

(2020) 03 BOM CK 0010
In the Bombay High Court
Case No : Criminal Appeal No. 587 Of 2004

State Of Maharashtra

APPELLANT

Vs

Mansing Shankarrao Mane And Anr

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(2), 13(1)(d), 20
Code Of Criminal Procedure, 1973 — Section 378, 386

Citation : (2020) 03 BOM CK 0010

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Pallavi Dabholkar, S.A. Ingawale

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 31st January 2004 passed by the Special Judge, Kolhapur, acquitting the accused of

offences punishable under Section 7 (Public servant taking gratification other than legal remuneration in respect of an official act), Section 13 (1) (d)

read with Section 13 (2) of Prevention of Corruption Act, 1988 (PC Act).

2. Mr. Ingawale, at the outset, submitted that his instructions are that accused no.2 has expired about 3 years ago but he does not have the details. Mr.

Ingawale states that within two weeks, he will file copy of the death certificate in the registry. Statement accepted.

3. Complainant â?" Vijaymala Patil (PW-1) was a resident of village Latawade in Kolhapur district. Complainantâ??s husband was one Ramchandra

Patil, an ex-army service man, who died in January 1999. Ramchandra Patil had a brother by name Vilas Patil. There was a partition deed entered

into in the family by which Ramchandra Patil got plot of land admeasuring 37

Ares at village Bhadole, Kolhapur. The partition deed, it is stated, was registered. It is complainant's case that despite partition deed being registered, her brother-in-law Vilas Patil's name continued to be shown in the 7/12 extract and therefore, complainant made an application to the Talathi (accused no.1) to delete the name of her brother-in-law Vilas. It is stated that alongwith the application, the deed of partition was also submitted. Accused no.1 demanded Rs.1000/- as bribe to have the name of Vilas deleted but later at the request of complainant, reduced it to Rs.700/-. Accused no.1 informed complainant (PW-1) to be present in his office on 9th April 2001 at 12 noon with the bribe.

4. Complainant did not want to pay any bribe and therefore, approached the office of Anti Corruption Bureau, Kolhapur on 7th April 2001 and lodged complaint with Mr. Chougule, DY. S.P. (PW-6). The pre-trap panchnama was prepared and complainant and panch witnesses were given necessary instructions and 9th April 2001 was fixed as the date for trapping accused no.1.

5. Complainant alongwith the raiding party went to the office of accused no.1 on 9th April 2001. Complainant (PW-1) and panch witness â?

Kharatmal (PW-2) went inside the office of accused no.1. Accused no.1 was not present in the office and therefore, PW-1 and PW-2 waited.

According to PW-1, accused no.1 came to his seat within five minutes but PW-2 states it took about an hour for accused no.1 to come to his seat.

PW-1 asked accused no.1 from the bench on which she was sitting with panch witness and other, that is across the room, as to whether the work was

done and accused no.1 asked PW-1 whether she has brought the agreed amount and when PW-1 nodded affirmatively, accused no.1 told PW-1 to

hand over the money to the person standing with crutches near the window and that was accused no.2. When PW-1 and PW-2 approached accused

no.2, accused no.2 started walking towards a temple, which is nearby, where the bribe amount of Rs.700/- was given and after giving the amount,

PW-1 gave the agreed signal and the raiding party came and caught the hands of accused no.2 and then took accused no.2 inside the office of

accused no.1 and post-trap formalities were completed. Anthracene marks were found in the hands of PW-1 and in the pouch, which she was holding,

in which the trap amount was kept and in the hands of accused no.2. Nothing was found on accused no.1. The indisputable fact is that there was no

anthracene marks found on the person of accused no.1.

6. Post-trap panchnama was prepared, statements were recorded and after completion of investigation, sanction from the sanctioning authority (PW-

4) was obtained and the case was registered. To the chargesheet filed, accused pleaded not guilty and claimed to be tried. The stand of the accused is

of total denial.

7. In the chargesheet, prosecution listed 16 witnesses but led evidence of only 6 witnesses, viz., Vijaymala Ramchandra Patil, complainant as PW-1;

Pushpamala Shelarji Kharatmal, panch witness as PW-2; Shivaji Hambir Aawaghade, staff working in the office of Talathi as PW-3; Subhash

Ramchandra Dharmadhikari, Sanctioning Authority as PW-4; Annaso Appaso Bhanase, Circle Officer as PW-5; and Sudhir Ramchandra Chougule,

Investigating Officer as PW-6.

8. The Apex Court in Ghurey Lal V/s. State of U.P. (2008) 10 SCC 450 has culled out the factors to be kept in mind by the Appellate Court while

hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its

power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion

with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is

not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial

court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is

going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has ""very substantial and compelling reasons"" for doing so.

A number of instances arise in which the appellate court would have ""very substantial and compelling reasons"" to discard the trial court's decision.

Very substantial and compelling reasons"" exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;
- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in ""grave miscarriage of justice"";
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including Murlidhar & Ors. V/s. State of Karnataka(2014) 5 SCC 73 0has held that unless, the conclusions

reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are

likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely

because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of

acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of

acquittal passed in his favour by the Trial Court.

The Apex Court in Ramesh Babulal Doshi V/s. State of Gujarat 1996 SCC (cri) 97 2has held that if the Appellate Court holds, for reasons to be

recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

9. I have perused the impugned judgment, considered the evidence and also heard Ms. Dabholkar, learned APP and Mr. Ingawale, counsel for respondents. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. There are many contradictions and omissions.

10. According to the version of PW-1, accused no.1 Talathi was not in the office and after five minutes he came, whereas PW-2, panch witness, states that accused no.1 Talathi came after one hour.

In the post-trap panchnama, it is stated that complainant and PW-2 went to the office of accused no.1 at 11.25 a.m. and accused no.1 arrived at 12.25 p.m. This is a huge difference because one can understand if there was a difference of 5-10 minutes but 55 minutes is definitely too large and that can also be detrimental to prosecution's case.

After accused no.1 came, according to PW-1, PW-1 greeted him with namaskar and asked him whether her work was completed. Accused no.1 replied by asking her whether she has brought the amount as told and PW-1 said she has brought the amount. But according to the panchnama, when PW-1 said as to whether her work has been done, accused no.1 replied asking whether she has brought money as told for tea etc. So therefore, there was no direct demand of money, though it might look like impliedly a demand being made. But when there is a difference between panchnama and evidence, we will have to look at it as an improvement made by PW-1.

Thereafter, as per complainant, accused no.1 told her that the amount should be given to the person who is sitting near the window. But as per the panchnama, accused no.1 told complainant by pointing towards a person, who was standing with crutches, that it should be given to that person.

PW-1, in her evidence, states that accused no.2 was standing near the window with crutches. Then accused no.2 came out of the office and stood

near the wall of the temple and she alongwith PW-2 went behind accused no.2, whereas accused no.1 was in his office. PW-1 then says accused

no.2 said that the amount, which has been demanded by accused no.1, be paid to him and accordingly, PW-1 opened the chain of her money purse by

her right hand and gave the amount with her right hand to accused no.2, who accepted the amount with his right hand and kept that amount in the

pocket of his bundi, the inner garment. Thereafter, PW-1 came out of the temple and gave the agreed signal. This indicates that PW-1 went inside the

temple alongwith accused no.2 but the panchnama does not say that. According to panchnama, they have not gone inside the temple but the

transaction took place between the open space of the office and the temple. Therefore, PW-1 coming out of the temple and giving the signal does not

arise. This is definitely an improvement in the evidence of PW-1. According to PW-1, when she came out of the temple, she gave the agreed signal

and the raiding party caught hold of accused no.2. Accused no.2 was taken inside the Talathi office and complainant was told to wait outside the

Talathi office.

In the cross examination, PW-1 says her husband died in the year 1999 by which time partition had taken place and in the cross examination, it is

brought on record that the document, which was annexed with the application by complainant, was an incomplete document. Mr. Ingawale submitted

that on an incomplete document, how can an entry in revenue record could be made. Mr. Ingawale submitted that it is a partition deed and some of

the pages were missing and hence, could not be acted upon. PW-1 says she gave an application on 6th July 2000 to delete the name of her husband

and add her name alongwith the name of her children. PW-1 says that application was allowed and her husband's name was deleted and her

name alongwith the name of her children was added in the 7/12 extract. PW-1 says she visited 10-12 times the office of accused no.1. Mr. Ingawale

submitted and rightly so, that the deletion of name of PW-1's husband and adding her name alongwith the children's name was done without

any demand of money. There is no allegation that accused no.1 demanded any money to make those changes because on 6th July 2000 also accused

no.1 was the Talathi. Mr. Ingawale pointed out that Exhibit 25, which is the application, which according to PW-1 was for deleting of the name of

Vilas, her husband's brother, is not even an application for that purpose but it was only for submitting a copy of the partition deed to be entered in the land records.

11. Moreover, PW-1 says that she had four brothers and four cousin brothers living in Bhadole village but she does not inform any of them about the demand of bribe by accused no.1, she does not inform any of them that she was going to the office of ACB on 7th April 2001 and she does not inform them that raid was planned on 9th April 2001. It is not PW-1's case either that her relationship with her siblings and relatives had soured. I am making this observation because PW-1 admittedly is a widow with two children and PW-1 says she could not, on her own, manage the land and she was making arrangements with a cultivator whose name is given as Rajaram Subhash Mane, who has not been examined. According to PW-1, this cultivator agreed to cultivate her land provided the name of Vilas was removed from the 7/12 extract.

12. According to PW-1, alongwith the application, she had produced photocopy of the partition deed. The Investigating Officer (PW-6) also has confirmed that the document was incomplete. It is the case of accused no.1 that he asked PW-1 to produce the complete document, which was never produced and that is why PW-1 has got annoyed. PW-1 admits that she was asked to produce all the pages of partition deed.

13. At the time of trap, it is the case of PW-1 that PW-1 asked accused no.1 as to whether her documents are found and accused no.1 informed her that the documents are found. It has come in evidence that there were many other persons sitting near PW-1 and she was sitting on the bench when she was talking to accused no.1. There were two other candidates sitting next to accused no.1. Therefore, they would have also heard the conversation between PW-1 and accused no.1. It has to be also noted that in the statement before the police, PW-1 has not stated that accused no.1 asked her as to whether she has brought the money. It also does not appear that she told accused no.1 that she has brought the money. These are material omissions.

14. PW-1 also says when she went to the office of accused no.1, two Assistants were working and there were other persons sitting and she was sitting on the bench and she asked accused no.1 about the work but accused

no.1 did not talk back anything. Nowhere it appears that accused no.1 gave the name of accused no.2 as his conduit. It is stated that he just pointed out towards the eastern side and based on which, PW-1 gave the money to accused no.2. If accused no.2 has to accept the money on behalf of accused no.1, naturally there must have been some conversation between accused no.1 and PW-1 that the money has to be paid over to accused no.2. No such conversation has come on record.

15. PW-1 says money was given inside the temple and she came out from the temple and gave the signal. But the other witness says that the money was given in the passage between the office and the temple. If that was the case, where is the question of PW-1 coming out of the temple and giving necessary signal. This is a very material contradiction. Infact PW-2 and the Investigating Officer state, and also it is so stated in the post-trap panchnama, that PW-1 came out of the Talathi office and gave the signal, whereas PW-1 says she came out of the Talathi office, went to the temple, gave the money to accused no.2 and then came out and gave the signal. This is a very material contradiction which goes to the root of the matter.

16. PW-2 admits that it is not there in her statement to the police that accused no.2 told her that the amount demanded by accused no.1 was to be paid to him. Then how did she know that the amount was to be given to accused no.2 is not clear. Therefore, looking at the statement, even accused no.2 has not demanded any money.

17. Therefore, when the evidence of complainant is carefully examined, alongwith the evidence of the other witnesses, there are number of material omissions and improvements. PW-2 says they went in two jeeps from the ACB office to Talathi office. PW-6, the Investigating Officer, says they went only in one jeep.

18. PW-1 says there were three or four people working in the office of Talathi and there were five visitors, who had come for their work. Police has not recorded statement of any of these people, let alone bringing them as witnesses. Therefore, there are serious lacuna in prosecution's case.

The Trial Court has listed many more such discrepancies, contradictions and omissions, which for the sake of brevity, I am not reproducing. Suffice to say, I concur with those observations.

19. The onus is on prosecution to prove beyond reasonable doubt, but even in

situation where there are legal presumptions, the onus of accused is only to explain on the basis of preponderance of probabilities. In *V Sejjappa V/s. State by Police Inspector Lokayukta, Chitradurga* (2016) 12 Supreme Court Cases 150, the Court was considering the presumption under Section 20, when it arises and what was the duty of court while invoking the provisions of Section 20. The Court after observing that the proof of demand is *sine-qua-non* for considering the offence under Section 7 of PC Act, held that initially burden of proving that accused accepted or obtained the amount other than legal remuneration is upon prosecution. It is only when such initial burden regarding demand and acceptance of illegal gratification is successfully discharged by prosecution, then burden of proving the defence shifts upon accused and a presumption would arise under Section 20 of PC Act. If the evaluation of the evidence and the findings recorded by the Trial Court do not suffer from any illegality or perversity and the grounds on which the Trial Court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible and the view taken by the Trial Court also is possible, the Appellate Court should not interfere.

20. In *State of Gujarat V/s. Navinbhai Chandrakant Joshi & Ors.* (2018) 9 Supreme Court Cases 242 the Apex Court held that the presumption under Section 20 of PC Act is rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities. Paragraph 11 of the said judgment reads as under:

“11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In *C.M. Girish Babu Vs. CBI Cochin, High Court of Kerala* (2009) 3 SCC 779, this Court held as under:-

“21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.”

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the

Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt?|â??

Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by

them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.â??

21. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the

accused 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, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and

strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

22. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal,

in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

23. Appeal dismissed.

24. The Government/Appropriate Authority shall pay over to respondent no.1 Mansingh Shankarrao Mane, within a period of 30 days from today, all

pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments

of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever

on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be

accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified

copy expedited.