

(2016) 01 BOM CK 0173
In the Bombay High Court
Case No : Criminal Appeal No. 236 of 1995

Sonyabapu Bhau Sarjine

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 20, 7

Citation : (2016) 2 AIRBomRCri 539 : (2016) ALLMRCri 5023 : (2017) 2 BomCR(Cri) 276 : (2017) 1 MhLJCrI 453

Hon'ble Judges : Smt. Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Mr. Kuldeep Patil, Mr. Ashish Dube, Advocate, for the Appellant; Mrs. A.A. Mane, APP, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Sadhana S. Jadhav, J.- The appellant herein is convicted for offence punishable under section 7, 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for one year and to pay fine of Rs. 500/i. d. to suffer R.I. for 2 months. He is also convicted for the offence punishable under section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for one year and to pay fine of Rs. 500/i. d. to suffer R.I. for 2 months by the Special Judge, Pune in Special Case No. 6 of 1992 vide Judgment and Order dated 6th May, 1995. Hence, this appeal.

2. Such of the facts necessary for decision of this appeal are as follows :

The appellant herein was working as police head constable and was posted at Shirur Police Station. One Dattatray Satav was working as a driver on the truck of Manik Satav, who was original resident of Wagholi. That Manik Satav was the owner of brick klin business and he used to ply the workers from Chande from his truck bearing No. MTO 5989. On 26/10/1991 Satav sent his truck to Chande for bringing labourers. While returning to Wagholi from Chande, near Ranjangaon

an accident has taken place. There were workers in the said truck. One of the worker Balwant sustained injury. The complainant i.e. Dattatray Satav had sent cleaner of the truck to the employer to inform about the accident. Thereafter, along with the employer he went to Shirur police station and lodged the report in respect of accident. All formalities were carried out. A panchanama was drawn.

3. The present appellant had inspected the documents in the custody of Dattatray Satav. He had seized the permit, fitness certificate, insurance papers and the driving licence of the complainant. Spot panchanama was recorded. The complainant had sought permission to take away the truck along with him. However, the appellant had informed him that he cannot take custody of the truck at least for a fortnight.

4. It is specific case of the prosecution that at the time of drawing the panchanama, the appellant herein had taken the complainant and his employer at one side and informed them that if they wanted the truck to be released forthwith, they should pay sum of Rs. 1000/. The employer had fulfilled the said demand and the appellant had allowed the complainant to take away the truck from the scene of the accident. Thereafter, the owner of the truck had demanded the original documents of the truck, which were seized by the appellant. They were informed that they would get it subsequently. They were also informed by the accused/appellant that if they wanted documents to be returned, they should pay him Rs. 500/. The amount was not paid.

5. The complainant Dattatray Satav had received the summons from the court to appear before the court on 20/1/1992 as the accident case has been registered against him. The complainant Dattatray Satav appeared before the court. He admitted his guilt. The learned Court had imposed a fine of Rs. 1000/upon Dattatray Satav. Soon after he had paid amount and on receipt of the same, he had been to Shirur Police Station and had demanded the documents from the accused. He had also shown the accused the receipt of payment of fine. That the appellant had insisted upon the demand of Rs. 300/for returning the documents. After negotiation, the demand was reduced to Rs. 200/. The complainant Dattatray who happens to be employee of Manik Satav had informed the appellant that he would pay the said amount only after he consults his employer.

6. The complainant had been to his employer and informed him about the demand of gratification by the appellant. The employer was annoyed as he had already paid Rs.1000/to the accused/appellant at the scene of offence only for permitting him to take away the truck and therefore, the employer being annoyed with the conduct of the police had asked the complainant to approach the office of the anti corruption bureau and lodge a report. Accordingly, on 22/1/1992 the complainant had been to the office of the anti corruption bureau and lodge report. That he was harassed by the accused for return of documents and that there was a demand of Rs. 200/for the purpose of the returning the documents.

7. The officer of the anti corruption bureau had called upon two public servants to act as panchas. The trap was planned. Pretrap panchanama was recorded and it was decided that they would conduct the trap on the next day. Accordingly, on the next day raiding staff has reached Shirur police Station. They were informed that the accused had gone home and therefore, the complainant and the members of the raiding party reached the house of the accused, which was situated just behind S.T. Stand. Upon knocking the door, accused had opened the door. He had enquired that the complainant as to why he is late by one day. The complainant had informed him that since the vehicle was being repaired, there was delay. The complainant and the panch were standing at the entrance door of the house. The accused had brought the documents seized in the case. He showed all the documents to the complainant, put them in a polythene bag and handed over the bag to the complainant. After receiving the documents, the complainant had sought permission to leave the place. However, the accused stopped him and asked him as to whether he had brought as was agreed. The complainant had answered in the affirmative and then extended the tented notes to the accused, which was accepted by him. The complainant had then left the place and had given pre-determined signal to the raiding party. The members of the raiding party had soon rushed to the spot. Upon seeing the police officers, the accused had made an attempt to flee from the spot. However, he was caught hold by constable More. The accused had also thrown the tainted currency notes. The said notes had fallen on the chair. The hands of the accused/appellant were examined in the ultra violet rays. The raiding party had found the traces of anthracene powder on his right hand and on the opening of left side pocket of his shirt. His personal search was also taken. However, at that relevant time, no other articles were found on his person. Soon thereafter, post trap panchanama was recorded. On 23/1/1992 P.I. Bhambare lodged the report at Shirur Police Station on the basis of which Crime No. 1/1992 was registered against the accused/appellant under the provisions of the Prevention of Corruption Act.

8. After completion of investigation, charge-sheet was filed and the case was registered as Special Case No. 6 of 1992. The prosecution has examined as many as five witnesses to bring home the guilt of the accused. P.W. 1 Dattatraya Babanrao Satav happens to be the original complainant. He has proved Exh. 23 which is the report lodged by him at Anti-corruption bureau on 22/1/1992. P.W. 2 Balu Shivaji Gore is the panch who had acted as a shadow witness. P.W. 3 Manik Amrutrao Satav is the employer of the original complainant Dattatraya Satav and P.W. 4 Rajendra Murlidhar Bhambare is the Investigating Officer as well as the complainant. P.W. 5 Bhagwant Dattajirao More is the sanctioning authority.

9. As far as Section 19 of the Prevention of Corruption Act, 1988 is concerned, the prosecution has examined P.W. 5 Bhagwant More who has deposed before the court that he had perused all the papers submitted before him by the Anti-corruption Bureau. He had studied the said papers minutely and after application of mind he had granted sanction for prosecution on 7/5/1992. He has proved the sanction letter which is at Exh. 39. It is pertinent to note that the sanctioning

authority has not been crossexamined and therefore, an inference can be drawn that the accused/appellant has not challenged the sanction order. It is a valid sanction.

10. P.W. 1 Dattatraya Satav who is the complainant has deposed before the court that he is working as a driver with Manik Satav on truck No. MTO 5989. On 26/10/1991 an accident took place at Ranjangaon. After informing about the said accident to the employer, after arrival of the employer, he had been to the Shirur Police Station and lodged a report. When they had been to the spot of incident, the accused had inspected the documents of the vehicle and had collected the same from P.W. 1. The relevant documents were permit, fitness, insurance and driving licence of P.W. 1. He has further deposed before the Court that when his employer had requested the accused to allow him to take away the truck, the accused had demanded illegal gratification of Rs. 1000/-. Since his employer desired to take away the truck on the same day, he has paid Rs. 1000/- to the accused on the same day and thereafter, his employer was permitted to take away the truck. His employer had also demanded the documents. The accused/appellant had informed his employer that he should come after two days to take away the documents. P.W. 1 had been to the police station after two days and had demanded the documents. The police had taken P.W. 1 at one side and had demanded Rs. 500/- for returning the documents. P.W. 1 had informed P.W. 3 about the demand made by the accused.

11. After about 1 and half month P.W. 1 had received court summons and was asked to remain present before the court on 20/1/1992. He had admitted the guilt. He was saddled with a fine of Rs. 1,000/-. He had paid the said fine immediately. The receipt of payment of fine is at Exh. 13. After depositing the fine, P.W. 1 had been to the Shirur Police Station seeking return of the documents. He had learnt that the accused was not in the police station but was at Market Yard for election purpose. The complainant P.W. 1 had been to Market Yard and had contacted the accused. He had once again reiterated his demand for return of documents. He has shown the receipt of the fine paid by him. The accused had insisted that P.W. 1 should pay Rs. 300/-. After negotiation, amount was reduced to Rs. 200/.

12. On 21/1/1992 P.W. 1 approached his employer and apprised him of the demand made by the accused/appellant. The employer was rather fed up of the illegal demand and had therefore, directed the P.W. 1 to approach the office of the Anti-corruption bureau. He had also given him the address of the Anti-corruption office. On 22/1/1992 he lodged a report with the Anti-corruption bureau which is marked at Exh. 23.

13. As far as the actual incident is concerned, P.W. 1 has narrated the incident as follows :

"After knocking the door, accused opened that door. He was wearing Lungi and Baniyan. He asked me as I was to reach to him one day before but arrived today.

I replied to him that as repair work of vehicle was going and therefore, I could not come on yesterday. Myself and panch Gore, were standing on the entrance door of the house. Accused collected my papers from the table, showed me all the documents and put all the documents in a polythene bag and he hand over me the polythene bag. After I received the document, I took permission of the accused to return back, on which accused asked me whether I brought as agreed. The accused accepted the same by his right hand."

"From the date of the accident till this incident I approached to the accused for 34 times for taking the documents."

"It is true that till the accused hand over the documents to me he did not demand the money to me. Before that, whenever I went to the accused and I demanded the documents he asked me to brought the amount."

14. In the cross-examination, it was elicited that from the date of the accident till the date of laying the trap, the complainant had approached the accused on 3 to 4 occasions only for seeking return of the documents. He has given the narration to that effect. P.W. 1 has further stated in the cross-examination that the complainant had met the accused at police station after 2 to 3 days of the accident and at that time, there was a demand of Rs. 500/. The accused appellant had also informed P.W.1 that unless the demand is fulfilled, he would not return the documents. P.W. 1 was constrained to inform about the same to his employer. P.W. 1 has further stated that there was a demand of Rs. 500/on more than 3 occasions. The amount which was extended for the purpose of laying the trap was also given by his employer. P.W. 1 has further deposed that it is true that till the accused handed over the documents, he had not demanded money. Whenever he had been to the house of the accused or police station, there was a demand and persistent question as to whether P.W. 1 had brought the amount.

15. P.W. 2 Balu Shivaji Gore happens to be a shadow witness. He was working in the office of the Director of Education situated in the Central Building, Pune. He was working as junior clerk. He has deposed before the court that at the relevant day, he was called by the office of Anti-corruption Bureau to act as a panch in the trap. He had agreed to the same. A pretrap panchanama was recorded. As far as the actual incident is concerned, the shadow witness has deposed before the court that at about 8 p.m. the complainant went to the police line and stood in front of the room the accused. The door was opened by appellant. As soon as he opened the door, the appellant had questioned the complainant as to why there was delay in approaching him. The appellant had handed over the relevant documents to P.W.1. That at a juncture when P.W.1 had sought permission to leave the spot, the accused had asked the complainant/P.W. 1 to fulfill the demand as agreed on the previous days. The complainant has handed over the said amount and then gave signal to the raiding party. Soon after the accused/appellant was accosted by the raiding party, he made an attempt to run away/ flee from the spot. He was apprehended by the police immediately, more

particularly, constable More. At that stage, the accused had thrown those notes and said notes had fallen on the chair. The hands and fingers of the accused were examined under the ultra violet rays and they shows traces of anthracene powder.

16. There is no effective cross-examination of the shadow witness as far as the incident of demand and acceptance is concerned. It is clear that the accused had evaded to answer any question soon after the incident. It is admitted position that the child of the appellant was ill at that relevant stage.

17. P.W. 3 Manik Satav is the employer of P.W. 1 who had directed P.W. 1 to go to the office of Anti corruption bureau and lodge report in respect of demand made by the appellant/accused.

18. There is no material on record to even remotely indicate that the sterling testimony of P.W. 1 and P.W. 2 would be falsified. They are genuine witnesses.

19. P.W. 4 is the Investigating Officer. He has deposed before the court in respect of the steps taken by him after he was apprised by the complainant Dattatraya Satav. He has deposed before the court (at the trial) that the son of the appellant was not feeling well and therefore, the officers has asked his wife to accompany him to the hospital. There is no material in the cross-examination which would show that the present appellant has been falsified.

20. P.W. 5 is the sanctioning authority.

21. Learned Counsel Mr. Kuldeep Patil appearing on behalf of the appellant has vehemently submitted that this Court was to appreciate the conduct of the accused/appellant. According to the learned Counsel, the appellant has been falsely implicated. That the accused/appellant had not accepted the amount extended by the original complainant. According to the learned Counsel, there are lacunas and discrepancies in the evidence of P.W. 1, P.W. 2 and P.W. 3. In fact, no such discrepancy is brought on record and therefore, this Court cannot give a thought to the said submissions.

22. It is the case of the learned Counsel that the appellant has been falsely implicated only because P.W. 1/original complainant had nurtured a grudge against the accused, since he was charge-sheeted. Considering the factual aspect of the matter, it is revealed that the accused/appellant had deliberately retained the documents of the complainant. It is suggested to him in the cross-examination that the complainant had been to the office of the accused at least 2 to 3 times for demanding the return of documents. At every stage and every time, the authorities were of the opinion that since the accused was charge-sheeted, this issue need not be gone into. In fact, as per the directions of the Hon'ble Apex Court as well as by this Court, it is clear that the onus to prove the guilt of the accused is on the accused in a case under the Provisions of the Prevention of Corruption Act, 1988. That there was demand by the accused/appellant on more than 3 occasions, as has been elicited in the cross-examination of P.W. 1. It is clear that the prosecution has proved the demand

made by the accused on more than one occasion.

23. Learned Counsel for the appellant submits that at the time of actual transaction, the prosecution has failed to prove that there was a demand. It is also submitted that the money was accepted only after the documents were returned and hence, according to the learned Counsel for the appellant, gratification was not demanded for the purpose of return of documents.

24. According to the learned Counsel, the conduct of the appellant needs to be appreciated. That after returning the documents, when P.W.1 was about to return, even according to the prosecution, the accused had only stated as to whether P.W. 1 had brought as agreed earlier and there is no specific reference to money. The learned Counsel for the appellant has drawn attention of this Court to the deposition of the shadow witness i.e. P.W. 2 who had initially stated in the cross-examination that the accused had only stated as to whether P.W. 1 has brought as agreed. However, he had later on submitted that the contents in the panchanama that there is a reference to money is correct one. The Court cannot be oblivious of the fact that the witness was deposing before the court after a lapse of more than 2 years and therefore, he had every right to refresh his memory. Hence, it cannot be treated as discrepancies.

25. The learned APP submits that the prosecution has proved the demand. In case, it is the contention of the appellant that there was no demand of money then, the onus would shift upon the accused to explain as to why he had accepted the amount and when the raiding party had entered the house, he had attempted to flee from the spot and had thrown amount on the chair. The learned APP has rightly submitted that in fact, the documents pertaining to vehicle ought to have been sent to the court. However, the accused had retained the original documents only to coerce the complainant to pay some gratification for receiving the said documents.

26. Section 20 of the Prevention of Corruption Act reads as follows :

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

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of subsection (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 under section 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 subsections (1) and (2), the court may decline to draw the presumption referred to in either of the said subsections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

27. It is the mandate of the legislature that whenever the prosecution would establish the element of acceptance, it is incumbent upon the court to presume that the accused had demanded and accepted illegal gratification. Thereafter, it is for the accused to rebut the said presumption. Drawing of the presumption under Section 20 of the Prevention of Corruption Act is a statutory mandate of the legislature and the court cannot be oblivious of this fact. In view of this, it can therefore, be safely said that the prosecution has proved the guilt of the accused beyond reasonable doubt.

28. In the statement, which is recorded by the court under Section 313 of the Code of Criminal Procedure, 1973, the accused had admitted that he had retained the documents along with him, in answer to question No. 10. That the very fact that he had retained the documents with him and had returned it on 22/1/1992 at this residential house is sufficient indicator that he had deliberately retained the said documents.

29. In view of the above discussion, the appeal stands dismissed. The appellant is granted four weeks" time to surrender before the Special Court from 1/2/2016.

30. Earlier when the advocate representing the appellant had not appeared on more than two occasions, this Court had requested advocate Mr. Ashish Dube to espouse the cause of the appellant. He had graciously accepted to assist the court. He has put in the best of his efforts to espouse the case. Subsequently, the advocate representing the appellant had taken charge of the appeal and has argued the matter on merits. The professional fees of the advocate so appointed Mr. Ashish Dube is quantified at Rs. 2,000/to be paid to him within 3 months from today.

31. The appeal is disposed of accordingly.