
(2011) 07 GUJ CK 0045
In the Gujarat High Court
Case No : Criminal Appeal No. 22 of 2005

Sureshkumar Labhshankar Joshi	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 394(2)
Evidence Act, 1872 — Section 8
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2011) 07 GUJ CK 0045

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Mrharshitstolia, for the Appellant; HL Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The Appellant has preferred this appeal u/s 394(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 23.12.2004, passed by the learned Special Judge & Addl. Sessions Judge, Fast Track Court No. 2, Bhavnagar, in Special (ACB) Case No. 02 of 2000, whereby, the learned Special Judge has convicted the accused for the offences under Sections 7, 13(1)(g) and 13(2) of Prevention of Corruption Act (for short "P.C. Act) and sentenced him to undergo simple imprisonment of 3 (three) years and to pay a fine of Rs. 10,000/-, in default, to undergo further S.I. for one year.

2. It appears from the record that during the pendency of this Appeal, the original Appellant - accused had expired and, therefore, the heirs and legal representatives of deceased Appellant have filed Criminal Miscellaneous Application No. 16996 of 2008 for joining them as party in the proceeding and this Court, vide order dated 3.9.2009, allowed the said application and permitted the heirs and legal representatives of the deceased Appellant to be joined as party in the Appeal.

3. The brief facts of the prosecution case is as under:

That the relatives of complainant were involved in a crime and, therefore, they were arrested for the offences alleged against them. Thereafter, the said relatives of the complainant obtained bail order from the High Court. It is the case of prosecution that the complainant stood as surety of his relatives. Therefore, the complainant filed an application on 4.5.1999 before the Mamlatdar for obtaining solvency certificate which was required to be produced before the Sessions Court at Bhavnagar. On 12.5.1999 the complainant went in the office of City Mamlatdar to make inquiry regarding solvency certificate. On inquiry, the complainant came to know the said work was entrusted to the Deputy Mamlatdar (accused) and, therefore, the complainant met the accused and inquired about the solvency certificate. At that time, the accused informed the complainant that the City Mamlatdar is not present in the office and the accused is required to personally inspect the house of the complainant for which the solvency certificate is demanded and he was informed to come on 14.5.1999 at 11.00 A.M. at the office. It is alleged that on 14.5.1999 between 11.00 and 12.00 O'clock the complainant met the accused. At that time, he was asked to come at 4.00 P.M. with the vehicle. Therefore, the complainant, along with his relative Nareshbhai Maganbhai Punani went to the office of the accused. It is alleged that thereafter the accused took the complainant out-side the office and asked him that if he wants to obtain solvency certificate then he has to spend Rs. 3000/- to Rs. 4000/- towards the costs as per the conditions. Thereafter, it was settled for an amount of Rs. 2000/-. At that time, the complainant told the Appellant that he had no amount of Rs. 2000/- with him and he has to make arrangements for the same. Thereupon, the Appellant told the complainant to come on the next day at 11.00 A.M., after making arrangement of Rs. 2000/-. The complainant was informed that the solvency certificate will be prepared and after he pays the amount, he will give the solvency certificate. The accused also informed the complainant to remain present at his house and also told that he will come on his own. It is alleged that thereafter the complainant went to the office of Anti Corruption Bureau (ACB) at Bhavnagar and informed the Police Inspector (ACB) about the incident. Thereafter, the complainant went to his house. It is alleged that soon thereafter, the accused also reached at the house of the complainant and inspected the house of the complainant. Thereafter, in presence of one Nareshbhai Punani, the accused told the complainant to bring Rs. 2000/- on the next day and take solvency certificate. It is alleged that thereafter the complainant again approached the ACB Office and lodged his complaint at 9.00 P.M. On 14.5.1999. After recording the complainant, PI Shri Sharma decided to arrange the trap against the accused and, therefore, he called two panchas from the Government Office on 15.5.1999 at 9.00 A.M. It is alleged that, at that time, Shri Sharma read over the complaint to both the panchas and informed them regarding the trap and facts of the complaint. Thereafter, the complainant produced an amount of Rs. 2,000/- i.e. currency notes of Rs. 100/-, before the Panchas, P.I. Shri Sharma and the staff in the office of ACB. Thereafter, the

panchas and the complainant and the members of raiding party were explained the characteristic of anthracene powder and experiment of ultra-violet lamp. The numbers of currency notes were noted down in the first part of the panchnama and necessary procedure was done. Thereafter, the currency notes, duly smeared with anthracene powder were placed in the pocket of the complainant and he was instructed not to touch the currency notes and he was informed to give the currency notes on demand by the accused. The panch No. 1 was instructed to remain present with the complainant and to see and hear the conversation between the complainant and the accused. Panch No. 2 was instructed to remain with the raiding party. Thereafter, the first part of panchnama was prepared and signed by both the panchas and the Police Inspector. It is alleged that thereafter, the complainant, Panchas and the members of raiding party proceeded towards the office of City mamlatdar. Thereafter, the complainant, along with panch No. 1, had gone to meet the accused, but, the complainant was not present. However, subsequently he came. It is alleged that thereafter the accused took out relevant papers from his cup-board and directed one of the employees that he should not bring those papers unless asked by him. Thereafter, the accused went outside from his office and the complainant and panch No. 1 waited there. When the accused did not return back for about 15 minutes, the complainant and panch No. 1 went outside the office to inquire about the accused and at that time, they found that the accused was sitting near the table of one another Deputy Mamlatdar Mr. Nimbalkar, where the complainant asked the accused for solvency certificate immediately as he has to produce the same before the Court. Thereupon, the accused told the complainant that he has come for that particular purpose on the table of Shri Nimbalkar and the complainant was asked to sit on empty chair. After some time, the employee of concerned table has come in the office and thereupon the accused sent the peon to bring the relevant papers. The peon handed over the papers. Thereafter the papers were completed and were sent to the Mamlatdar for signature. The accused informed the complainant that his work will be completed after the Mamlatdar puts his signature on those papers. It is alleged that, at that time, the accused made a gesture by moving his head. The complainant informed the accused whether he has brought the amount with him. It is alleged that at that time, the accused took out one piece of news paper and placed the said paper on one table and asked the complainant to place the amount on that paper. Thereupon, the complainant took out muddamal currency notes of Rs. 2000/- and placed the same on the piece of paper. It is alleged that, at that time, there was call from the City Mamlatdar and, therefore, the accused went towards the office of City Mamlatdar and the complainant was asked to sit there. It is alleged that immediately thereafter, the complainant came out from the office and gave signal to the raiding party. On receiving the signal, the raiding party along with Panch No. 2 and P.I. Shri Sharma rushed there. It is alleged that the complainant informed PI Shri Sharma that the accused had gone in the chamber of City Mamlatdar and he showed the amount which was lying on the table on piece of paper. Thereupon, two persons from the raiding party were kept to watch the muddamal amount and the Police

Inspector, along with 2 panchas and the complainant went in the chamber of City Mamlatdar where the accused was sitting and some other persons were also there and necessary papers of solvency certificate and register were also lying there. Thereafter, the search was carried out in presence of panchas and members of raiding party and muddamal currency notes of Rs. 2000/- were attached with the piece of news paper. The experiment of ultra violet lamp was done in the office of City Mamlatdar and currency notes were examined and personal search of the accused was carried out and the second part of the panchnama was prepared at the office of City Mamlatdar. Thereafter, P.I. Shri Sharma came at the office of ACB and completed the necessary procedure, office was registered against the accused. The accused was arrested and the investigation was handed over to the Police Inspector of ACB Office at Junagadh, who took over the investigation. He recorded the statement of panch witnesses and other witnesses and further statement of the complainant. All necessary documents were attached and thereafter, the charge-sheet was submitted in the Court of learned Special Judge at Bhavnagar.

4. Thereafter, the charge was framed against the Appellant. The Appellant - accused has pleaded not guilty and claimed to be tried.

5. In order to bring home the charge levelled against the Appellant- accused, the prosecution has examined three witnesses and also produced documentary evidence on record before the trial Court.

6. Thereafter, after examining the witnesses, further statement of the Appellant-accused u/s 313 of Code of Criminal Procedure was recorded in which the Appellant-accused has denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, Fast Track Court No. 2, Bhavnagar, vide impugned judgment and order dated 23.12.2004, rendered in Special (ACB) Case No. 2 of 2000, held the Appellant - accused guilty to the charge levelled against him and awarded the sentence as referred herein above.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Bhavnagar, the deceased Appellant - accused has preferred this appeal.

9. Heard Mr. H.S. Tolia, learned advocate for the Appellant and Mr. H.L. Jani, learned APP for the Respondent-State.

10. Mr. Tolia has first read the complaint and contended that looking to the contents of the complaint itself, it clearly appears that the complaint is filed with some mala fide intention. He has contended that the panchas are selected witnesses. He has also read the evidence of Panch No. 1 and contended that the evidence of this witness is not reliable and trustworthy. He has contended that looking to the documentary as well as oral evidence on the record, the prosecution has failed to establish that there was any demand or acceptance of

amount or recovery of amount from the possession of the Appellant, as alleged by the Appellant. He has contended that there are material contradictions in the evidence of the witnesses. He has also read further statement of the Appellant, u/s 313 Code of Criminal Procedure, and contended that in the said statement also the Appellant has categorically stated that he has been falsely involved in the commission of offence. He has relied upon the decision of Hon'ble Apex Court in the case of Raghbir Singh Vs. State of Punjab, and contended that it is the duty of the Trapping Officer to secure the independent and respectable witnesses of raid. He has also contended that the amount which was lying on the table, was not the table of the Appellant - accused and, therefore, the recovery of the amount from the Appellant is also not proved. He has also contended that the complainant - star witness of the prosecution has not supported the case of the prosecution and, therefore, the prosecution has failed to prove its case beyond reasonable doubt. He has also contended that the prosecution has not examined the material witness Nareshbhai Maganbhai Punani, who had accompanied the complainant, when the complainant met the Appellant - accused, which seriously affects the credibility and trustworthiness of the prosecution case. He has contended that the file of issuance of solvency certificate was not entrusted to the Appellant till 14.5.1999 and even at the time of so called raid, the Appellant did not demand any amount from the complainant. He has also contended that the solvency certificate can be issued by the City Mamlatdar and not by the Deputy Mamlatdar, the Appellant herein, and, therefore, there was no question for the Appellant to demand any amount from the complainant. He has also contended that the solvency certificate was already issued by the City mamlatdar and was handed over to the complainant and, therefore, there was no occasion or reason to give any amount of illegal gratification. He has contended that both the panchas are the selected panchas and they are from one department. He has contended that P.W.2 - Panch witness is a tutored witness and he has admitted in his evidence that he has remembered all these details as he has been read over the panchnama 4-5 time. He, therefore, contended that looking to the facts and circumstances of the case, the prosecution has failed to establish the case against the Appellant - accused and, therefore, the judgment and order of the trial Court is required to be quashed and set aside and Appellant - accused may be acquitted from the charges levelled against him.

11. On the other hand, learned APP Mr H.L. Jani has supported the judgment and order of the Special Court and contended that the trial Court has fully appreciated the evidence produced on record by the prosecution and, therefore, no interference may be called for by this Court. He has contended that merely because the complainant has not supported the case of prosecution, that does not mean that the prosecution has not proved its case beyond reasonable doubt. He has contended that the complainant was won-over by the Appellant - accused and, therefore, he has not supported the case of prosecution. He has contended that the version of the complaint is required to be corroborated by the

independent evidence of panch witness and the panchnama. He has read the oral evidence of P.W. 2 - Prakash Dahyalal Gohil (Exh.15), who is Panch witness. He has contended that this witness is an independent witness and is a Government servant and he has no reason to falsely implicate the Appellant - accused in the commission of offence and even the defence has not established that there was any enmity between the Appellant and the Panch witness and, therefore, there is no reason to disbelieve the say of this witness. Mr. Jani has contended that from the oral evidence of this witness, it is clearly established that demand and acceptance by the Appellant is proved beyond reasonable doubt.

12. Mr. Jani has also placed reliance upon a decision in the case of Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, in which it is held by the Hon''ble Apex Court that "It is settled law that evidence of a hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence." He has contended that in the present case, no doubt, the complainant has turned hostile, but, he has clearly admitted that there was a talk between the complainant and the Appellant - accused regarding the demand of money in the office of the Appellant - accused and the complainant was also informed by the Appellant - accused that on the next day the complainant should come with the vehicle. Therefore, the contents of the complaint Exh.12 are corroborated by the evidence of the complainant. He has also contended that the panch witness as well as the Trapping Officer have fully supported the case of the prosecution and, therefore, there is no reason for the learned Judge to disbelieve the case of the prosecution. He has, therefore, contended that the learned Judge has, after considering all the material aspects of the matter and after considering the oral as well as documentary evidence, rightly held the Appellant - accused guilty of the offences charged against him and no interference is called for by this Court and the judgment and order of the learned Judge is required to be confirmed.

13. Heard the learned Counsel for the parties. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness and also perused the charge framed against the Appellant and considered the submissions made by learned Counsel for the parties. I have also considered the decisions cited by both the parties.

14. From the perusal of the oral evidence of complainant, it clearly appears that he has been declared as hostile. However, the complainant has clearly admitted that there was talk of money between the him and the Appellant - accused and the complainant was also informed by the Appellant - accused to come on the next day with his vehicle. The Panch witness (Exh.15) has clearly deposed that "the Appellant has told the complainant that his (complainant) work would be over, the papers have already been sent for signature of Officer (Mamlatdar) and thereafter he made some signs regarding the money and, therefore, the

complainant has told that as per talk he has already brought the money and thereafter, the Appellant brought one piece of paper and asked the complainant to put the money on it and thereupon the complainant put the money on the piece of paper, lying on the table." Even the Trapping Officer has categorically deposed in his evidence that after receiving the signal from the complainant he, along with raiding party and panch No. 2, rushed to the place and recovered the currency notes, the papers on which the currency notes were placed, which were smeared with anthracene powder and the numbers of the notes were tallied which were in the first part of the panchnam. Thereafter, after completing the formalities the muddamal were seized.

15. In the present case from the contents of the complaint as well as from the deposition of P.W. 2 - Panch witness, the prosecution has proved its case beyond reasonable doubt that the Appellant - accused has made demand from the complainant and he has also accepted it. Therefore, from the contents of the complaint as well as from the evidence of panch witness, it is clearly established that the prosecution has proved its case beyond reasonable doubt and, therefore, the learned Judge has not committed any error in holding the Appellant - accused guilty of the charges levelled against him. It has also come in evidence that the Appellant - accused had gone on the table of Mr. Nimbarkal and the complainant and the Panch witness have followed him and they have gone behind the Appellant - accused and as per the say of the accused, the complainant had put the money on the table. Even from the evidence of Trapping Officer, it is clearly established that the prosecution has successfully proved its case beyond reasonable doubt.

16. The Hon"ble Apex Court has also held in catena of decisions that the evidence of independent witness cannot be discarded mainly branding it as that of a cached or tutored witness. The evidence of Government servant cannot be rejected mainly because he is called to associate the raiding party. When the Court is satisfied from the facts and circumstances of the case that the panch witness is a witness of truth then his evidence cannot be discarded. I have also found that the Appellant - accused has abused his position as "public servant" and the abuse of position was also dishonest and it is also proved that the Appellant has deliberately caused wrongful act by obtaining pecuniary benefit and his pecuniary benefit is also proved beyond reasonable doubt.

17. Mr. Jani has also contended that looking to the facts of the case presumption u/s 20 of the P.C. Act is required to be drawn against the present Appellant - accused. Section 20 of the P.C. Act reads as under:

20. Presumption where public servant accepts gratification other than legal remuneration -

(1) Where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or Clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for

himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable u/s 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in Sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said Sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

18. Looking to the evidence produced on record, it appears that the illegal gratification was accepted by the Appellant - accused. It also appears that the Appellant - accused has not properly explained the presence of anthracene powder. From the perusal of evidence on record, I am of the opinion that the Appellant - accused has failed to rebut the presumption drawn u/s 20 of the P.C. Act. Even from the cross-examination of witnesses also, I have found that the Appellant has failed to prove his probable defence beyond reasonable doubt before the trial Court.

19. As per Section 8 of the Evidence Act, the conduct of the accused is required to be considered. From the record it is clearly established that at the place of occurrence, the accused was found and from his possession the trap amount was recovered in presence of panch witness and hence that conduct of the accused can be considered that there was motive of the accused to commit the offence and just to get some illegal gratification. Therefore, the contention of the Appellant - accused that the accused was wrongly involved in the commission of offence is not believable.

20. This Court has also gone through the latest decision of the Hon''ble Supreme Court in the case of Banarsi Dass Vs. State of Haryana, In the case before the Hon''ble Supreme Court, the complainant and another independent witnesses have not supported the case of the prosecution and, therefore, the Hon''ble Supreme Court has quashed and set aside the judgment of the High Court and acquitted the accused of the charges levelled against him. In the present case, no doubt the complainant has turned hostile and has not supported the case of the prosecution, but, the panch witness has fully supported the case of the

prosecution and his evidence is fully corroborated with the circumstantial evidence. In Banarsi Das (Supra) the Hon"ble Supreme Court in Para - 20 has also observed that...." It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence." In the present case before me, the panch witness has fully supported the case of prosecution and even by circumstantial evidence each link of the chain of events is established to prove the case of prosecution.

21. Looking to the facts of the case, I am of the opinion that the prosecution has proved that the Appellant - accused, being a public servant, has demanded the amount and also accepted the bribe amount from the complainant, The accused has not explained by discharging his burden of rebutting the statutory presumption of guilt against him. From the facts and evidence on record, it is clearly established beyond reasonable doubt that the amount by way of bribe was demanded by the accused and he accepted that amount voluntarily as an illegal gratification.

22. In view of above, I am in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and I am of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence.

23. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 23.12.2004 passed by the learned Special Judge (Fast Track Court No. 2), Bhavnagar, in Special Case No. 2 of 2000 is hereby confirmed. Bail bond stands cancelled. R & P to be sent back to the trial court forthwith. Since the Appellant - accused has expired, no direction can be issued regarding his surrender to undergo sentence. Appeal stands dismissed accordingly.