 for an amount of Rs. 9,02,403/-. It was alleged by the prosecution that A1 to A3 threatened PW.1 that after encashing the bill, if he fails to pay the said amount as agreed, the remaining bill amount would not be passed. PW.1 encashed the bill, but was unwilling to pay the bribe amount to A1 to A3, he approached PW.15, the Deputy Superintendent of Police, Vijayawada on 25.07.1991 at 9 AM and gave a complaint against the accused.

4. Basing on his complaint, PW.15 registered a case in Crime No. 9/ACB/VJA/91 under Sections 7 and 11 of the Act. On 27.07.1991 at 07.50 PM with his staff and mediators trapped at the residence of A1. During the course of which it was alleged that A1 received tainted amount of Rs. 25,000/- from PW.1. The said amount was recovered from him and phenolphthalein sodium carbonate reaction test conducted on the fingers of A1 found to be positive. On the same day, at about 08.30 PM, PW.15, DSP, ACB, Vijayawada trapped A2 and A3 in Room No. 220, Santosh Lodge, Machilipatnam, while they were receiving an amount of Rs. 25,000/- each. The phenolphthalein sodium carbonate reaction test conducted on the fingers of A2 and A3 found to be positive and the amount of Rs. 50,000/- was recovered from them by PW.15 in the presence of mediators.

5. The crucial fact in this case is that A1 to A3 did not deny the factum of recovery of tainted amount from them. Their defence was that they received the amount from PW.1 for the purpose of distributing it to the labourers engaged by PW.1 in the contract work. The theory put-forth by the accused was that PW.1 was under a severe financial crunch he was unable to execute the work in time, amounts became due to the labourers, the ryots were agitating for water from the channel and the labourers were pressing for payment of money from the work done by them. Under these circumstances, according to the accused, they took up the task of paying the amount to the labourers and they assured the

labourers that they would collect the amount from PW.1 and distribute to them.

6. I have heard the learned counsel appearing for the appellants/accused 1 to 3 and the learned Special Public Prosecutor for ACB cases/respondent.

7. The aforesaid being defence theory, the other pleas taken by the accused are the following:

It is contended on behalf of the accused that PW.1 could not complete the work as per the original agreement and at his request he was directed to enter into a supplemental agreement, the work executed by PW.1 was check measure and the amount of Rs. 2,98,000/- was reduced from the original amount which was originally agreed and the above bill having been passed for an amount of Rs. 9,02,403/- and was encashed by the petitioner, there was no official favour pending with the accused on the date of trap and therefore, there was no occasion for the accused to demand any bribe for passing the rest of the bill amount, PW.1 want to complete the work as per the original agreement.

8. It was further contended that as mentioned in Ex. P. 31, affidavit of PW.1 attested by the notary, he admitted therein that the amount of Rs. 75,000/- was given to the accused for the purpose of work done by them. It was also affirmed by the notary-DW2 and also the same being the version under Ex. P. 33, a letter addressed by PW.1 to the Director General, ACB, Hyderabad. The version of PW.1 cannot be believed.

9. Nextly, it has been contended that there is no evidence in this case showing demand of any bribe by the accused from PW.1. Basing on the evidence relating to recovery of amount of Rs. 75,000/- from the accused no presumption u/s 20 of the Act can be drawn against the accused. It is also the contention of the accused that as no accompanying witness was present along with PW.1, the version of PW.1 having regard to the facts and circumstances of the case cannot be relied upon as to the fact of the accused demanding and accepting bribe from PW.1.

10. In this case, PWs. 12 and 13, the mediators and PWs. 14 to 17, investigating officers have categorically spoke about the recovery of the tainted amount from the accused and the positive result yielded on conducting phenolphthalein sodium carbonate test on the fingers of all the accused. PW.1 had categorically stated in his evidence that A1 to A3 have been consistently demanding him for paying the bribe amount of Rs. 75,000/- and also accepting the same from him on the date of trap.

11. As regards the signature of PW.1 on the affidavit and the petition i.e. Exs. P. 31 and P. 32, the prosecution version is that the accused somehow obtained the papers containing the signatures of PW.1 from a person in the office of PW.1, prepared affidavit and petition on the said papers and got it signed by DW. 2. In any event, the genuineness of the contention urged by the counsel prosecution has to be tested basing on the entire facts and circumstances of the case. It is not

understandable as to how after lodging report with DSP, ACB, PW.1 sent petitions on subsequent date contrary to the version of the report as far as PW.1 is concerned though he admitted his signatures on the affidavit and petition respectively denied to have made in affidavit or sent in a such petition.

12. Sri C. Bali Reddy, learned counsel appearing for A2, in support of his contention argued that when the demand is not proved, the presumption available u/s 20 of the Act. He relied on V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P., wherein the Supreme Court held as follows:

24. Submission of the learned counsel for the State that presumption has rightly been raised against the appellant, cannot be accepted as, inter alia, the demand itself had not been proved. In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of presumption only if a demand is proved. It 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) or 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.

25. Furthermore, even in such a case, the burden on an accused does not have to meet the same standard of proof, as is required to be made by the prosecution.

13. For the preposition, mere proof of recovery of bribe money from the accused is not sufficient to prove the offence u/s 5(2) of the Act or u/s 161 IPC (Provisions under the new Act) relied on Banarsi Dass Vs. State of Haryana, the Supreme Court held that for proving the offence u/s 5(2) of the Act or Section 161 IPC the demand and acceptance of bribe is essential. Mere proof of recovery of bribe money from the accused is not sufficient to prove the offence of bribery. According to the Supreme Court, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused.

14. Now it has to be seen whether the principles laid down in the aforesaid judgments of the Supreme Court, whether the finding can be recorded that the prosecution in the instant case failed to establish the voluntary demand and acceptance of bribe by the accused persons.

15. It is true that the accused is entitled to prove his defence version by standard of preponderance of probabilities and he is not required to discharge the burden as that of the prosecution which is required to prove its case beyond reasonable doubt. Therefore, if the accused would be able to raise a proper defence, he is entitled for acquittal.

16. In the instant case, despite the fact that PW.1 could not execute the work as per the terms of the original agreement and supplemental agreement was executed thereunder, the original agreement amount was reduced by Rs. 2,98,000/-. The untenable fact is that only the bill was sanctioned to him for part of the amount and he was insisting upon for sanctioning the remaining part of bill amount. His contention is that, the accused were insisting upon him to pay the amount of Rs. 75,000/- from out of the encashed bill as a condition precedent for passing the bill for the remaining amount. Therefore, it is not possible to accept the contention of the accused that there was no official favour pending with the accused on the date of alleged trap.

17. The main defence theory is that the accused received the amount of Rs. 75,000/- from PW.1 for the purpose of distributing the amount to the labourers over existing upon payment by PW.1. If so, as rightly contended by the prosecution that the accused could as well have received the amounts at one time at one place. The very fact that A. 1 received the amount at his residence and A2 and A3 received the amount in a lodge on the same day gives strength to the contention advanced by the prosecution that the amount was received as bribe. A2 and A3 are residents of Challapalli and their offices were located at Challapally. There was no satisfactory explanation from A2 and A3 as to what made them to stay in a lodge at Machilipatnam on the date of trap to receive the amount from PW.1 in the said lodge. No particulars have been furnished as to the details of the number of the labourers and the amount to be distributed among them. Therefore, it is not possible to accept the alleged explanation offered by the accused for receiving the money as true and genuine. Under law, the demand and acceptance of bribe need not be proved through direct evidence. The prosecution can prove it by circumstantial evidence. At the cost of repetition, I would like to state that if really the amount of Rs. 75,000/- was intended for the purpose of distributing it among the labourers towards their wages, A1 to A3 could have received the same amount at one time at one place. The manner in which the amount was received by A1 to A3 clearly indicates that it was received as illegal gratification.

18. In view of the above, I am of the considered view that the learned trial Court rightly arrived at the conclusion that A1 to A3 could be established by direct as well as circumstantial evidence in the present case that the demand and acceptance and did not commit any error in convicting them for the aforesaid offences. The conviction and sentence passed by the trial Court in the present case, therefore, did not call for any interference in these appeals. Since the appeals relate to the year 2005, the sentences passed against the appellants for

the offences stated above is reduced to one year. With the above reduction in the sentences, the appeals filed by the appellants are dismissed.