
(2012) 10 BOM CK 0118
In the Bombay High Court
Case No : Criminal Appeal No. 642 of 2005

Smt. Anuradha Wasnik

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2013) 1 ABR 6 : (2013) BomCR(Cri) 181

Hon'ble Judges : A.R. Joshi, J

Bench : Single Bench

Advocate : D.C. Chahande, for the Appellant; A.M. Joshi, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

A.R. Joshi, J.—Heard rival arguments on earlier dates on this criminal appeal preferred by the original accused (since deceased) challenging the judgment and order of conviction passed on 30/9/2005. Said impugned judgment and order was passed in Special Case No. 15 of 1995 in which, initially there were three accused including the present appellant (since deceased) being original accused No. 1, however, accused Nos. 2 and 3 died during the pendency of the matter and as such case against them stood abated leaving behind only accused No. 1 to face the trial. By the impugned judgment and order original accused No. 1, present appellant (since deceased), was convicted for the offences punishable u/s 7 and also punishable u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. He was sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000/-, in default, to suffer further rigorous imprisonment for three months. Being aggrieved by the said judgment and order, original accused No. 1 preferred appeal in the year 2005, however, during the pendency of the appeal, original accused No. 1 died and his wife Smt. Anuradha Wasnik continued the said litigation being legal representative of said accused No. 1 and as such her name was inserted as appellant as present position

stands. Prior to appreciating the rival arguments, the case of the prosecution in nutshell can be mentioned in order to appreciate proper prospective of the matter and in order to ascertain whether material brought before the trial Court warranted conviction for the offences charged under the Prevention of Corruption Act.

2. On 07/6/1992 one Narayan Bhongade, father of the complainant submitted the application for mutation to be effected in the records of rights concerning his agricultural land. Vide the said application it was prayed to the concerned authority of revenue of which original accused No. 1 (deceased appellant) was Revenue Inspector at the relevant time at Kanhan, district Nagpur. By the said application, said Narayan Bongade wanted that the names of his sisters i.e. Sau. Manjulabai Thakre and Sau. Sevantabai Kadoo were to be removed from the record of rights as they had relinquished their shares in favour of Narayan Bhongade through relinquishment deeds on the stamp papers of Rs. 10/- each, which were also filed along with the application for mutation. In spite of repeated requests, mutation was not effected and accused No. 1, apparently, demanded a bribe amount of Rs. 500/- for getting the said work done and also demanded Rs. 80/- to cure the defect of deficit stamp papers on the premises that two relinquishment deeds were on insufficient stamp papers of Rs. 10/- each instead of Rs. 50/- each.

3. According to the complainant, sometime in the month of August, 1993, there was camp of Revenue Inspector at the village of the complainant at Kerdi and that time he had met accused No. 1, the Revenue Inspector and also met accused No. 2 Shri Dhoke, the then Patwari working in revenue department and requested both of them to complete the work of mutation and to give correct 7/12 extract for the agricultural property of his father. According to the complainant, that time, Dhoke Patwari insisted that the complainant should meet accused No. 1 and accordingly in such meeting it was initially told by accused No. 1 that amount of Rs. 580/- was necessary, i.e. Rs. 500/- for doing the work and Rs. 80/- to cure the deficit stamp papers on the instruments. That time, according to the complainant, he requested accused No. 1 to lower the said amount of Rs. 500/- as he had no money and as such allegedly the said amount was reduced to Rs. 200/-. Thereafter, the matter was not finalized as no payment was made by the complainant. Also, according to the complainant, on or about 12/10/1993 he met accused No. 1 in the Gram Panchayat office at Kanhan and again requested for the work. That time he was told that as the money was not paid, the work was not done and accused No. 1 further told him that accused No. 2 Dhoke Patwari was available in the village and asked the complainant to call said Patwari along with the record and again demanded for the money so that the work could be done.

4. After the above, according to the complainant, on 22/10/1993 in the morning he had been to the residence of accused No. 2 Dhoke at Kamptee and gave him message that he was called by accused No. 1 at the office at Kanhan for effecting

the mutation entry. That time, according to the complainant, he was assured by accused No. 2 Patwari Dhole that he would reach the office of accused No. 1 at 2.00 p.m. and asked the complainant to reach there along with his father and also bring Rs. 280/- for the work. As complainant was not ready and willing to pay the bribe amount, he, on the same day, contacted the Anti Corruption Bureau office at Nagpur and lodged oral report which was reduced into writing being complaint (Exh. 53). On the strength of the said complaint, further process was conducted by the Investigating Officer Shri Jaiswal- P.W. -5, during which, after calling two panch witnesses including panch, P.W. -3 Vijay Gan, pretrap panchanama procedure was conducted and pre-trap panchanama (Exh. 63) was drawn. Thereafter, raid was conducted in the afternoon of the same day i.e. 22/10/1993 in the office of accused No. 1 at Kanhan. During the raid, according to the complainant, he along with his father and panch No. 1 i.e. P.W. -3, entered the office of accused No. 1. That time accused No. 2 Patwari Dhole saw them and had a talk with accused No. 1 about arrival of complainant and his father. According to the complainant, accused No. 1 told accused No. 2 to see about the work of complainant and thereafter accused No. 2 Patwari Dhole told accused No. 3 Doma Kotwal (deceased), then working as Kotwal at village Kerdi to take the complainant and others out of Gram Panchayat office. Thereafter, accused No. 3 Doma Kotwal took them out and asked the complainant whether he had brought the amount and, if so, deliver the same to him. On this, the complainant first handed over him Rs. 80/- on which accused No. 3 Doma told him regarding the directions of accused No. 1 and to give the remaining amount. On this, the complainant gave him Rs. 200/- and said amount was accepted by accused No. 3 Doma. Thereafter, pre-arranged signal was given by the complainant to the raiding party members and accused No. 3 Doma was put under arrest and usual trap procedure was conducted including taking hand washes of accused No. 3, his shirt, etc. and samples were collected of such hand washes and detailed trap panchanama was drawn which is at Exh. 64. Accused No. 3 put under arrest and subsequently, during the investigation, role of accused Nos. 1 and 2 was revealed and they were also put under arrest and were charged for the offences as mentioned above. After the trial and after recording of evidence of six witnesses, trial ended in conviction of original accused No. 1- Kanthiram (since deceased) as during the pendency of the trial accused Nos. 2 and 3 died.

5. During the trial, out of six prosecution witnesses, important prosecution witnesses are only P.W. -2 Deochand Bhongade, complainant - first informant, P.W. -3 Vijay Gan- panch witness, P.W. -4 Nilkanth Tarare-friend of the complainant, P.W. -5 Ashok Kumar Jaiswal - Investigating Officer and P.W. -6 Jayant Kawale - the then Collector, Nagpur who accorded sanction to the prosecution of accused No. 1, the then working as Revenue Inspector at Kanhan. The evidence of P.W. -1 Vikas Tidke is not of much significance in as much as though he was member of the raiding party on 22/10/1993, his role was only to hand over the complaint and requisition letter to Kanhan police station and thereafter on 27/10/1993 for carrying different exhibits to the office of the

Chemical Analyser for getting C.A. Reports, etc.

6. Prior to appreciating of the substantive evidence of mainly the complainant P.W. -2-panch witness No. 1, P.W. -3 and P.W. -4 - friend of the complainant, certain admitted position can be narrated in order to crystallize the issue in controversy. The said admitted position is as under.:

(a) During the pendency of the criminal trial, accused Nos. 2 and 3 died thus case against them stood abated and only the original appellant faced the trial.

(b) Actual taking of the bribe was by accused no. 3, who died during the pendency of the matter.

(c) According to P.W. -4 the friend of the complainant he was present at the time of initial demand made by accused No. 1 with complainant at the camp site and, in fact, it was the only demand allegedly made by accused No. 1 to the complainant. However, entire complaint (Exh. 53) is silent regarding presence of P.W. -4 at the said first meeting and only occasion when there was alleged demand by accused No. 1 of Rs. 500/- and subsequently reducing the said demand to Rs. 200/- and also demand of Rs. 80/- for the stamp papers.

(d) According to P.W. -4, his statement was not recorded by the investigating agency in the matter.

(e) In the entire evidence of the complainant- P.W. -2, there is no whisper of the presence of his friend Nilkanth P.W. -4 allegedly at the first meeting with accused No. 1 at the camp office.

7. Bearing in mind the above admitted/factual position, the rival arguments are to be dealt with and it is to be ascertained whether the substantive evidence of P.W. -2, P.W. -3 and P.W. -4 inspire confidence so far as the charges against original accused No. 1-appellant (since deceased).

8. From the substantive evidence of P.W. -2 and P.W. -3, it must be said that, there was no specific demand of either Rs. 200/- or Rs. 80/- by accused No. 1 from the complainant at the time trap. For this purpose the substantive evidence of P.W. -2 is reproduced hereunder for ready reference, which is appearing in para-2 of his evidence.

...In Gram Panchayat Kanhan Pipari we found the accused persons and 2-3 other Patwari present in the said office. There was no talk with anybody in the said office. Accused No. 2 Dhoke after seeing us told accused No. 1 about our arrival in the office. Accused No. 1 told accused No. 2 see about our matter, and do according to his instructions already given. Thereafter accused No. 2 Dhoke told accused No. 3 Doma Kotwal (deceased) that he should take us out side Gram Panchayat Office. Therefore, accused No. 3 Doma, myself and Panch Vijayram, we came out from the said office. Accused No. 3 Doma asked me as to whether I had carried the amount, if carried, deliver it. Therefore, I had taken out Rs. 80/- from my right side pant pocket and handed it over to accused No. 3 Doma.

Accused No. 3 Doma told me that amount of Rs. 80/- was for purchase of stamp. Accused No. 3 Doma further told me that as per direction of accused No. 1 give the amount. Therefore, amount Rs. 200/- (bribe) which was kept in my shirt pocket was handed over (given) to accused No. 3 Doma. Thereafter accused No. 3 Doma had mixed the amount (Rs. 80 + Rs. 200) and kept it in his shirt pocket...

9. When this substantive evidence is to be seen in juxtaposition of the relevant substantive evidence of P.W. -3 panch witness, definitely it can be said that there is a variance in the said evidence as to how the events had actually happened. In other normal circumstance, if the bribe amount would have been accepted by accused No. 1, this variance would not have been of much relevance. But, in the specific circumstance of the present case as to the bribe was accepted by accused No. 3, such variance is definitely a mitigating circumstance to the prosecution and in that event, it must be said that the learned trial Court had not properly appreciated the same. For the sake of ready reference, the substantive evidence of P.W. -3 Vijay Gan appearing in notes of evidence in para-4 is reproduced hereunder.:

... Myself, complainant, complainant's father and accused No. 3 Doma, we had taken entry inside in the office of Gram Panchayat Kanhan Pipri. Complainant told us about accused No. 1 Wasnik accused No. 2 Dhoke were sitting in the said office. After having taken entry in the office of Gram Panchayat Kanjan Pipri, accused No. 1 told accused No. 3 to do the work of complainant. Thereafter, myself, complainant and accused No. 3 came out from said office and at this time, complainant had given Rs. 80/- to accused No. 3 Doma Kotwal. Thereafter, accused No. 3 Doma asked complainant as to whether he had brought the amount of Saheb. Thereafter, complainant had taken out the bribe amount (Rs. 200/-) and handed it over to accused No. 3 Doma....

10. From the above evidence, it must be said that according to the panch witness, during the trap procedure, after the complainant, his father and panch took entry in the office, accused No. 1 told accused No. 3 to do the work of the complainant and thereafter accused No. 3 took them out of the office. Also, according to the panch, after accused No. 3 was given Rs. 80/-, he again asked the complainant whether the complainant had brought the amount of "Saheb" and then the bribe amount of Rs. 200/- was given to accused No. 3. Whereas, according to the substantive evidence of P.W. -2-complainant, referred above, when they entered the office, accused No. 1 told accused No. 2 to see about the matter of the complainant and do according to the instructions and thereafter accused No. 2 told accused No. 3 to take the complainant and others out of the office. Again, according to the complainant, after accused No. 3 was given Rs. 80/-, he further asked the complainant to give the amount as per the direction of accused No. 1 and then amount of Rs. 200/- was given to accused No. 3. In the light of the specific defence of accused No. 1 as to he had nothing to do with the said mutation entries and he was only to verify and finalize them as the initial

work was to be done by accused No. 2 only, such variance in the evidence as above would have been properly appreciated by the trial Court. On the contrary, in the impugned judgment, a reasoning is given by the trial Court in as much as proof of the demand of bribe by accused No. 1 through accused No. 3. Such observations of the trial Court are appearing in para-24 of the impugned judgment. Even, there is another observation by the trial Court appearing in para-16 of the judgment accepting the substantive evidence of P.W. -4 Nilkanth, friend of the complainant on the aspect of demand of bribe of Rs. 500/- and then reducing it to Rs. 200/-. In holding so, the trial Court had ignored the factual position as detailed above in earlier paragraph and specifically the absence of any reference with respect to P.W. -4 in the complaint and also in the substantive evidence of complainant P.W. -2.

11. In the result, in the opinion of this Court, the trial Court had erred in coming to the conclusion that the prosecution has succeeded in establishing the initial demand and acceptance of the amount of bribe by accused No. 1 through accused No. 3 and thus holding accused No. 1 guilty of the offence when the person, who actually received the amount, i.e. accused No. 3, was already dead and case against him stood abated so also the case against accused No. 2 stood abated. A defence of accused No. 1 is put forth during the cross-examination of complainant P.W. -2 wherein it is admitted by the complainant that the work of accused No. 1 was to certify the mutation entry and in the absence of aunts of the complainant and in the absence of notice to his mother and without notice under Namuna No. 9, accused No. 1 refused to certify the mutation entry, and therefore, the complainant has lodged false case. Considering the effect of substantive evidence and mainly that of P.W. Nos. 2, 3 and 4, it must be said that defence of the accused was probable on preponderance of probability and moreover demand of bribe amount by accused No. 1 and acceptance of the same for himself through accused No. 3 was not established by the prosecution beyond reasonable doubt. Hence, the present appeal must succeed and same is accordingly disposed of as under.

Criminal Appeal is allowed. The impugned judgment and order dated 30/11/2005 is quashed and set aside. Fine amount already paid be refunded to the appellant.