
(2013) 09 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 4041 of 2013

State of Himachal Pradesh

APPELLANT

Vs

Parkash Chand Bhardwaj

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2014) 1 ShimLC 176

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : H.K.S. Thakur, A.A.G, for the Appellant; J.L. Sharma and Lalit K. Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The State has laid a challenge to the acquittal of the respondent, hereinafter referred to as "the accused", in Corruption Case No. 37-CC/7 of 2010, decided on 30.3.2013, for the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988, in short "the Act". Heard and gone through the record.

2. In short, the prosecution case can be stated thus;

Admitted Facts:

(i) The accused was posted as Sub Divisional Soil Conservation Officer (SDSCO) at Rajgarh. During the year 2008-2009, a flow irrigation scheme was sanctioned by the Soil Conservation wing of the Agriculture Department for the construction of a canal from Fegeta Nallah to village Hached for Rs. 10,62,000/-.

(ii) To execute the aforesaid scheme, Krishak Vikas Sangh was formed. Shri Jagmohan Singh (PW-1) was elected as President thereof and the work of the scheme was to be executed under his supervision. Further, the payment from the Soil Conservation Department was also to be released in his name.

Prosecution Case:

(iii) It is alleged that when the work was in progress, the accused demanded 20% commission every time for releasing payments, which was, later on, reduced to 10%.

(iv) On 30.4.2009, two cheques worth Rs. 2,24,472/- were to be issued by the accused to the complainant to make payment of the labour charges and the cost of construction material. In lieu thereof, the accused is alleged to have demanded Rs. 25,000/- from him.

(v) The complainant (PW-1) did not want to give any bribe to the accused, thus he decided to report to police. While he was on his way to make the complaint, he came across to the vigilance officials at the place known as Sanora and got recorded his statement Ext. PW-1/A u/s 154 of the Code of Criminal Procedure to the Dy. S.P., (PW-9) which culminated into FIR Ext. PW-8/D in Police Station SV and ACB, Nahan.

(vi) PW-9 Dy. S.P. Balbir Singh after recording the statement Ext. PW. 1/A aforesaid instructed the complainant (PW-1) to receive the cheque and after its encashment from the bank, he was directed to meet vigilance team near Khairi road where one house was under construction. After a considerable time, the complainant reached the spot. He was given pre-trap demonstration with respect to the use of phenolphthalein powder and sodium carbonate. At the time of giving the demonstration, PW-7 Inspector Mal Dutt and Head Constable Sudhir were present. On mixing solution, it turned pink. The pink solution was put into a small bottle, which was sealed with seal impression "K" and taken into possession vide memo Ext. PW-1/B. The seal after its use was handed over to PW-7 aforesaid and sample thereof was taken on a plain cloth Ext. PW-1/F.

(vii) Thereafter, the complainant produced 25 currency notes of the denomination of Rs. 1,000/- each to the Investigating officer. The serial numbers of each of the currency notes were noted down on a piece of paper and thereafter, treated those notes with phenolphthalein powder and handed over to the complainant with the direction that he should not touch the currency notes, but deliver it on demand to the accused. After its delivery, he was directed not to shake hands with the accused. Regarding this, memo Ext. PW-1/C was prepared.

(viii) The complainant proceeded to the office of the accused alongwith PW-7 Inspector Mal Dutt who acted as a shadow witness. He was instructed to give signal to the vigilance team.

(ix) In the meanwhile, PW-9 Dy. S.P. Balbir Singh associated witnesses PW-2 Jagat Ram and PW-3 Satishwar Dutt, officials of the H.P. Forest Corporation located at Rajgarh. On his signal, they went inside the office of the accused. Inspector Mal Dutt Sharma witness remained outside. On receiving signal from the complainant, he further passed it on the Dy. S.P. aforesaid, on which he raided the office of the accused.

(x) PW-9 Dy. S.P. Balbir Singh caught hold the accused from the wrist of his right

hand and PW-7 Inspector Mal Dutt Sharma from the wrist of his left hand. The hands of the accused were washed with clean water arranged from the office of the accused in a dish, which remained colourless. When the solution of sodium carbonate, which was prepared separately in the office of the accused, was mixed with the handwash, it turned into pink. Seal "K" which was handed over to Inspector Mal Dutt Sharma earlier, was taken from him and the same seal was used to seal nip (Ext. P-2), which was taken into possession vide memo Ext. PW-1/D.

(xi) On interrogation, the accused is alleged to have got recovered the currency notes from the right hand side drawer of his office table. The serial numbers of the currency notes were got tallied with memo Ext. PW-1/C, prepared earlier, in the presence of the witnesses. These currency notes were found to be the same. They were put in order which were sealed with seal impression "K" and taken into possession vide memo Ext. PW. 1/E.

(xii) Thereafter, the Dy. S.P. aforesaid took into possession receipts of the deposited cheque and file containing documents from Amit Kumar, Junior Assistant working in the office of the accused, vide memo Ext. PW-1/J.

(xiii) The accused was arrested. Spot map Ext. PW-9/A of the alleged place of incident was prepared. Statements of the witnesses were recorded and further during the investigation, appointment and posting orders of the accused were also obtained from the office of the Agriculture Branch of H.P. Secretariat. After getting the prosecution sanction Ext. PW-4/D, challan was prepared and presented for trial of the accused.

Proceedings before the learned Special Judge.

3. After going through the challan and the documents appended thereto, the accused was charge-sheeted by the learned trial Court for the offence aforesaid, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined its witnesses and the accused was also examined u/s 313 of the Code of Criminal Procedure. The circumstances, which were found attendant upon him, were put to him, to which he denied.

5. The defence taken by the accused is that complainant Jagmohan Singh was annoyed with him because he was given excessive rate for construction of the canal without his approval. Later, the rates were reduced. A complaint was received from the residents of the area that Jagmohan Singh was not resident of the village for which the canal was being constructed and objected to the allotment of the construction work to him which caused delay in its execution. Even for that matter, the complainant had also managed to raise assembly question about the delay in the execution of the work, which resulted into inquiry by the Divisional Engineer, who had also tried to settle the dispute. Later, the accused was directed to get the work completed from the complainant. Regarding the incident, he stated that some vigilance officer alongwith the

complainant entered his room. Dy. S.P. (Vigilance) was not with them. He was caught hold by the vigilance people and made to sit in the room under the supervision of covigilance officials. The complainant went outside. After half an hour, he returned and police took him to the residence of the accused on the pretext that his residence was also required to be searched. His signatures were obtained on various papers and nips and he was falsely implicated in the case. It was also his case that the cheques were not handed over by him and the same were collected in his absence after signing the cheques at about 10.15 a.m. Thereafter, he went to bus stand to see off his wife to Solan where his family used to reside.

6. The accused opted to lead defence evidence and examined DW-1 Virender Kumar, Sub Divisional Soil Conservation Officer, Rajgarh. He stated that the flow irrigation scheme in question was sanctioned during the year 2008 and on 17.2.2009, Shri Gangu Ram Musafir, the then MLA, had raised the assembly question as to why the work of this scheme had not been started regarding which they submitted answer to the aforesaid question, Ext. D.A. an Ext. D.B.

7. After the trial, the accused was acquitted by the learned trial Court on the following grounds:

(i) The case projected by the complainant in the FIR Ext. PW-8/D was that on 30.4.2009, two cheques worth Rs. 2,24,472/- were to be issued by the accused to the complainant on account of labour charges and cost of construction material and in lieu of issuing those cheques, he had demanded a sum of Rs. 25,000/- from him. When he entered into the witness box, the complainant stated that after contacting the vigilance party at Sonora, the vigilance officials asked him to contact them at Rajgarh-Khairi road. Thereafter, he proceeded to the office of the accused to collect the cheques and after collecting the cheques, he encashed the same and he straightway proceeded to Khairi road, where the vigilance officials met him in the under construction building where pre-trap demonstration, as aforesaid, was given and the accused had delivered the cheques, when he visited his office in the morning on 30.4.2009 without insisting for payment of bribe money of Rs. 25,000/-, but there was nothing on record to show the accused had agreed to receive the bribe money after the cheques were encashed, whereas the complainant stated that he was carrying a sum of Rs. 25,000/- from his home. It was also in his statement that when he again visited the office of the accused alongwith the treated currency notes, he asked the accused to clear his payment, for which the accused demanded bribe money of Rs. 25,000/- and he assured that he had brought the bribe money, on this, he cleared the payment. Thereafter, he handed over the bribe money to the accused, to which he put it in the drawer of his table and did not explain as to which payment was cleared by the accused when he had delivered Rs. 25,000/- because he had already received two cheques pertaining to his outstanding bills from the accused in the morning when he had visited the office of the accused. Therefore, in the opinion of the learned Special Judge, it was a material

contradiction.

(ii) The second ground which weighed with the learned trial Court was that PW-7 Inspector Mal Dutt who accompanied the complainant as a shadow witness did not position himself outside the office of the accused in such a manner that he could hear the conversation between the complainant and the accused and also see the delivery of bribe money by the complainant to the accused on demand. The said witness was not aware as to what transpired between them before he received the signal from the complainant.

(iii) Further, the recovery of the bribe money from the drawer of the table of the accused in the manner as stated in the prosecution story was also not free from reasonable doubt. Independent witnesses PW-2 Jagat Ram and PW-3 Sateshwar did not support the case of the prosecution in whose presence the alleged recovery was stated to have been made and the statements of the official witnesses to that extent cannot be believed as the accused has imputed allegations against them that they had connived with the complainant.

(iv) The learned trial Court also took note of the statement of PW-7 Inspector Mal Dutt that when the complainant had entered into the office of the accused, three more persons were also present there, but they were not associated as the witnesses.

Legal Position

8. No doubt, this Court has full power to review the entire evidence upon which the order of acquittal is founded and then to come to its own conclusion. But in exercising the power conferred by the Code of Criminal Procedure and before reaching its conclusion upon facts, this Court has to give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

9. In nutshell, this Court is empowered to review full evidence. If the evaluation of the evidence by the trial Court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based its order are reasonable and plausible, this Court will not disturb the order of acquittal if another view is possible.

Discussion and Findings of this Court

10. On re-appraisal of the evidence on record, I find the material contradictions in the prosecution story initially stated by the complainant in terms of the FIR aforesaid and the version when the complainant examined himself in the Court. In cross-examination, the complainant precisely admitted the dispute qua execution of the work by him. He also admitted that the accused had sent the

Section Incharge of his office to village Hached to settle the dispute with respect to the construction of the canal. He also admitted that the Divisional Engineer had come to village Hached alongwith accused to solve the said dispute and directed to allot the construction work to him. There was also an assembly question, as stated by PW-1 and proved by the defence witness. Against this background, the evidence on record requires to be closely scrutinized.

11. Independent witnesses PW-2 Jagat Ram and PW-3 Sateshwar Singh both did not support the case of the prosecution qua recovery of tainted money from the accused, at all. Even they denied the demo alleged to have been given by the Dy. S.P. Further, according to them, vigilance team went inside the office of the accused, which was almost sealed and nobody was allowed to enter it. Therefore, even the complainant did not know what had happened inside the office.

12. Further, the complainant aforesaid stated that he was already having the amount of Rs. 25,000/- with him, which was taken by him along from his shop out of his earning. In case the accused was already having this amount, then in that event, there was no question of getting the cheques from the accused for its encashment and from that amount, to hand over the amount of Rs. 25,000/- to the vigilance party to treat it with the phenolphthalein powder and thereafter hand it over to the accused. Thus, there has been a material contradiction as the first version given by him in terms of FIR Ext. PW-8/D and the statement given by him in the Court as PW-1, as pointed out by the learned trial Court and as stated above in para-10, makes the prosecution story a suspect.

13. Further, when the amount of Rs. 25,000/- is alleged to have been delivered to the accused, as stated by the complainant, he did not say anything as to which payment was cleared by the accused at the time when he delivered this amount to the accused as he had already received two cheques pertaining to the outstanding bills from the accused in the morning at the time when he had visited his office. Thus, the demand and acceptance of the bribe by the accused from the complainant stands not proved in accordance with law.

14. In Narendra Champaklal Trivedi Vs. State of Gujarat, the Apex Court has reiterated the principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as a bribe.

15. In the absence of evidence of demand and acceptance of the amount as illegal gratification is the sine qua non for constituting an offence under the Act. It is also settled law that there is a statutory presumption u/s 20 of the Act which can be dislodged by the accused by bringing on record some evidence, either direct or circumstantial, that money was accepted by other than the motive or reward as stipulated u/s 7 of the Act. It is also obligatory on the part of the Court to consider the explanation offered by the accused u/s 20 of the Act and the consideration of the explanation has to be on the anvil or preponderance of probability.

16. But in the instant case, there is also no question of statutory presumption because even the recovery of the alleged tainted money is not proved in accordance with law. The statement of the complainant is quite contradictory to his initial story as set up by the prosecution and the independent witnesses not supported the case of the prosecution and further three more persons who were proved to be present in the office of the accused, were also not associated in the raid or included as independent witnesses. Had it been done so by the prosecution, their statements would have thrown light with respect to the veracity of the prosecution case or at least, to say as to what had happened inside.

17. Further, PW-7 Inspector Mal Dutt was also associated as a shadow witness despite the fact that the independent witnesses from the public were available to the vigilance team. It is neither explained nor understood as to why PW-7 aforesaid was included as a shadow witness, despite the availability of the independent witness. Even, this witness has made material contradictions to the statement of the complainant. According to him, no independent witness was there to hear the conversation between the accused and the complainant and also to see whether the currency notes had passed to the accused or not. Further that when the complainant entered into the room of the accused with the tainted money, he remained outside standing near the stairs and he got the signal after about 30 minutes. He stated that during this time, some people had entered and came out from the room of the accused and when he entered into the room, there were more three persons sitting, but then he stated that he received the signal from the window and he passed signal to the Dy. S.P. But as a matter of fact, this witness has not positioned him as the shadow witness in the manner he explained as to what was the duty of a shadow witness. He did not know whether any conversation with respect to the demand of money was raised by the accused which was heard by him and thereafter, the tainted money was delivered to the accused. The statements of the persons who were already present on the spot, in whose presence the alleged transaction is alleged to have taken place, were of course material, as stated above, but their non-examination casts a serious doubt on the prosecution case. Thus, prosecution case lacks probability, therefore, in my considered opinion, the statement of PW-7 Inspector Mal Dutt, the alleged shadow witness, was rightly rejected.

18. To draw the presumption with respect to the recovery of the money against the accused in given circumstances is also hazardous. Against the above factual background and for the aforesaid reasons, after applying the settled principles of law, I find that the findings of acquittal recorded by the learned Special Judge are reasonable and borne out from the record, which requires no interference. Hence, the State-appeal sans merit and is accordingly dismissed.

19. The respondent is hereby discharged of the bail bonds entered upon by him at any time of the proceedings. Send down the record.