
(2020) 02 BOM CK 0111
In the Bombay High Court
Case No : Criminal Appeal No. 843 Of 2004

State Of Maharashtra

APPELLANT

Vs

Talimunisa Rais Ahmed Block No. II

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(2), 13(1)(e), 20
Code Of Criminal Procedure, 1973 — Section 313, 378, 386

Citation : (2020) 02 BOM CK 0111

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

Bench : Single Bench

Advocate : Anamika Malhotra, Amrut Joshi

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 8-12-2003, passed by the Court of Special Judge, Bombay, acquitting respondent

(accused) of the offence punishable under Sections 7 and 13 (2) read with Section 13(1)(e) of Prevention of Corruption Act 1988 (P.C. Act 1988).

2. As none appeared for respondent, this court appointed Mr. Amrut Joshi as Amicus Curiae. Before I proceed with the case, I must express my

appreciation for the assistance rendered and endeavour put forth by Mr. Joshi, learned Amicus Curiae, for it has been of immense value in rendering

the judgment.

3. The facts in brief are, accused at the relevant time was a Municipal Councilor of Mumbai Municipal Corporation. Complainant â?" Anwar Khan

Raziuddin Khan (PW-1) was in occupation of room no.2 in Furniturewala Chawl on leave and licence basis from Mohommad Azam Bahadurali (PW-

3). The said room was in need of some repairs before its occupation and PW-3

had asked PW-1 to get the room repaired. It is alleged that there is a system to get prior permission before any of the chawls are repaired, accused should be met and given some bribe. It is stated by PW-1 in the complaint that when he went to BMC, he was advised that he should be contacting accused and take her blessings. PW-1, therefore, went to the house of accused about a week prior to 10-9-1996, at which time, accused informed him that a sum of Rs.5000/- was required to be paid to accused to give permission. There is nothing on record, as to how a councilor is required to give permission, because that is something between the corporation and the person concerned. On 9-9-1996 at about 9.30 a.m., PW-1 met accused at her residence and requested her to reduce the amount, which was settled at Rs.4000/-. PW-1 was told to pay the amount on 10-9-1996 at 9.30 a.m. at the residence of accused. As PW-1 did not want to pay that amount as bribe, he approached Anti Corruption Bureau (ACB) and lodged a complaint. After completing the necessary procedures of pre-trap panchnama on 10-9-1996 in the presence of panch witnesses one of whom is Sudha Chavan (PW-2), a trap was arranged at the residence of accused.

4. PW-1 and PW-2 met accused at her residence in the morning and it is alleged that accused asked about the money. It is stated that PW-1 offered the amount of Rs.4000/-, but accused asked him to keep the money on top of a typewriter, which was covered, which was kept on one side of the room on a table. Twice complainant asked accused to count the amount, but it seems accused refused to count on the ground that PW-1 was like her family member and she trusted him. After keeping the money on top of the covered typewriter, PW-1 went out and gave the agreed signal, after which the raiding party entered. PW-4 and another constable held the hands of accused by her wrists. PW-5 entered and disclosed his identity and completed the rest of the formalities. No anthracene mark was found on the person of accused, because admittedly, accused did not even touch the amount. Thereafter, post-trap panchnama was prepared, FIR was lodged and investigation began. At the relevant time, both APP as well as Mr. Joshi state that in view of the judgment of the Apex Court in P. V. Narasimha Rao Vs. State (CBI/SPE) (1998) 4 SCC 626 no sanction was required.

5. Prosecution filed charge sheet and listed 22 witnesses, but only 5 have been

examined, including Investigating officer. Accused pleaded not guilty and claimed to be tried. In her statement recorded under Section 313 of CrPC, accused does not deny that a sum of Rs.4000/- was kept by PW-1 on top of the covered typewriter, but her defence is, in August 1996, she was very ill and on 8-9-1996 she was advised by some well wishers that if she offers one goat to the students residing in hostel by way of meal, the blessings that she would get by making such donation would cure her. At that time, complainant also was present in her house and complainant also asked her whether she could get three goats from the butcher for the ceremony to be performed at his residence for his nephew. Accused agreed and that is why PW-1 was at her residence to pay the butcher who was expected in the house of accused. The butcher was also present on 8-9-1996 and the goats were to be brought on 10-9-1996, so complainant was told by accused to come on 10-9-1996 and pay the price for the goats directly to the butcher. PW-2 â?" panch witness in her cross-examination admitted that the relationship of PW-1 with accused was very cordial like family members. Accused specifically denied the case of PW-1 that she demanded any illegal gratification as alleged or at all. Accused also denied that she ever demanded any money from PW-1 or she accepted any money from PW-1 and it was only a trap foisted on her at the instance of some political rivals. The defence of accused is of total denial.

6. To prove its case, prosecution examined 5 witnesses, namely, Anwar Bazuddin Khan â?" complainant, as (PW-1); Miss Sudha Nana Chavan, panch witness, as (PW-2); Mohommed Azain Bahadurali Siddique, as (PW-3); Miss Sangeeta Mahadev Gaikwad, PSI, as (PW-4) and Jayprakash Nagappa Giram, PI, as PW-5.

7. The Apex Court in Ghurey Lal Vs. 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.

8. The Apex Court in many other judgments including Murlidhar & Ors. Vs. 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.

9. The Apex Court in Ramesh Babulal Doshi Vs. 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.

10. I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Joshi, learned Amicus. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment in its consideration on the merits of the case.

11. Mr. Joshi submitted that this was a case where PW-1 in his examination-in-chief says that he went to the house of accused and asked her how much money he has to pay to get his house repaired and it is not the case that accused first demanded the money for discharging her official function.

Mr. Joshi submitted that where a man has not demanded a bribe, he is only suspected to be in the habit of taking bribes, and he is tempted with a bribe just to see whether he would accept it or not and to trap him, if he accepts it, it will be an illegitimate trap and accused cannot be convicted. In fact it will be an offence on the part of the persons taking part in that unless authorised

by an act of parliament. Mr. Joshi relies on a judgment of Madras

High Court in the case of M. S. Mohiddin Vs. State 1952 M W N Cr 4 5Mr. Joshi also relied on a similar issue decided by a Learned Single Judge of

this Court in Shridhar Chavan Vs. State of Maharashtra 2015 SCC Online Bom 5057

12. I do not wish to go into all these legal submissions because I am convinced that some of the contradictions, which I am going to list out below, itself are enough for dismissing the appeal.

It is the case of PW-1 that he was desperate to get the house repaired and accused was not allowing him to repair unless bribe was paid. PW-1 does

not show under what provisions of law, did accused have any authority to permit the repair of house or refuse, in her locality as a Councilor. PW-1

admits that such permissions have to be obtained from the Municipal Corporation. PW-1 has gone to accused and asked her how much should he pay

her and accused said the amount will be Rs.5000/-. This was one week before the trap. Except PW-1's statement, there is no other evidence of

this meeting.

13. PW-1 says that after the pre-trap panchnama was prepared, they went to Shivaji Park police station and picked up PW-4 - Sangeeta Mahadev

Gaikwad and then proceeded to the house of accused. PW-4 denies that she was picked up from Shivaji Park police station. PW-2 does not say that

they ever went to Shivaji Park Police Station on the way to the house of accused. PW-5 say that they went to Shivaji Park Police Station because

PW-4 wanted to collect some papers. Therefore, there are contradictions.

14. PW-1 says when accused was told twice to count the money, she told him that he is like her family member and she trusted him and asked him

keep the money on top of the covered typewriter. PW-1 say that accused told him that she has purchased some goats and the money will be given to

the butcher who was expected within a short time. PW-2 also corroborates this and it is the case of accused that PW-1 himself wanted to buy three

goats and he brought the money to pay the butcher and left the money on top of the covered typewriter.

PW-1 says that later accused informed him that he will have to pay in addition the money for the persons of BMC and police, but PW-2 does not say

anything like that.

PW-2 says before the money was given to accused, PW-1 informed accused that he went to the office of corporation, but could not find the

concerned persons as they had gone on round. PW-1 does not say that.

PW-2 say that when the raid was going on, the husband of PW-1 came into the room. PW-5 also says that. But PW-4 does not say about the

husband. So also PW-1 is silent.

PW-5 says the son of accused was present during the time of raid, but other witnesses are totally silent about the son appearing in the room during the raid.

15. The indisputable fact is there was no anthracene marks found on person of accused, from the drawing of the room and seating arrangements in

the room which has been brought on record by PW-2, the place where accused was sitting was far away from typewriter, which was closer to where

PW-1 was sitting. 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 Sejappa Vs. 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. This judgment was relied upon by Mr. Joshi and he further

submitted that 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.

16. Mr. Joshi also relied on State of Gujarat Vs. Navinbhai Chandrakant Joshi & Ors. (2018) 9 Supreme Court Cases 24 2, to submit that the

presumption under Section 20 of the 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 Navinbhai Chandrakant Joshi (supra) 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.

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.

17. Trial Court has raised various other issues including the contradictions in the address of the room that PW-1 wanted to get repaired and many

more, which for the sake of brevity, I am not reproducing. The observations of the Trial Court has the approval of this court.

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

under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless she is proved guilty by a

competent court of law. Secondly, accused having secured her acquittal, the presumption of her 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.

19. 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, need not be interfered with.

20. Appeal dismissed.

21. The High Court Legal Services Committee, to award fees of the learned Amicus Curiae fixed at Rs.10,000/-.