

(2014) 01 DEL CK 0174
In the Delhi High Court
Case No : Criminal A. No. 83 of 2008

Sumit Kumar Verma

APPELLANT

Vs

State (Govt. of NCT of Delhi)

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Prevention of Corruption Act, 1988 — Section 13(1)(d) 13(2) 7

Citation : (2014) 01 DEL CK 0174

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Saahila Lamba, for the Appellant; Aashaa Tiwari, APP, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This appeal is directed against the judgment dated 19th December 2007 passed by the Special Judge in CC No. 61/06/01 convicting the Appellant for the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 ("PC Act"). The appeal is also directed against the order on sentence dated 20th December 2007 whereby the Appellant was sentenced to rigorous imprisonment ("RI") for two years and a fine of Rs. 4,000 and in default of payment of fine to undergo RI for six months for the offence u/s 7 of the PC Act and to RI for three years and to pay fine of Rs. 6,000 and in default to undergo RI for 9 months for the offence u/s 13(2) read with Section 13(1)(d) of the PC Act. During the pendency of the appeal, the sentence awarded to the Appellant was suspended by an order dated 30th January 2008.

2. There were two accused in the case. Crl. A. No. 81 of 2008 filed by the co-accused M.P. Singh against the same judgment has been allowed by the Court by its judgment dated 23rd January 2014.

3. The case of the prosecution is that the Airports Authority at Indira Gandhi International Airport, New Delhi used to auction goods and the Complainant Raj

Kumar Chawla (PW-8) used to purchase the goods through such auction. As part of the terms of the said purchase of goods through auction, PW-8 as a successful bidder was required to pay 33% of the final amount at the time of the auction and the balance amount within three days. The delivery of the auctioned goods could be taken only upon presentation of a challan prepared by the Cargo Disposal Unit ("CDU") Office, upon deposit of the balance final amount.

4. On 29th December 1999, Lot Nos. 26139 and 26148 were auctioned for Rs. 30,000 in favour of PW-8. On that day itself he deposited Rs. 10,000. He was required to deposit the balance amount of Rs. 20,000 within three days thereafter for the purposes of taking delivery of the auctioned goods. It is stated that the Appellant was posted as Assistant Grade-III and the co-accused M.P. Singh (A-1) was posted as Assistant Grade-I in the office of the Director, CDU at IGI Airport New Delhi. The case of the prosecution is that on 29th December 1999 after his bid amount was accepted, A-1 met PW-8 and asked him to take delivery of the auctioned goods on the following day and to pay Rs. 500 as his share. It is further the case of the prosecution that on 30th December 1999 at about 11.30 am PW-8 went to the Anti Corruption Branch ("ACB") and lodged a complaint (Ex. PW-8/A) with it to the effect that the A-1 had demanded money for getting the challan issued. Inspector Sudesh Kumari (PW-10) recorded the complaint in the presence of the panch witness Gulshan Kumar (PW-11). PW-8 produced one government currency ("GC") note of Rs. 500 and PW-10 recorded its number in the pre-raid proceedings. The said GC note was treated with phenolphthalein powder. PW-8 was asked to touch the note and dip his fingers in the sodium carbonate solution and the solution turned pink. The treated GC note was handed over to PW-8 who kept it in the left pocket of his shirt. PW-8 was asked to handover the treated note to the A-1 on his demand in the presence of PW-11. PW-11 was instructed to remain close to PW-8, to hear the conversation, to observe the transaction and to give a signal to the raiding party by placing his hand over his head after the transaction is over. These proceedings were recorded in the pre-raid report (Ex. PW-10/A). Inspector Y.S. Negi (PW-13) was to take over further investigation after the raid as the Investigating Officer ("IO").

5. A raiding party comprising PW-8, PW-11, PW-13 and other officers of the ACB left for the CDU at 12.30 pm on 30th December 1999 and reached there at around 1.20 pm. On the directions of PW-10, PW-13 and the driver stayed back. PW-8 and PW-11 went to the room of the A-1. It is alleged that the A-1 demanded Rs. 500 as bribe from PW-8 and asked PW-8 to give the said sum to a person sitting in front of him in the room whose name was later disclosed as Sumit Kumar Verma (Appellant). It is further alleged that on the directions of the A-1, the Appellant received the treated GC note of Rs. 500 by his left hand from PW-8. Appellant kept the GC note in the left pocket of his leather jacket. PW-8 also handed over the original EMD receipt to the Appellant. On completion of the said transaction, PW-11 gave the pre determined signal upon which PW-12 and other members of the raiding team except PW-13 came there. On enquiry PW-11 told PW-10 that the A-1 had demanded a bribe and asked PW-8 to give the same

to Appellant who had received it by his left hand and kept in the left pocket of his jacket. It is stated that on directions of PW-10, PW-11 recovered the treated GC note from the left pocket of the jacket which Appellant was wearing. PW-11 tallied the number of the GC note with that recorded in the pre-raid report. PW-10 took the left hand wash of the Appellant and the solution turned pink. The wash was then collected in two clean bottles which were sealed. The left pocket of the jacket of Appellant was also similarly washed and the solution which turned pink was transferred to clear bottle and sealed. The recovered GC note was taken into possession by a memo Ex. PW-8/B-1. The post-raid proceedings were recorded by PW-10 and on that basis an FIR was registered.

6. PW-13 then took possession of the recovered GC note, all exhibits and seizure memos and formally arrested the A-1 and Appellant. He also took their personal search and seized certain documents.

7. The key witnesses examined by the prosecution included PWs-8 and 11 i.e. the Complainant and the panch witness. In his examination-in-chief, PW-8 deposed that the A-1 was taking lunch at the time when PW-8 came to his office in the CDU and that the A-1 demanded "kharcha pani" for the preparation of the challan. PW-8 further explained that the A-1 demanded Rs. 500 for preparing the challan and he asked PW-8 to pay the sum of Rs. 500 at another table where some other person used to sit. But that person was not sitting at that time. However, a jacket was lying on his seat. PW-8 stated: "I put a note of Rs. 500 in the pocket of that jacket which was lying on the table." PW-8 stated that the panch witness gave a signal and the raiding party reached the spot.

8. The Complainant (PW-8) did not support the case of the prosecution and was cross-examined by the Additional Public Prosecutor ("APP"). The critical aspect was whether A-1 had himself demanded any bribe and whether A-1 had asked for the bribe money to be handed over to the Sumit Kumar Verma, the Appellant. During his cross-examination by the APP, PW-8 deposed that one Gautam had demanded money from him and that he went to the ACB on account of Gautam demanding money and that "except Gautam no one else demanded money from him". The second aspect of the matter is that according to PW-8 when A-1 asked him to pay Rs. 500 to the Appellant, he found that the Appellant was not sitting at his table and a jacket was lying on the seat. PW-8 then stated that he had placed the treated GC note of Rs. 500 in the pocket of the jacket and thereafter the panch witness (PW-11) came over there. In other words, PW-8 did not support the case of the prosecution regarding the presence of the Appellant in the room.

9. This Court has been taken through the deposition of PW-8 both by Ms. Saahila Lamba, learned counsel for the Appellant as well as Mrs. Aashaa Tiwari, learned APP for the State. PW-8 appeared to vacillate on the aspect of the presence of the Appellant in the room. During his cross-examination by the APP, PW-8 stated:

It is incorrect that I have been won over by accused Sumit. It is correct that

when I entered in the room of MP Singh I was asked by M.P. Singh whether I have brought the money which I was asked to bring. I replied in the positive that I have brought Rs. 500. It is incorrect to suggest that MP Singh asked me to give the money to Sumit who will prepare the challan (Confronted with portion A to A of mark PW8/X where it is so recorded). It is incorrect to suggest that MP Singh asked Sumit Kumar to prepare the challan and accept whatever the Complainant is giving to you (Sumit) (Confronted with portion B to B of mark PW8/A. Vol. Sumit was not present on his seat at that time only a jacket was lying there. It is incorrect to suggest that I handed over the EMD receipt to Sumit and Sumit then asked for the money upon which I took out a note of Rs. 500/- from the left side pocket of my shirt and Sumit took that note as bribe from me and put in the pocket of the jacket which he was wearing at that time (Confronted with portion C to C of mark 8/A where it is so recorded). Vol. Only jacket was lying on a table where nobody was sitting. It is incorrect to suggest that the panch witness went out of the room of MP Singh immediately the raiding party entered in the room. It is further incorrect to suggest that I told to the raiding party that I have given Rs. 500/- as bribe to Sumit Kumar Verma on the asking of MP Singh and Sumit Kumar put the amount in the left pocket of the jacket (Confronted with portion D to D of mark PW-8/A where it is so recorded). It is incorrect to suggest that the raiding party then apprehend Sumit and recovered the amount of Rs. 500/- from him (Confronted with portion E to E of mark PW8/X where it is so recorded).

10. PW-8 further maintained in his cross-examination as under:

It is wrong to suggest that Sumit Kumar had received Rs. 500/- from me as bribe on the instructions of accused M.P. Singh. It is wrong to suggest that the amount of Rs. 500/- was recovered from accused Sumit Kumar in my presence.

11. When learned counsel for A-1 cross-examined him, PW-8 stated:

It is incorrect that no demand of any bribe was made by Sh. M.P. Singh accused on the date of raid. It is also incorrect to suggest that accused MP Singh never asked me to give the bribe money to any persons. As soon as I entered the room of the accused MP Singh demanded the money from me but on his direction I had given the money to Sumit Kumar. Again said Sumit was not present on his chair and I only put the money in the pocket of the jacket lying on the table. I was not aware whose jacket it was. It is incorrect to suggest that accused MP Singh never demanded any money while I entered his room nor he directed me to give the money to any other person. It is incorrect to suggest that I myself put the money in the jacket lying in the room. It is correct that accused never said me to put the money in the jacket lying in the room. I do not know if MP Singh had said to the raid officer that he never demanded any money with the Complainant and he never directed me to give the money to any other person. There was a rush of people at that time. It is incorrect to suggest that I am deposing falsely and falsely implicated accused MP Singh. I do not know whose duty was to prepare the challan.

12. It can be seen, therefore, that PW-8 was unable to give a reliable account of the events and in particular whether the Appellant was present in the room and whether the bribe amount was paid to him.

13. The next crucial witness was PW-11, the panch witness. He too did not support the case of the prosecution. He stated that when PW-8 asked A-1 about preparing the challan, A-1 told him that he would prepare it after lunch. When PW-8 insisted that he should prepare it immediately, A-1 pointed out towards the Appellant and asked PW-8 to get the challan prepared by the Appellant. He then stated that PW-8 extended the treated GC note of Rs. 500 towards the Appellant who accepted that GC note with his left hand which he kept in the left side of the pocket of his leather jacket. Thereafter PW-11 gave the pre-determined signal to the raiding party which came over immediately. He further stated that a search was taken of the Appellant and the treated Rs. 500 GC note was taken out from his pocket and given to PW-11 and that the serial number of the recovered GC note was tallied with the number recorded in the pre-raid report. PW-11 also spoke about the left hand wash and the left pocket wash of the Appellant's jacket.

14. Since PW-11 did not support the case of the prosecution as regards A-1, the APP was permitted to cross-examine the witness. At the stage of cross-examination, PW-11 resiled from his earlier statement concerning not only A-1 but the Appellant as well. The following answers by PW-8 in his cross-examination by the APP bear this out:

I did not tell the police that when Complainant met with accused M.P. Singh he enquired from the Complainant whether he had brought the money which was settled earlier on which Complainant replied that he had brought Rs. 500/- and accused M.P. Singh asked the Complainant to give that GC note to accused Sumit. (Confronted with portion A to A of his statement Mark-A and contents of post raid report where it is so recorded). I did not tell the police that when I along with Complainant turned towards accused Sumit, he demanded the bribe by the gesture of his left hand. (Confronted with portion B to B of his statement Mark-A and contents of post raid report where it is so recorded). It is correct that Complainant had given EMD receipt to accused Sumit. I did not tell the police in my statement that I took the search of accused Sumit Kumar on the direction of raid officer. (Confronted with portion C to C of his statement Mark-A and the contents of post raid report).

15. Yet, it appears that a concerted attempt was made by the APP to salvage the case as regards the Appellant. He appears to have suggested that the Appellant demanded the bribe from PW-8 "by gesture" which PW-11 denied in his cross-examination as is borne out from the following answers:

It is wrong to suggest that accused M.P. Singh had enquired about the bribe amount earlier settled from the Complainant and accused Sumit had also demanded bribe from the Complainant by gesture. It is wrong to suggest that

the bribe money was given to accused Sumit on his specific demand and on the direction of accused M.P. Singh. It is wrong to suggest that I am deposing falsely on the confronted portion as I have been won over by the accused.

16. In the anxiety to salvage the case vis-?-vis the Appellant, the APP appears to have imputed demand of bribe by the Appellant which was not the case of the prosecution at any point in time.

17. The cross-examination of PW-11 by learned counsel for the Appellant yielded the following answers which appear to support the case of the prosecution:

I did not notice the number of the person found present in the room of the accused. It is correct that after giving the signal the raid team entered the room of the accused persons and I was following them. It is incorrect to suggest that the jacket from which the money was recovered was hanging on the back of the chair. It is incorrect to suggest that no recovery was effected in my presence. It is my first case in which I was deputed as Panch Witness. It is incorrect to suggest that when we reached in the room of the accused persons, accused Sumit was not present there in the room. I have gone through my statement u/s. 161 Cr.P.C. today before coming in the witness box. It is incorrect to suggest that I have only deposed on the basis of my statement recorded by the police which I read today. It is incorrect to suggest that no recovery was effected from accused Sumit in my presence. I do not remember whether some other than accused persons were present in the room or not. It is also incorrect to suggest that I have deposed falsely.

18. The above answers contradicted what PW-11 stated when he was cross-examined by the learned APP in the trial Court. He was therefore an untrustworthy witness who kept changing his version. PW-8 was the only other person in the room at the relevant time. In his cross-examination, PW-8 stood by his version that the Appellant was not present in his seat and that the treated GC note was placed by him in the jacket which was lying on the seat.

19. Thus, the evidence of PWs-8 and 11, who were the only two persons in the room other than the accused, were contradictory in material particulars and did not help the case of the prosecution vis-?-vis the Appellant.

20. In the impugned judgment, the trial Court appears to have placed considerable reliance on the evidence of the Raid Officer Inspector Sudesh Kumari (PW-10). She was not present in the room and her version of the events in the room was based on what PW-11 told her. It was hearsay evidence. The trial Court appears to have overlooked the fact that the version of PW-10 had to be tested by examining the evidence of PWs-8 and 11. If PW-11 was himself shaky in his recollection of the events, it was unsafe to place reliance on what PW-11 is supposed to have told PW-10.

21. The trial Court appears to have proceeded on the basis that there was no question was put to PW-10 on behalf of the Appellant herein to counter her

statement regarding the recovery of the treated GC note from the Appellant and the hand wash of the Appellant. However, the following cross-examination of PW-10 by learned counsel for the Appellant seems to suggest that that was not the case. The line of defence appears to be that the Appellant was not even present in the room when PW-10 entered it after receiving the pre-determined signal from PW-11. In particular, the following answers in the cross-examination of PW-10 indicated the above line of defence:

In the complaint the name of accused Sumit Kumar was not mentioned. I cannot say that Complainant did not mention the name of Sumit Kumar in the complaint because either he did not know him or he had never met him in the cargo terminal office. It is incorrect to suggest that the tainted GC note was recovered from the pocket of the jacket which was hanging on the back of the chair in that room. It is incorrect to suggest that no recovery was effected in my presence. It is incorrect to suggest that when we reached in the room of the accused persons accused Sumit Kumar was not present there in the room. It is further wrong to suggest that the accused Sumit Kumar was falsely implicated in the present case. It is wrong to suggest that I have deposed falsely.

22. The Court is of the view that the evidence of PWs-8, 10 and 11 which were critical to bring home the guilt of the Appellant, did not support the case of the prosecution and, therefore, the finding of guilt of the Appellant cannot be sustained in law.

23. For the above reasons, the impugned judgment dated 19th December 2007 of the trial Court convicting the Appellant for the offences under Sections 7, 13(2) read with 13(1)(d) of the PC Act and the consequent order on sentence dated 20th December 2007 are set aside. The appeal is allowed but in the circumstances with no order as to costs. The bail bond of the Appellant and the surety bond are discharged.