

(2019) 02 CHH CK 0172

In the Chhattisgarh High Court

Case No : Criminal Appeal (CRA) No. 133, 166 Of 2016

Saket Kashyap And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 02 CHH CK 0172

Hon'ble Judges : Rajendra Chandra Singh Samant, J

Bench : Single Bench

Advocate : J.D. Bajpayee, Praveen Dhurandhar, A.N. Bhakta

Final Decision : Dismissed

Judgement

Rajendra Chandra Singh Samant, J

1. These appeals have been preferred against the judgment of conviction and order of sentence dated 21-01-2016 passed in Special Case No.02/2011

by the Special Judge Durg, C.G., convicting the appellants under Section 7, 13(1)(d) R/w. 13(2) of Prevention of Corruption Act, 1988 and sentencing

them with R.I. for 01 year and R.I. for 2 years along with fine of Rs.2,000/- and Rs.3000/- with default stipulations and direction that both the jail

sentences shall run concurrently.

2. The prosecution case, in brief, is this, that complainant Babulal Sahu (PW-1) had applied for electric connection in his welding shop. The application

was processed, but the survey report of lineman was pending. The complainant approached appellant Prahlad Kumar Verma requesting him for

preparation of survey report, on which he demanded Rs. 500/- as bribe. The complainant filed a written complaint (Ex.-P/1) to S.P., ACB, Raipur. On

that basis an unnumbered FIR (Ex.-P/12) was recorded. Complainant Babulal Sahu (PW-1) was given a micro tape recorder to record the statement

of appellant Prahlad Kumar Verma, which was recorded and produced with the application (Ex.-P/3). The tape recording was transcribed vide Ex.-

P/4 and micro tape recorder and cassette were seized vide Ex.- P/5. In the presence of witnesses, the complaint and the complainant's version was

verified. Subsequent to that a preliminary procedure of demonstration of trap proceeding was conducted in presence of the witnesses and the

complainant. The currency notes of Rs.400/- were coated with phenolphthalein powder and placed in the left side pocket of full pant of the

complainant and he was given instruction of the manner of handing over the same. The complainant was again provided with micro tap recorder to

record the statement at the time of handing over the bribe money. On 16-11-2010 the trap party led by I.O., B.S. Rathore (PW-10) proceeded to the

spot in village Chilhati, Distt. Durg. Complainant Babulal Sahu (PW-1) was asked to go ahead and hand over the bribe money to appellant Prahlad

Kumar Verma and a shadow witness Yogesh Gupta was asked to follow him. The complainant met with appellant Prahlad Kumar Verma and asked

him for survey report. Appellant Saket Kashyap produced the survey report and after receiving the same the complainant took out the bribe money

from his pocket and handed over the same to appellant Prahlad Kumar Verma, then appellant Prahlad Kumar Verma took the money and passed on

the same amount to appellant Saket Kashyap who received the same and kept in his pocket. The complainant then gave the pre-agreed signal, seeing

that all the members of the trap party arrived on the spot and caught hold of hands of both the appellants. In rest of the procedure of trap the hands of

the appellants were washed in solution of Sodium Carbonate which turned into pink which preserved and seized. Appellant Prahlad Kumar Verma

made a statement that he had received the money from the complainant and given to helper appellant Saket Kashyap. The currency notes were

recovered from shirt pocket of appellant Saket Kashyap which was matched with the numbers previously recorded and found verified. Then the notes

were washed in the solution of sodium carbonate and the solution turned into pink which was preserved and sealed in a bottle. The shirt pocket of

appellant Saket Kashyap was dipped in the solution of sodium carbonate and colour of the solution turned pink, which was again preserved and sealed

in a bottle. Fingers of both hands of the complainant was also dipped into the solution of sodium carbonate which turned into pink colour, which was again preserved and sealed. The bribe money was seized vide Ex.-P/17. Preserved and sealed bottles containing solutions of sodium carbonate were seized vide Ex.-P/18. Papers regarding the connection applied for by the complainant were seized vide Ex.- P/19 and P/20 and panchnama of the whole proceeding was prepared vide Ex.-P/23. Numbered FIR Ex.-P/35 was recorded later on in the Police Station ACB Raipur. The seized solutions were sent for FSL examination and the report was received vide Ex.P/32, confirming the presence of phenolphthalein in the solutions pertaining to wetting of hands of both the appellants, currency notes and the shirt of appellant Saket Kashyap. Further investigation procedures were completed and after obtaining sanction for prosecution vide Ex.-P/27 charge sheet was filed before the concerned Court.

3. Both the appellants were charged with offence under Section 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. Both the appellants denied the charges and prayed for trial.

4. The prosecution examined as many as 14 witnesses. Subsequent to which, both the appellants were examined under Section 313 of the Cr.P.C., in which they denied all the incriminating evidence against them, pleaded innocence and false implication. It was pleaded in defence that the complainant was running his welding shop by making use of domestic connection, regarding which he was advised by appellant Prahlad Kumar Verma to apply for separate electricity connection. The complainant had filed the application, but had not paid the process fee and without depositing the process fee survey report could not have been prepared. It is stated that the complainant has falsely implicated the appellants as the amount that was handed over was for the payment of process fee, which was claimed by the complainant as the bribe money. No witness was examined in defence.

5. After completion of the trial, the impugned judgment has been passed wherein both the appellants have been convicted and sentenced as aforementioned.

6. It is submitted that by learned counsel for the appellants that the prosecution has failed to prove the offence against the appellants, therefore, their conviction is bad in law. The statement of the prosecution witnesses had not

been reliable and were contradictory to each other, which could not have been formed the basis of the conviction against the appellants. The prosecution has failed to prove the demand and acceptance of bribe in this case.

The statement given by complainant Babulal Sahu (PW-1) in para 9 itself shows, that appellant Prahlad Kumar Verma received and passed the

money to appellant Saket Kashyap without any demand. He has further admitted in cross-examination, that he has not mentioned in his complaint that

it was appellant Saket Kashyap who was making such demand and that he had not complained against appellant Saket Kashyap. Rest of the

prosecution witnesses should not have been relied upon, as all of them were official witnesses and members of the trap party. Similar admission has

been made by B.S.Rathore (PW-10) in his cross-examination that there was no complaint against appellant Saket Kashyap. Further, the fact in

evidence itself creates doubt that appellant Prahlad Kumar Verma had received the amount and passed over to appellant Saket Kashyap. Therefore,

the allegation that appellant Prahlad Kumar Verma had made demand becomes doubtful and as there is no complaint against appellant Saket Verma

regarding making any demand then the acceptance on his behalf cannot be said to be based on demand.

It is also submitted that the complainant had filed application for conversion of his electric connection from domestic to commercial use, regarding

which he had to pay process fees and it was the process fees that he had paid, which is falsely claimed to be bribe money. Apart from that, the said

money was not seized from the pocket of any accused, on the contrary which was seized from the drawer of the table which again shows the receipt

of money as doubtful.

Reliance has been placed on the Judgment delivered by Hon'ble the Supreme Court in the matter of M. Ukhtiar Singh (since deceased) through his L.R.

Vs. State of Punjab [(2017) 8 SCC 136,] P. Satyanarayana Murthy Vs. The Dist. Inspector of Police and Ors. [(2015) 10 SCC 152,] State of Kerala

and Ors. Vs. C.P. Rao [(2011) 6 SCC 450], K. Subba Reddy Vs. State of Andhra Pradesh [AIR 2008 SC 106].

Reliance has also been placed on the judgment delivered by this Court in CRA No.851 of 2003 [Shani Ram Bhagat Vs. State of Chhattisgarh], dated

04-10-2017, in which after scrutiny of statements and documents and on overall

appreciation of evidence on record, it was held that the prosecution has failed to prove the charges against the accused beyond reasonable doubt. It is prayed that the appellants be acquitted of charges against them.

7. Learned counsel for the State opposes the grounds raised in the appeal and submits that the prosecution has proved its case beyond reasonable

doubt. Babulal Sahu (PW-1) has made clear statement regarding demand and acceptance of bribe money. Some minor discrepancies which has come

in his statement are not material in any sense. Apart from this, according to the statement given by the other witnesses, appellant Prahlad Kumar

Verma admitted in presence of the witnesses that he has received the amount and passed over to appellant Saket Kashyap and the recovery was

made accordingly. This admission of appellant Prahlad Verma cannot be regarded confessional, on the other hand, it is meant for discovery which has

resulted accordingly, therefore, no case is made for acquittal of these appellants.

8. Heard learned counsel for the parties and perused the record of the trial Court.

9. The question that requires determination in these appeals is as to whether the prosecution has been able to establish guilt of accused/appellants, on

the basis of evidence beyond reasonable doubt?

10. Babulal Sahu (PW-1) states that he had applied for electricity connection to be installed in his welding shop. Appellant Prahlad Kumar Verma had

the responsibility to prepare the survey report. When he met with appellant Prahlad Kumar Verma, then he was demanded Rs.500/- against the

survey report. The witness again requested appellant Prahlad Kumar Verma on another occasion then appellant Prahlad Kumar Verma told him that

responsibility of survey report is of appellant Saket Kashyap, who is on leave. The witness then again met with appellant Saket Kashyap for the

survey report then he was again demanded Rs.500/- as bribe. Thereafter, the complainant approached the office of ACB, Raipur where he filed the

application Ex.-P/1. The complainant had been given a tape recorder with instruction to record the conversation regarding demand of bribe money.

The witness carried out the instructions accordingly and recorded the conversation with appellant Prahlad Kumar Verma in given tape recorder. On

his producing the tape recorder in the office of ACB, Raipur, it was heard and then this witness filed another complaint Ex.-P/3. The first complaint

Ex.-P/1 does not mention the name of appellant Saket Kashyap. The second

report Ex.-P/3 does not find mention of appellant Saket Kashyap as the person making the demand of bribe, which is accordingly admitted in cross-examination by Babulal Sahu (PW-1).

11. Babulal Sahu (PW-1) has made statement regarding initial demonstration procedure which is not in dispute and then has stated that he along with the trap party and the witnesses approached the place of appellants. This witness met with appellant Prahlad Kumar Verma in Kundan Hotel, where

appellant Saket Kashyap was present. On asking by this witness appellant Prahlad Kumar Verma asked appellant Saket Kashyap to bring the survey

report which was brought and then this witness took out the tainted bribe money of Rs.400/- kept in his pocket and gave it to appellant Prahlad Kumar

Verma. Appellant Prahlad Kumar Verma took the money in his hand and kept the same on the table and then slid it towards appellant Saket

Kashyap. Appellant Saket Kashyap picked up the money and kept in his pocket. Thereafter, both the appellants were caught hold of by the members

of the trap party and the trap proceeding was carried out. In cross-examination he has admitted that there was requirement of payment of processing

charge for electrical connection which he had not paid, but he denied that appellant Prahlad Verma had asked him for deposit of process fees. No

specific question has been put to him in defence to deny that this witness did not hand over the money to appellant Prahlad Kumar Verma, that

appellant Prahlad Kumar Verma did not receive the money in his hands, that appellant Prahlad Kumar Verma did not pass over the same to appellant

Saket Kashyap and that appellant Saket Kashyap did not pick up the money and kept in his pocket. Thus, evidence of this witness on these points is

totally unrebutted and uncontradicted.

12. The independent witnesses of this incident Mukesh Kumar Sinha (PW-2) has not supported the prosecution case. However, he has admitted in

answer to the leading question by the prosecutor that the hands of appellants Prahlad Kumar Verma and Saket Kashyap were washed in some

solution and that both the appellants were caught hold of by the Anti Corruption team. This evidence gets partial corroboration to the statement of

Babulal Sahu (PW-1) regarding this, that the appellants were present on the spot and the Anti Corruption team was present there to conduct the

proceeding.

13. Jugal Kishore (PW-3) has supported the version of Babulal Sahu (PW-1) in his examination-in-chief regarding handing over of bribe money to

appellant Prahlad Kumar Verma which was passed over to appellant Saket Kashyap, and thereafter, regarding proceeding taken up by the ACB

team. In cross-examination his statement has remained intact in this respect.

14. U.D. Badgaiya (PW-4) is an official witness of the trap proceeding he has stated regarding the trap procedure that appellant Saket Kashyap was

searched vide Ex.-P/16 and four currency notes of Rs.100/- were recovered from his pocket which was seized vide Ex.-P/17. This witness has not

fully supported the prosecution, therefore there was discredited on the remaining points he has stated before the Court, but his statement regarding

recovery of money from the pocket of appellant Saket Kashyap has remained unrebutted in his cross-examination.

15. Prakash Chandra Rajvaidya (PW-6) is another official witness of the trap procedure, who has stated that he had been to the spot of incident

where the appellants were sitting in a hotel. The complainant approached appellant Prahlad Kumar Verma and handed over to him Rs.400/-. On

receiving the signal the hands of the appellants were caught hold of which were washed in the solution and the colour of the solution changed

accordingly. Firstly appellant Prahlad Kumar Verma was searched and tainted currency notes were not found in his possession. Thereafter, hands of

appellant Saket Kashyap were washed in the solution colour of which turned into pink and then he was searched and from his pocket four currency

notes of Rs.100/- were recovered. In cross- examination his statement regarding search and recovery has remained unrebutted.

16. Inspector Jerol Lakda (PW-14) is the person who has conducted the trap proceeding after making initial statement of receiving the complaint and

the demonstration, he has given statement regarding search and recovery of currency notes and also regarding the solution test. In cross-examination

his statement has remained unrebutted.

17. Avinash Chouhan (PW-7) is Junior Engineer in CSPDCL he has stated that appellant Prahlad Kumar Verma was responsible for the maintenance

and other works and appellant Saket Kashyap was his assistant, which was not under challenge.

18. Dayalu Ram (PW-8) has stated about the seizure of application form and

other documents filed by the complainant vide Ex.-P/20, which is again not under challenge.

19. Rajanikant Awasthi (PW-9) has stated about grant of sanction by the prosecution against the appellants vide Ex.-P/27, which was not under challenge.

20. DSP, B.S.Rathore (PW-10) has conducted the investigation and made seizures and has stated that search of appellant Prahlad Kumar Verma vide

Ex.-P/14 was without any result. However, search of appellant Saket Kashyap vide Ex.-P/16 resulted in recovering of four currency notes of

Rs.100/- which was seized vide Ex.-P/17. He made seizure of coloured solutions which preserved and sealed vide Ex.-P/18. There is no such

challenge given to him in his cross-examination regarding the statement which is given in examination-in-chief.

21. DSP, Lochan Pandey (PW-13) has recorded the FIR vide Ex.-P/35, which is again not under challenge.

22. Appellant Prahlad Kumar Verma has made statement in examination under Section 313 of the Cr.P.C. that he had asked the complainant to

deposit process fees, without which no order could have been passed for preparation of survey report. The complainant has falsely implicated him for

demand of bribe, whereas, it had been the money for the payment of process fees, for which no witness was examined in defence by the appellants.

23. Complainant Babulal Sahu (PW-1) has clearly denied in his examination in chief and in his cross-examination, that he has deposited the process

fees with appellants. Avinash Chouhan (PW-7) has admitted in his cross-examination that only on deposit of process fees any Lineman can be

ordered to prepare the survey report and the complainant had not deposited the same. But, no suggestion has been put to him regarding procedure by

which the process fees had to be deposited. Similar admission is made by Dayalu Ram (PW-8) in his cross-examination that it is the Assistant

Engineer who orders the Lineman for preparation of survey report after deposit of process fees.

24. It was burden of defence to clarify as to what was the procedure of deposit process fees and who was the person responsible to take the deposit

and in such case of official payment, normally a receipt is issued regarding making such deposits. No witness has admitted that the appellants were

the persons responsible for taking deposits and issuing receipts in this respect.

25. After making close scrutiny of all the evidence present on the record of the trial Court, in conclusion it is found that the statement of the

complainant Babulal Sahu (PW-1) was that there was demand of bribe Rs. 400/- by appellant Prahlad Kumar Verma is unrebutted, which finds

support from the other circumstances that at the time of taking bribe the money was received by appellant Prahlad Kumar Verma himself, which is

again unrebutted statement and then it was passed over to appellant Saket Kashyap who picked up the same and kept in his pocket. This incident of

giving and taking bribe money has been supported by other witnesses including independent witness Jugal Kishore (PW-3) who was not a member of

trap team and further the circumstantial evidence regarding acceptance which has been confirmed in the solution test. According to the statement of

Babulal Sahu (PW-1) he had made repeated efforts for obtaining survey report and his application for electricity connection was kept pending, which

he received only when he passed over the money to the appellants, which is sufficient to show that the acceptance that was made, was against the

demand made by appellant Prahlad Kumar Verma in collaboration with appellant Saket Kashyap who happens to be assistant. Therefore, I am of this

opinion that the prosecution has successfully proved the case against both the appellants. Therefore, after overall consideration on the material and

evidence present in the record of the trial Court, I do not find any substance in both these appeals, hence, they are dismissed accordingly.

26. The appellants are reported to be on bail, their bail bonds are cancelled and they are directed to surrender to serve out the remainder of the

sentence.