

(2019) 07 GUJ CK 0012
In the Gujarat High Court
Case No : R/Criminal Appeal No. 821 Of 2006

State Of Gujarat	Vs	APPELLANT
Rajan Rarukuti Nayar & 1 Other(s)		RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 378(1)(3)
Prevention Of Corruption Act, 1988 — Section 7, 12, 13, 13(1)(d), 13(1)(d)(i), 13(1)(d)(ii), 13(2), 20

Citation : (2019) 07 GUJ CK 0012

Hon'ble Judges : A. P. Thaker, J

Bench : Single Bench

Advocate : K. P. Raval K. B. Anandjivala, Kinnar A Shah

Final Decision : Dismissed

Judgement

Dr. A. P. Thaker, J

1. This acquittal appeal is filed by the State under Section 378(1)(3) of the Code of Criminal Procedure, 1973, against the judgment and order dated 21.04.2005 passed by the Special Additional Sessions Judge, Valsad in Special (ACB) Case No. 17 of 2002, (old Case No. 4 of 1997) whereby the Special Additional Sessions Judge has acquitted the accused from the charges levelled against them under Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter be referred to as "the Act").

2. The brief facts of the prosecution case are as under:

2.1 The Complainant Shri A. C. Jadeja, who was discharging his duties as Police Inspector, ACB, Valsad during the year 1996, received an information that at Bhilad RTO Check-post, officers of RTO used to take bribe from vehicles passing through. Therefore, he arranged a decoy trap with two panchas and got necessary procedure and initial Panchnama was prepared. By stopping truck driver, Ratanlal Bhuraji Rav and calling two panchas, he carried out the action of

trap. It is also the case of the prosecution that after carrying out the necessary procedure Panch no. 1 was alleged to stay in the truck bearing no. RJ-27-G-2437. Thereafter, the complainant, Police Inspector instructed the driver Ratanlal Bhuraji Rav to go to the Bhilad RTO Checkpost along with panch witness no.1 and if bribe amount is asked then to make payment by complainant having tainted with powder. It is alleged that when the decoy witness along with panch No.1 reached to the window of RTO Check-post, at that time, accused no. 1 was at window and the decoy driver handed over the necessary papers of the truck and at that time, by gesture, the accused No.1 demanded the amount and, therefore, the truck driver handed over currency notes of Rs. 50/- of denomination of Rs. 10/-, which were smeared with anthracene powder and accused No.1 accepted the same in the presence of the panch and at that time, accused No.2 was also present. It is also alleged that thereafter driver gave signal and therefore, Police Inspector as well as the other police staff together with the panch no. 2 rushed to the spot. The Police Inspector has recovered the bribe amount from the right side pocket of accused no. 1. Thereafter, necessary second part of the panchnama was prepared and accused were arrested and necessary seizure memo was handed over to each accused. After, completion of the investigation, the Investigating Officer has led the charge-sheet before the Special Court.

3. The Special Additional Sessions Judge has framed the charge against both the accused. Both the accused denied having committed any offence and pleaded for trial. Thereafter, evidence of the prosecution was carried out. Thereafter, further statements of the accused under Section 313 of Criminal Procedure Code were recorded. The accused No. 1 has stated that he was not at the window and he has been falsely implicated in this case. Whereas, according to accused no. 2, he has not demanded any amount nor amount of Rs. 8380/-was recovered from him. The accused have neither examined themselves nor have examined any defence witness.

4. After perusing entire evidence on record and hearing both sides, the learned Special Additional Sessions Judge has acquitted both the accused from the charges levelled against them.

5. Being dissatisfied with the impugned judgment, the State has preferred the present appeal and prayed to reverse the judgment and convict the accused and inflict necessary punishment to them.

6. Heard learned APP Mr. K. P. Raval for the Appellant - State and learned advocate Mr. K. B. Anandjiwala for Mr. Harnish K. Shah learned advocate for the respondent-accused at length and perused the entire evidence led by the prosecution and the impugned judgment and order of the Trial Court.

7. Learned APP Mr. K. P. Raval for the State, while reading the evidence on record, has vehemently submitted that though decoy witness and two panchas turned hostile, considering the evidence of the Police witness and certain

admission on the part of the decoy witness and panchas in their evidence, the Trial Court ought to have believed that all the three ingredients viz. regarding the demand, acceptance and recovery have been fulfilled. He has also submitted that both the panch witnesses have supported the version that the anthracene powder was applied on the currency notes and experiment of ultraviolet lamp was carried out.

7.1 He has further submitted that the panch witnesses and decoy witness have also admitted the facts of panchnama and seizure memo and other documents and therefore, the documentary evidence ought to have been given due importance by the learned Trial Court. According to him, the driver has given amount to the accused no. 1 and he has accepted amount. As per the evidence of panch no. 2 amount has been recovered from the accused. Learned APP has stated that Police Inspector has clearly supported the version of the prosecution, though the panchas are turned hostile, evidence of the Police Inspector should have been believed by the Trial Court. Learned APP Mr. Raval vehemently submitted to allow present appeal and convict both the accused and impose necessary sentence.

8. Per contra learned Advocate Mr. K. B. Anandjiwala for the accused has submitted that both the panchas turned hostile and have not supported specifically three main ingredients regarding the demand, acceptance and recovery. According to him, when the important ingredients are not established, the version of the panchas that there was experiment of anthracene powder and ultraviolet lamp on the currency notes and found some sings of anthracene powder on the hands of accused no. 1 cannot be sole ground to believe version of the prosecution. It is also submitted that in this case, the entire proceedings from beginning of the raid till filing of the charge sheet was carried out by the same officer. Therefore, this goes to the root of the prosecution case, which affects credibility of the prosecution case that there is no iota of evidence to convict the accused. According to him, the learned Trial Court has properly appreciated the evidence on record and rightly acquitted the accused from the charges levelled against them.

9. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

10. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in

appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime with which he is charged.

11. In law prosecution has to establish charge beyond reasonable doubt. What is required to be proved has been made clear by the Supreme Court in the case of *Rabindrakumar Dey V/s. State of Orissa*, reported in AIR 1977 SC 170 as under:

"Three cardinal principles of criminal jurisprudence are well settled namely:

(1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from weakness or falsity of the defence version while proving its case;

(2) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and

(3) that the onus of the prosecution never shifts."

12. It is well settled by the Apex Court in the case of *A. Subair Vs. State of Kerala*, reported in (2009) 6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and Section 13(1)(d) of the Act ruled that the prosecution has to prove the charge under beyond reasonable doubt like any other criminal offence and that the accused should be considered innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredient necessary to be established to record a conviction.

13. In the case of *State of Kerala and another Vs. C. P. Rao*, reported in (2011) 6 SCC 450 the Apex Court reiterating its earlier dictum, vis-a-vis the same offences held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

14. In the recent enunciation by the Apex Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in the case of *B. Jayaraj v. State of A.P.*, reported in AIR 2014 SC (Suppl.) 1837 in unequivocal terms that mere possession and recovery of the currency notes from an accused

without proof of demand would not establish the offence under Section 7 as well as Section 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein it has been held that while it is extendable only in respect of the offence under Section 7 and not the offence under Section 13(1)(d)

(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

15. It is also well settled principle of law that so far as the cases under Prevention of Corruption Act are concerned, the three main ingredients namely (i) demand (ii) acceptance and (iii) recovery are required to be proved beyond reasonable doubt. It is also well settled that if one of them is not proved being the vital part, the offence cannot be said to have been constituted and conviction cannot be inflicted.

16. Considering the settled preposition of law and having perused the evidence on record, it clearly transpires that the entire case of the prosecution is based on the decoy witness Mr. Ratanlal Bhuraji, Truck driver PW. 3 (Exh. 15), Panch Rameshsingh Kansingh Parmar PW. 1 (Exh. 12) and Vajesingh Ramsingh Dabhi PW. 2 (Exh. 13). So far as evidence of Police Officers are concerned, it is an admitted facts that their evidence is of hearsay in nature.

17. On perusal of the evidence of Mr. Ratanlal Bhuraji, Truck driver at Exh. 15, it appears that, he has not supported the version of the prosecution and stated that at the relevant time, he was stopped by the Police Officer and thereafter, he parked vehicle before the check-post and went to the check-post, where two persons were present, out of them, one was in uniform and another was in simple dress. He has also stated that when he was going to the checkpost during that period, there were two persons with him. They have given him total Rs. 20/- which containing Rs. 10 each and he handed over that amount on check-post. He has also stated that thereafter, at the time of checking of his papers, he has given Rs. 20/- to the person, who was at the Checkpost and he himself put it on the table. According to him, thereafter, he left the place and two persons who were staying in his truck came down from the Truck. Thus, from his evidence it appears that he has not supported the basic version of the prosecution that accused had demanded and he had paid Rs. 50 to the accused and accused no. 1 had accepted it.

18. On perusal of the evidence of Panch witness, Ramesh Parmar, at Exh. 12, it transpires that he has stated that Police informed the truck driver Ratanlal that he should not pay currency notes till amount is demanded. He has also admitted that he was instructed to stay with the truck driver and truck driver was directed to stop at the check-post and handed it over the same amount if demanded by anybody. He has admitted that truck driver stopped his truck near the RTO check-post, but he has specifically deposed that driver alone had gone to the check-post and for showing his receipt (bilty) and paper of the truck. He has denied the suggestions that amount was demanded by accused No.1 and same was paid to him by the driver and the same was recovered from accused No.1. He has also denied suggestion that Rs. 8380/- was recovered from the accused no. 2 from his bag. He has also stated that at the time of incident, there was rainy season and driver alone has gone to the check post and he was sitting in the truck. According to him when they left Valsad, only two constables were with them and after issuing signal from the driver, both the constables had laid down from the truck. From his evidence, the factum of demand, acceptance and recovery from the accused is not proved.

19. On the perusal of the evidence of another Panch, Vajesing Ramsing Dabhi (Exh. 13), it appears that he has stated that Shri Jadeja has given Rs. 20/- to constable for experiment of anthracene powder. He has also not supported the version of prosecution that currency notes were found from the possession of the accused no. 1. and as per the instruction of Police Inspector, he has taken currency notes from the hand of the accused no. 1 and, thereafter, experiment of ultraviolet lamp was carried out on the accused no. 1, as well as the accused no. 2. He also denied the suggestion that currency notes were total of Rs. 50, each of Rs. 10/- denomination. He has stated he has no knowledge as to what conversation taken place between the Police Inspector and the Driver. He has also stated that when they reached to the check post, after getting signal from the driver, present, only the driver was present and currency notes were lying on the table.

20. On perusal of the evidence of the Police witness, it is fund that they have supported the prosecution case. But in view of the evidence of the independent three witnesses namely decoy driver and two panchas, it is clearly found that there is no iota of evidence regarding the demand being made by any of the accused. There is also no evidence of acceptance of amount by the accused and recovery thereof. It also appears from the record that the version of the Police witness is that the amount is only recovered from the accused no. 1. But that fact is not supported by the independent witnesses. It also appears from the record that there is no iota of evidence regarding demand, acceptance and recovery from the accused no. 2, who is a public servant. Therefore, on perusal of entire evidence, it clearly transpires that the prosecution has failed to prove beyond reasonable doubt the charges levelled against both the accused.

21. It also appears in this case that everything has been done from beginning

i.e. from filing of complaint till filing of charge sheet by the same Investigating Officer. This affects credibility of prosecution version. Therefore, on this count also, the case of the prosecution must fail.

22. On perusal of the impugned judgment, it clearly transpires that the learned Trial Court has properly appreciated evidence on record in its true perspective and has not committed any serious error of facts and law. There is no perversity in the judgment of the Trial Court in acquitting the accused.

23. For the forgoing reasons, present appeal is devoid of merits and the same is liable to be dismissed. Resultantly present appeal is hereby dismissed. The judgment of acquittal of the Special Additional Sessions Judge, Valsad in Special (ACB) Case No. 17 of 2002 is hereby confirmed. Bail bond of the accused stands cancelled. Surety stands discharged. R & P be send back to the concerned Trial Court.