
(2010) 03 GUJ CK 0085
In the Gujarat High Court
Case No : Criminal Appeal No. 1013 of 1993

Shankerji Surji Joshiara

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Evidence Act, 1872 — Section 114, 133, 8
Prevention of Corruption Act, 1988 — Section 15, 7

Citation : (2010) 2 GLH 108

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

Bench : Single Bench

Advocate : K.B. Anandjiwala, for the Appellant; A.J. Desai Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The appellant - original accused has filed this Appeal u/s 374 of Cr. P. C. challenging the Judgment and order of conviction dated 30. 6. 1993 passed by the learned Special Judge, Court No. 2, Ahmedabad, in Special Case No. 40 of 1990, whereby the learned Special Judge has held the appellant - accused guilty for the offences charged against him. Brief facts of the prosecution case is that the complainant -Punambhai Mohanbhai Patni was the rickshaw driver and he was plying rickshaw bearing Registration No. GRS - 3874 on rental basis. He had not paid up the fine about 10 traffic cases for the offence pertaining to the traffic rules. The accused, who is Police Constable, Traffic Section, intercepted the rickshaw of the complainant on 6. 2. 1989 at about 7: 30 a. m. near Kalupur Bridge. The accused told the complainant that he is Court Duty Policeman of Traffic Branch, Ahmedabad City and he was having 10 complaints against the complainant and has got warrant against him. Thereafter, he was to be taken along with auto-rickshaw and the accused to the police station. Nr. Kalupur Railway Station, the accused asked the complainant to park his auto-rickshaw in parking plot of the station and then obtained the token

issued by the parking Authority. The complainant paid the charge for parking the rickshaw. The accused asked the complainant as to how much money he was having with him and at that time, the complainant replied that he does not have any amount as he has just started plying his rickshaw. The accused also told the complainant that he was having warrant against him and also told that if the complainant wants to pay the fine in the Traffic Offences Court then the complainant will have to incur a large amount as fine. Therefore, he told that he wants to compromise with the accused and the complainant should be prepared to pay Rs. 200/-. The accused also told the complainant that if complainant is paid Rs. 200/-, then he can see to it that the complaints are disposed of and he would not have difficulty. The complainant was not having enough money to pay the accused and hence, as alleged, he was advised the accused to see him in the noon hours at the Court of Metro Magistrate, 13th Court (Traffic Court), Gheekanta, Ahmedabad. The complainant was also assured that on payment of the amount of Rs. 200/- by the complainant, the complaints against him would be destroyed. It is further alleged that the complainant was actually flared up with such kind of the repeated payment of gratification amount as on previous occasions he had paid Rs. 164/- and 174/- and therefore, due to this kind of repeated nuisance and harassment by the Traffic Policeman, he approached the A. C. B. Office and lodged the complaint, as the complainant is not willing to pay Rs. 200/- to the accused person towards his repeated demand of illegal gratification.

2. Thereafter, upon lodging the complaint against the accused on 6. 2. 1989 and after for arranging the trap against the accused, panch witnesses were summoned and they were briefed of what functions they have to perform and then complainant was asked to produce currency notes in the sum of Rs. 200/- which were smeared with anthracene powder and then the same were safely placed in the pocket of wearing apparel of the complainant with instructions not to touch the same till demand is made by the accused. Prior to that the panch witnesses were briefed of the experiment by ultraviolet lamp and its effect on smeared currency notes with the powder. Thereafter, the number of currency notes were noted down in the first part of the trap panchnama prepared in the presence of the panch witnesses and the raid was successfully carried out.

3. The prosecution has examined three witnesses Viz. the complainant - Poonambhai Mohanbhai Patani at Exhibit 8, the panch witness Alibin Mohmedbhai Chaus at Exhibit 10 and Investigating Officer Vinod Jashvantray Vyas at Exhibit 15. The following documentary evidences have been produced by the prosecution:-

Exhibit 14: Grating sanctioned to prosecute the accused for the alleged offence.

Exhibit 16: Complaint dated 6. 2. 1989.

Exhibit 12: Trap Panchnama dated 6. 2. 1989.

Exhibit 11 and 9: Seizure memos.

The defence side has produced following documentary evidence.

Xerox copy of the receipt book for Rs. 200/- paid by complainant in the Court.

Exhibit 18: Department Circular calling and furnishing certain information in respect of the accused called for by the A. C. Bureau.

Exhibit 21: Certified copies of eight N. C. complaints filed against the complainant.

Exhibit 22: Certified copies of certain orders of Magisterial Court.

Exhibit 23: Certified copies of certain orders passed by the Magisterial Court against some accused

Exhibit 24: Certified copies of certain orders of Magisterial Court.

Exhibit 25 and 26: Certified copies of complaints lodged against the complainant dated 15. 8. 1990 and 5. 9. 1990.

4. On completion of investigation the requisite sanction of the competent Authority was obtained to prosecute the accused and thereafter the charge-sheet against the accused came to be submitted. The prosecution has examined three witnesses and at the end recorded the statement of accused u/s 313 of Cr. P. C. At the conclusion of the trial, after considering the oral as well as documentary evidence led by the parties and the arguments advanced, the learned Special Judge, vide impugned Judgment and order dated 30. 6. 1993, held the accused - appellant guilty for the offences charged against him. The learned Special Judge convicted the appellant - accused for the offence u/s 7 of the Prevention of Corruption Act and sentenced him to undergo Rigorous Imprisonment for a period of three years and to pay fine of Rs. 500/- i/d to undergo R. I. for a further period of two months, and further convicted the accused for the offence under Sections 15 of the Prevention of Corruption Act and sentenced him to undergo Rigorous Imprisonment for a period of two years and to pay fine of Rs. 1, 500/- i/d to undergo R. I. for a further period of two months. The learned Judge has ordered that the substantive sentences shall run concurrently.

5. Being aggrieved by and dissatisfied with the Judgment and order dated 30. 6. 1993 passed by the learned Special Judge, Court No. 2, Ahmedabad, in Special Case No. 4() of 1990, the appellant (original accused) has preferred this Appeal.

6. Heard learned Advocate Shri K. B. Anandjiwala, appearing for the appellant - original accused and learned A. P. P. Shri A. J. Desai for the respondent - State. I have gone through the Judgment and order passed by the learned Special Judge and also gone through the oral as well as documentary evidence produced before me. I have also gone through the papers produced before me.

7. Learned Advocate Mr. Anandjiwala has contended that looking to the complaint of the complainant, the demand is not established beyond reasonable doubt. He has also read the contentions of the complaint and contended that when there is

no evidence in corroboration of the contention stated in the complaint and simply oral allegation made by the complainant, it cannot be considered that the prosecution has proved the alleged offence against the accused beyond reasonable doubt. Mr. Anandjiwala, learned Counsel has also argued that the complainant has never bothered to obey the traffic rules and so many complaints and memos were filed against him. Basically, the complainant is a rickshaw driver and before the learned Metropolitan Magistrate (Traffic), Ahmedabad, so many complaints were pending and in some of the complaints, the complainant was penalized and just to prove the efficiency in service, when the present appellant - accused called the present complainant at that place, then at that time, the complainant was directed by the present appellant - accused to go before learned Metropolitan Magistrate, (Traffic), Ahmedabad and to pay the fine. He has also contended that the conduct of the present appellant - original accused, can be considered in favour of the accused. He has served his duty in good faith and just to avoid penalty which can be imposed by the learned Metropolitan Magistrate, the complaint was filed by rickshaw driver before the ACB, Ahmedabad. Learned Counsel has also read the contentions of the panchanama at Exhibit 12 and vehemently argued that it is panchnama of trap and in connection of the demand made by the present appellant, the trap operation was arranged but no amount was recovered from the possession of the present appellant - accused. Even he has read the contentions of Panchnama and also contended that presence of the anthracene powder was found on finger and palm of the complainant and no presence of anthracene powder was found on body of the accused. Even the Investigating Officer - Trapping Officer has also carried out the experiment of ultraviolet lamp, but the prosecution has totally failed to establish the recovery regarding trap amount and, therefore, there was no question of demand of any illegal gratification made by the accused from the complainant. He also contended that there were 8 cases pending against him, so the accused told the complainant to arrange for Rs. 200/- towards the fine amount. He has also contended that the learned Judge has not considered the very aspect that in the past also, the complainant had paid Rs. 164/- and Rs. 174/- as fine to the different policemen other than the accused and he had not stated the same before the police or in the complaint. Therefore, he has prayed that the order passed by the learned Special Judge is required to be quashed and set aside.

8. Learned A. P. P. Mr. A. J. Desai appearing for the State, has supported the Judgment and order of the learned Special Judge. He has contended that in connection of the demand, the trap panchnama was prepared and after preparation, of the preliminary panchnama, the trap was carried out by the trapping officer in the presence of panch witness. He has also argued that the panchas are independent witnesses and from the oral evidence, the prosecution can say that the demand is proved beyond reasonable doubt. He has also contended that so far as demand is concerned, there cannot be any direct evidence but the Court can consider the oral evidence of the complainant and

conduct of the accused. Mr. Desai, learned APP has vehemently argued that no doubt the trap amount was not recovered from the possession of the accused, but the contention of the complainant clearly shows that the present appellant - accused had demanded the amount towards the illegal gratification/bribe from the present complainant. He, therefore, contended that the trial Court has not committed any error in holding the appellant - accused guilty for the charges levelled against him and, therefore, no interference is required to be called for.

9. I have gone through the Judgment and order of the trial Court. I have also perused the oral as well as documentary evidence on record. I have also gone through the further statement of the accused recorded u/s 313 Cr. P. C. The first part of the panchnama was drawn as per the contents of the complaint and the trap amount was also produced and also anthracene powder was applied by trapping officer and it was inserted in the pocket of the complainant. Thereafter, proper care and caution was taken by the trapping officer and it was found during the experiment of ultraviolet lamp. It was also found by the trapping officer that the anthracene powder was not present on the body of member of the raiding party, when the raiding party reached to the place of trapping. The prosecution is unable to prove that at the place of offence, demand was made by the present appellant accused. Even the prosecution has not proved from the oral evidence of the complainant that the demand was made by the present appellant - accused and he has committed offence under Sections 7 and 15 of the Prevention of the Corruption Act. It is true that looking to the defence version, certain documents are produced on record and it is also established beyond reasonable doubt before the learned Special Judge that the present appellant - accused was appointed as Court Duty Constable of Traffic Court at Ahmedabad Metropolitan Magistrate compound. It is also on record that the present appellant - accused was entrusted the duty to serve summons and warrant to the person, who has committed traffic offence and the name and number of vehicle which are not noted by the Traffic Police Constables, who are attached with the service of process. From the cross-examination of the complainant, it is very clear that during the trap, original accused, present appellant has never demanded any single paisa towards illegal gratification. It is admitted fact that the accused person has not accepted any single paisa. Even from the panchnama, it is evident that the trap amount was recovered from the possession of the original complainant. The prosecution is unable to convince this Court even today also that this panchnama can be considered as panchnama of sealing and seizing. Even the memo book, which is prepared by the present appellant - accused, it shows that provisions u/s 8 of the Evidence Act, can be applicable in this matter. The conduct of the present appellant is very clear to show that during the official duty, which is made by the Department to the present appellant - accused. The attention was drawn by the present appellant to the complainant to go to the learned Metropolitan Magistrate Court and remove the complaint. So, when the demand is not established beyond reasonable doubt, when the acceptance is not proved, it creates a doubt in favour of the accused,

then doubt of benefit is required to be given to the accused. It is true that only in the case of demand, I am in agreement with the submission made by the learned APP that there may not be any direct evidence but this case is not based on simply demand. Looking to the evidence of the trapping officer, the panchnama is drawn by him and looking to the admission of the complainant himself, no demand was made by the present appellant -accused. Present appellant - accused is an accomplice and the law as to accomplice evidence is well settled.

10. Section 133 of the Evidence Act provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice. The effect of this provision is that the Court trying an accused may legally convict him on the single evidence of an accomplice. To this there is a rider in illustration (b) to Section 114 of the Act, which provides that the Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. It is very clear to say that corroboration is necessary in case of demand, but in the present case, looking to the defence made by the present appellant - accused, I am of the opinion that the appellant has established his case that he has never demanded any single pai as illegal gratification or bribe and therefore, prosecution has failed to prove the charge levelled against the accused.

11. I am, therefore, of the opinion that the learned Special Judge has committed grave error in holding the appellant - accused guilty for the offences alleged against him.

12. It is also pertinent to note that except bare allegation, there is no evidence to support the allegation of the complainant that accused initially demanded Rs. 200/- and thereafter agreed to accept the said amount. Hence, the story put forward by the prosecution is not trustworthy and is doubtful and the prosecution has failed to establish the guilt against the accused and hence, there is an error apparent on the face of the record and law resulting into miscarriage of justice. Hence, impugned Judgment requires to be quashed and set aside. In view of the above, this Appeal is allowed. The judgment and order dated 30. 6. 1993 passed by the learned Special Judge. Court No. 2, Ahmedabad in Special Case No. 40 of 1990, holding the appellant - accused guilty for the offence punishable under Sections 7 and 15 of the Prevention of Corruption Act, is hereby quashed and set aside, and the appellant - accused is acquitted from all the charges levelled against him. Bail bond, if any shall stand cancelled. Fine, if paid, be refunded to the appellant - accused.