

(2017) 04 GUJ CK 0138
In the Gujarat High Court
Case No : 198 of 2017

State of Gujarat

APPELLANT

Vs

Manguben Gordhanbhai Vasava

RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 313](#), [Section 378\(1\)\(3\)](#), [Section 378\(1\)\(3\)](#) - Power to examine the accused - Power to examine the accused - Appeal in case of acquittal - Appeal in case of acquittal
[Prevention of Corruption Act, 1988](#), [Section 13\(2\)](#), [Section 7\(13\)\(1\)\(d\)](#) - Criminal misconduct by a public servant - Public servant taking gratification other than legal remuneration in respect of an official act

Citation : (2017) 04 GUJ CK 0138

Hon'ble Judges : R.P. Dholaria

Bench : Single Bench

Advocate : K.L. Pandya, D.A. Chaudhari

Judgement

1. The appellant has preferred the present appeal under section 378 (1) (3) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 10.03.2016, rendered by learned Special (ACB) Judge, Dahod in Special (ACB) Case No. 04 of 2012, whereby the present respondent - accused has been acquitted from commission of the offences punishable under Sections 7, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (for short "the Act").

2. The short facts giving rise to the present appeal are that complainant - Surekhaben Somabhai Machhar was working as an Aanganvadi Worker at Barsaleda and the present respondent - accused was the Child Development Programme Officer. While inspecting the aforesaid center of Aanganvaadi on 15.03.2012, the present respondent - accused inquired about the registers, gas bottle and other materials. At that time, the complainant replied that the said

articles were kept at her home, due to which, she got angry upon the complainant and the present respondent - accused threatened her to take action against her and demanded Rs.5,000/- from the complainant for not taking any action against her. Out of the said amount, the complainant handed over Rs.3,000/- on 18.03.2012 and the present respondent - accused directed the complainant to pay the remaining amount on 29.03.2012. Since the complainant did not desire to give any amount to the present respondent - accused, the complainant approached the ACB office. After the complainant lodged the complaint, necessary formalities in respect of trap were carried out at ACB Office and the trap was arranged. The present respondent - accused was caught red handed while accepting bribe. Hence, the complaint came to be lodged against the present respondent - accused for the offence punishable under Sections 7, (13) (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

3. In pursuance of the complaint, the Investigating Officer carried out the investigation and filed the charge-sheet against the present appellant - accused. The charge was framed against the accused. The accused pleaded not guilty to the charge and claimed to be tried. 4. In order to bring home the guilt, the prosecution has examined five witnesses and also produced several documentary evidence.

4.1. At the end of the trial, after recording the statement of the accused under section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

5. Being aggrieved by the same, the appellant has preferred the aforesaid Criminal Appeal before this Court.

6. This Court has heard Mr. K.L. Pandya, learned APP for the State and Mr. D.A.Chaudhari, learned advocate for the respondent.

7. By way of preferring the present appeal, the appellant - State has contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed, as such.

8. Mr. K.L. Pandya, learned APP has argued that the learned Special Judge has not appreciated the evidence available on the record and as per his submission, P.W. No. - 1 - Complainant - Surekhaben Somabhai Machhar clearly supported the prosecution case and at the time of trap, in view of the previous demand raised by the accused, she placed tainted currency notes under the mattress in the house of the accused and her evidence is totally consistent with the complaint and even fully establishing the demand and acceptance on the part of the accused. He has further argued that even panch No. 1 i.e. P.W. No.2 who accompanied the complainant at the time of trap, had also supported the

prosecution case to some extent and therefore, necessary corroboration is also emerging out. Hence, he has urged that the judgment of acquittal recorded by the learned Special Judge is required to be set aside and to be converted into conviction as such.

9. On the other hand, Mr. D.A. Chaudhari, learned advocate for the respondent - accused has argued that the evidence of the complainant - P.W. No. 1 is not sufficient to establish the vital ingredients with regard to demand and acceptance at the time of trap. Upon entering into the house of the accused, the complainant voluntarily thrusting tainted currency notes into mattress which was lying there and nothing is emerging out from her evidence as to whether any specific demand was raised by the accused from the complainant as regards the demand of illegal gratification or not. He has further argued that nothing has been recovered from the person of the accused and even the test of phenolphthalein powder also found to be negative so far as the person of the accused is concerned. Therefore, there is no linking evidence against the accused so far as the demand and acceptance are concerned. He has further argued that the panch No. 1 who accompanied the complainant, at the time of trap, had not supported the prosecution case and she was declared hostile. She has deposed in her examination-in-chief as well as the cross examination carried out by the learned APP that she did not hear the conversation took place between the complainant and the accused and even, she went on saying to the extent that she did not know as to how and when the complainant thrusting tainted currency notes under the mattress. Therefore, her evidence is not corroborating as regards the demand and acceptance. So far as the recovery is concerned, the recovery was effected from the mattress and even, she admitted that between the period when they entered into and left the room, the accused was busy with her prayer and she was sitting at that place. He has further argued that as per the prosecution case, one person namely Kamalaben also accompanied the P.W. Nos. 1 and 2 and her role was in the nature of the co-complainant as her amount was also alleged to have been handed over to the accused, however the prosecution has not examined her. Therefore, in absence of her evidence and as the evidence of the complainant is not sufficient and not getting corroboration from P.W. No.2, the prosecution miserably failed to establish the demand and acceptance. If the recovery is believed to be proved, it also renders meaningless. In support of his arguments, he has placed reliance upon the judgment reported in (2007) 8 SCC 309 (Ganapathi Sanya Naik v. State of Karnataka). Therefore, he has urged that the judgment of acquittal recorded by the learned Special Judge calls for no interference and further urged that the judgment delivered by the learned trial Judge may be confirmed. He has also supported the judgment rendered by the learned Special Judge. He has further stated that the learned Trial Court has not committed any error in relying upon the evidence and the learned Trial Court has rightly recorded findings which are based upon the material evidence and this Court should not interfere with the findings recorded by the learned Special Judge.

10. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book.

11. In the present case, this Court is required to scrutinize the evidence to ascertain whether there is proper, reliable and cogent evidence beyond reasonable doubt to reverse the judgment and order passed by the learned trial Court.

12. Keeping in mind the principle laid down by the Supreme Court in the aforesaid series of decisions in light of the rival submissions came to be made by the learned advocates for the respective parties, the question arises for determination of this Court whether the prosecution has proved beyond reasonable doubt that the vital ingredients of demand, acceptance and recovery of illegal gratification of Rs.2,000/- or not.

13. P.W. No. - 1 Surekhaben Somabhai Machhar-complainant has been examined vide Exhibit 06. She has deposed that she was working as an Aanaganvaadi Worker at Barsaleda and one another lady namely Kamalaben was working as Tedagar. She was working at the said station since 2004. The accused was the Child Development Programme Officer and visited her center on 15.03.2012. At that time, she inspected registers and inquired about snacks, registers, gas bottles and other materials and also prepared report. Thereafter, on the following day, she was called to her office and she demanded Rs.5,000/- as an illegal gratification for not taking any action against her. She handed over Rs.3,000/- at that time. Again on 27th March, 2012, she demanded Rs.2,000/- which were to be paid by the complainant to her. As she was not willing to pay such amount, she lodged the complaint before ACB, Dahod. On the day of trap, after she lodged the complaint, necessary formalities in respect of trap were carried out. Along with her, P.W. No. 2 - Kamalaben (Tedagar) accompanied with her. When they reached to the house of the accused, she was busy in offering prayer and they were directed to sit over the chair and thereafter, she inquired as to why they have arrived. At that time, the complainant told that she had brought money. At that time, the accused inquired about another person who was with her. Thereafter, she was directed to place the same amount below mattress and therefore, she placed tainted currency notes below the mattress and thereafter, she raised pre-arranged signal and due to which, other members of the raiding party arrived and she pointed out that she placed currency notes below mattress, the said tainted currency notes were recovered immediately from there. In the cross examination, she admitted that neither in the panchnama nor in his statement, she has stated the fact as regards Rs. 2,000/-. She also admitted that the accused all throughout remained busy with prayer and remained silent all throughout.

14. P.W. No. 2 - Taraben Rameshbhai Nisarata has been examined vide Exhibit 11. She was also requisitioned as a shadow panch by the raiding party. She deposed that she accompanied the complainant and Tedagar Kamalaben at the time of trap. They were made to understand about the formalities of trap. When

they reached to the house of the accused on the day of trap, the accused was busy with her prayer. At that time, the complainant thrust money under the mattress and raised the signal, but she did not notice the said act on the part of the complainant. Therefore, she was declared hostile and even after declaring her hostile, in extensive cross examination carried out by the learned APP, she had not supported the prosecution so far as the demand and acceptance are concerned. On the contrary, she deposed that the signatures over the panchnama and other formalities were taken over on the following day and not at the time of the trap. In the cross examination carried out on behalf of the accused, she admitted that she had not heard the conversation between the complainant and the accused - Surekhaben. She has also not heard that Surekhaben told that she had brought money and the accused told her to place under mattress. She also admitted that at the time of trap, the complainant and Kamalaben were also nearby her, however she had not noticed as to how the complainant thrust money under the mattress. She also admitted that she accompanied on the following day for obtaining the signatures on the panchnama and other papers. She also admitted that she did not know as to who had placed money under the mattress and who recovered the said tainted currency notes.

15. P.W. No. 3 - Bharatbhai Zavarabhai Pateliya has been examined vide Exhibit 22. He was a trapping officer. In his deposition, he has detailed as to how he recorded the complaint and how he carried out the trap. In his cross examination, he has submitted that the accused had not demanded any amount of illegal gratification at the time of trap. He also further admitted that from the panchnama, nothing reveals that the accused demanded the amount of Rs. 2,000/- as the illegal gratification. He has admitted that it is also not revealing that the accused told the complainant to place money under the mattress. He also admitted that the accused stated him that he had never demanded the amount of Rs.2,000/- from the complainant.

16. On overall analysis of the aforesaid evidence on record, according to the prosecution case, the respondent - accused demanded the amount of Rs.2,000/- towards illegal gratification from the complainant and the said amount were smeared with phenolphthalein powder. At the time of trap, the accused directed the complainant to put the said amount under the mattress and after placing the said tainted currency notes below mattress, the complainant gave pre-arranged signal and due to which, other members of the raiding party who were waiting outside the house of the accused, ran to the place of the incident and recovered the said tainted currency notes below the mattress. On that aspect, the complainant stated that whenever she reached the house of the accused, she told the accused that she had brought money and as per her direction, she placed the amount below the mattress, however P.W.No.2 who accompanied the complainant at the time of trap, had not supported the prosecution case and she had deposed that she has not heard the conversation took place between the complainant and the accused and even, she went on saying to some extent that she had even not seen as to how the aforesaid tainted currency notes were came

to be placed below mattress. As per the prosecution case, though the complainant, P.W.Nos.1 and 2 as well as Kamalaben - all were present at the time of trap, however the panch who was independent witness and also the government official whose service was requisitioned as a shadow witness, had not supported the prosecution case and the prosecution has not examined another Kamalaben who accompanied the complainant at the time of trap. Therefore, the version of the complainant remains uncorroborated in absence of the evidence of the shadow witness and for non-examination of Kamalaben who accompanied the complainant at the time of trap. In the result, the explanation rendered by the accused as regards the conduct of the complainant for not keeping the gas bottles and utensils and other things in Aanganvadi Center and keeping all the things in her house, the present respondent - accused scolded the complainant and due to which, the complainant wrongfully implicated the present respondent - accused and even the explanation rendered to the extent that the complainant planted the tainted currency notes below mattress without her knowledge appears to be more plausible as the evidence of the complainant is not sufficient to establish the vital ingredients as regards the demand and acceptance. If her evidence may be taken in toto, nothing reveals that the accused raised demand of Rs.2,000/- as the amount of illegal gratification at the time of trap. On the contrary, her evidence is in the nature of voluntarily thrusting the aforesaid amount below the mattress, even that fact is also not getting corroboration from the mouth of the shadow witness - P.W.No.2. Therefore, the learned Special Judge has rightly recorded the finding that the prosecution miserably failed to establish the vital ingredients of demand and acceptance. In consequence thereof, even after the recovery came to be effected from the house of the accused renders meaningless in absence of establishment of the vital ingredients of demand and acceptance. Though co-complainant Kamalaben was available and she was the witness, she has not been examined. On that ground also, the prosecution miserably failed to bring on record the corroborative evidence in order to support the say of the complainant. On that ground also, the finding recorded by the learned Session Judge is in accordance with the law. In consequence thereof, the learned Special Judge has rightly acquitted the accused which calls for no interference.

17. In view of the above, this Court is in agreement with the view taken by the lower Court. Moreover, learned Public Prosecutor is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude that the approach of the Court below is vitiated by some manifest illegality or the decision is perverse or the Court below has ignored material evidence while acquitting the accused. Under the circumstances, this Court is of the considered opinion that the Court below has not committed any error in acquitting the respondent-accused of the charges leveled against him and, therefore, this Court finds no reason to entertain this appeal.

18. For the foregoing reasons, the Criminal Appeal is dismissed. The impugned judgment and order dated 10.03.2016, rendered by learned Special (ACB) Judge,

Dahod in Special (ACB) Case No. 04 of 2012 acquitting the accused of the charge, as alleged, is hereby confirmed. Bail bond, if any, stands canceled. Registry to return the R&P to the concerned trial Court forthwith. Appeal is dismissed.