

(2023) 02 JH CK 0017

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 504 Of 2003

Vijay Kumar Shankar @ Kumar Vijay Shankar

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313
Prevention Of Corruption Act, 1947 — Section 5(1)(d), 5(2)
Indian Penal Code, 1860 — Section 161

Citation : (2023) 02 JH CK 0017

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Ranjan Kr. Singh, Prabhas Chandra Jha, Nehala Sharmin

Final Decision : Dismissed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. The appellant has preferred this appeal being aggrieved by the Judgment of conviction and Order of sentence dated 24.03.2003, passed by the learned Additional Judicial Commissioner- cum Special Judge, Vigilance, Ranchi in Vigilance P.S. Case No.25 of 1986 whereby and where under the learned court below has held the appellant-convict guilty for the offences punishable under Section 161 I.P.C. for which he has been sentenced to undergo Rigorous Imprisonment for one year and also for the offence punishable under Sections 5(2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947 for which he has been sentenced to undergo Rigorous Imprisonment for a period of one and half year and fine of Rs.5,000/- and in case of default of payment of fine to undergo Simple Imprisonment for a period of three months. It was ordered that both the sentences shall run concurrently and the period of sentence already undergone by the convict shall be set-off.

3. The case of the prosecution in brief is that when the appellant-convict was posted as Junior Engineer in Chanho Block Office, he demanded the bribe of Rs.600/- from the complainant for preparing bill of Rs.2,000/-in respect of the loan for getting a well-constructed under the 20-Programme Point. It is also alleged that the appellant-convict has warned the complainant that unless the complainant makes illegal gratification, the cheque will not be issued. The complainant submitted his complaint to the Superintendent of Police, Vigilance, Ranchi. The Superintendent of Police, Vigilance, Ranchi entrusted the matter for verification and after the report of the officer concerned regarding the truth of the allegation, a trap was laid on 24.09.1986 at the Block Office of Chanho. The appellant-convict was caught red handed while taking the bribe of Rs.400/-. Search of the appellant-convict was duly made and the sleaze money was recovered.

4. After investigation, charge sheet was submitted against the appellant-convict for having committed the offences punishable under Section 161 I.P.C. and Sections 5(2) read with Section 5 (1) (d) of the Prevention of Corruption Act, 1947. The charges for the said offences were framed against the appellant-convict to which the appellant-convict pleaded not guilty.

5. In support of its case, the prosecution altogether examined 13 witnesses.

6. P.W.1- Biglal Oraon was the Deputy Superintendent of Police (Vigilance) on the date of occurrence-on 24.09.1986. He deposed about the pre trap preparations in detail. He further deposed that the members of the trap team reached Chanho Block Office at 11:00 am and took their position. P.W.1 was in the verandah of the said office. The appellant-convict reached the office at about 12:00 noon and on seeing the complainant; P.W.1 enquired from him whether the complainant has brought the money. The complainant answered in the affirmative and handed over the currency notes kept in the envelope to the appellant-convict. The members of the trap team reached the spot. The hand of the appellant-convict was caught and the appellant-convict was challenged by informing that he has taken bribe and search of the appellant-convict was made. He has stated about the post trap formalities like the preparation of the general currency note memorandum. He has proved the documents over which his signature was appearing. From the left side pant pocket of the appellant-convict, four currency notes of 100/-denomination each was recovered. The numbers of the notes tallied with the numbers of the currency notes mentioned in the G.C. note memorandum prepared during the pre-trap preparations. He also stated about the fingers of the appellant-convict being washed with sodium carbonate solution and upon washing the fingers, the colour of the solution turned pink. The currency notes recovered and pant of the appellant-convict were seized after preparing the seizure list. In para-62 of his cross-examination, he has stated that in his presence, from the complainant, the appellant-convict did not demand bribe for preparing the bill and passing the bill. In para-30 of his cross-examination, he has stated that at about 12:30 pm, the appellant-convict asked

the complainant in presence of P.W.1 as to whether the complainant has brought the money. In para-37, P.W.1 has stated that after the bribe was taken, the complainant gave the signal.

7. P.W.2- Belasices Toppo has deposed that on 24.09.1986 a trap was laid of which, P.W.2 was a member. He proved his signatures appearing on different documents. P.W.2 has stated in detail about the pre trap preparations. P.W.2 was the shadow witness, for the trap. He saw the complainant talking to appellant-convict. He saw the complainant handing over the currency notes from the envelope to the appellant-convict. He also saw that the appellant-convict counted the currency notes and kept the same of his left side pocket of his full pant. After seeing, P.W.2 signaled the members of the trap team. P.W.2 caught the right hand of the appellant-convict and another police man caught the left hand of the appellant-convict. Other members of the trap team surrounded the appellant-convict. Police personnel revealed their identity and challenged the appellant-convict of having taken the bribe of Rs.400/-. He proved the G.C. note memorandum which has been marked Ext. 1/2 and 1/3. He has also stated about the post trap formalities like washing the fingers of the right hand of the appellant-convict in the sodium carbonate solution. He has stated the seizures were made in the case. In his cross-examination, in para-16, he has stated that he saw the appellant-convict taking money in the verandah and thereafter, he signaled the members of the trap team.

8. P.W.3- Mrinal N. Singh is the then A.S.I., Vigilance. He is also a witness on the point of trap. He has proved his signature on the relevant registers. He has stated about the trap having taken place and he saw Belasices Toppo and Martin Barla catching hold of the hands of the accused. He has also stated about recovery of the four currency notes of Rs.100/- denomination each from the left side pocket of the full pant of the appellant-convict. In his cross-examination, P.W.3 stated that he saw the hand of the appellant-convict being caught by the police personnel. He has also stated about the four currency notes, whose numbers tallied with the numbers of currency notes mentioned in the G.C. note memorandum; were recovered from the pocket of the full pant of the appellant-convict. The appellant-convict was challenged that he has taken bribe. In para-20, he has stated that he did not see the notes which were taken as bribe, in the court, on the date of his deposition.

9. P.W.6- Martin Barla is also a member of the trap team. He has stated in detail about the trap which took place on 24.09.1986. Garvet Hembrom gave a signal regarding the bribe money. P.W.6 and P.W.2 caught hold of hand of the appellant-convict. P.W.1 came there and called two independent witnesses. Upon search of the pocket of the appellant-convict, Rs.400/- was recovered from the left side pocket of the full pant of the appellant-convict. He has also stated about the hand and pocket of the pant of the appellant-convict having been washed by the sodium carbonate solution which became pink. In para-27, he has stated that he has not seen demanding and taking of money.

10. P.W.7- Ram Naresh Singh was also a member of the trap team. He has deposed in detail about the pre trap preparations and he has proved his signature on various documents. He has further submitted that the allegations against the appellant-convict was verified by Gabriel Hembrom and found the same to be true. At 12:30 pm, the appellant-convict came and met the complainant on the verandah and at that place, towards the southern side; the appellant-convict took the bribe money from the complainant. Thereafter, the hand of the appellant-convict was caught. He has also stated about the appellant-convict was challenged that he has taken the money from the complainant. On being searched, in presence of witnesses from the left side pocket of the pant of the appellant-convict, four currency notes of 100 denominations were recovered. In para-47, he has stated that he has not seen the appellant-convict taking the bribe money.

11. P.W.10- Manohar Singh Biruwa was also a member of the trap team. He deposed in detail about the pre trap preparations. He saw the hand of the appellant-convict being caught by Martin Barla and Balasices Toppo. The Deputy Superintendent challenged the appellant-convict by saying that he has taken bribe. He has stated in detail about the post recovery formalities also and upon search of the appellant-convict, from the left side pocket of the full pant of the appellant-convict, Rs.400/- was recovered and upon the same being washed with solution, the colour of the solution turned pink. In his cross-examination, he has stated that at the time of search of the appellant-convict, both the hands were caught by two of the police personnel.

12. P.W.12- Ramnandan Ram is the complainant. He has deposed that he was entrusted the work of digging the well for the purpose of irrigation. He dug the well. The claim was of Rs.14,000/-. He got Rs.6,000/- in three installments. He submitted application for the fourth installment to the B.D.O. The B.D.O. sent the application to the appellant-convict who was junior engineer for payment. The complainant met the appellant-convict for preparing the bill. He identified the appellant-convict who was standing in the dock. The appellant-convict told him to spend Rs.600/-. P.W.12 agreed for the same. Then he submitted an application to the Vigilance Bureau. He identified his application which was marked Ext. 8. Therefore, Hembrom, went for verification of his complaint but on that date, they could not contact the appellant-convict. Thereafter, again the verifying officer went with the complainant. The appellant-convict stated that the complainant has to spend Rs.400/-, then only the bill of the complainant will be prepared. The complainant told the appellant-convict to prepare the bill and he will pay the money after 4-5 days. He then went to the Vigilance office. He handed over Rs.400/- to the Deputy Superintendent of Police of Vigilance office. Thereafter, the documents were prepared. He has stated about the pre trap preparations. He has stated that at the time of trap, the appellant-convict told him that the bill has not been prepared and when the complainant offered him the money, the appellant-convict refused to receive the same saying that he is busy. At that point, P.W.12 was declared hostile. Though he was put leading questions by the

prosecution but he did not support the case of the prosecution. In his cross-examination, he has stated that B.D.O. himself made the payment to the P.W.12.

13. P.W.13- Parmeshwar Ravidas is the I.O. of the case. He has stated that the occurrence is of 24.09.1986. He has also deposed about the pre trap preparations. He received the signal and reached the place of occurrence and saw that B. Toppo and Martin Barla were catching hold of the hand of the appellant-convict. He has also stated about the post trap formalities including the recovery of Rs.400/- from the pant pocket of the appellant-convict and the preparation of post trap formalities and upon washing the fingers of the appellant-convict, the same turned pink.

14. P.W.4- Gopal Jee Jha has proved the chemical examination report of the sodium carbonate solution.

15. P.W.5- Dubraj Singh is an independent witness being the panchayat sewak. He has stated that one person was caught and he was asked to be a witness. He has proved his signature which was marked exhibit.

16. P.W.8- Maheshwar Prasad Mishra is a Joint Secretary, Personnel, Administrative Reforms Department, Govt. of Jharkhand. He was the special magistrate of Vigilance Bureau in 1986. On 24.09.1986, he was the member of the trap team. He has stated about the pre trap formalities in detail. He further deposed that on going to the place of occurrence upon receiving the signal, he saw that hand of the appellant-convict was caught by Belasices Toppo and Martin Barla. He has also stated about the post trap formalities.

17. P.W.9- Churaman Ram is an independent witness. He has deposed that he was told to be a witness and he has proved his signature which was marked exhibit. He identified the seizure list prepared in his presence. In his cross-examination, he has stated that the content of the seizure list was read over to him then only he signed.

18. P.W.11- Ramnath Chaubey has proved the sanction for prosecution of the appellant-convict.

19. After closure of the evidence of the prosecution, statement under Section 313 Cr.P.C. of the appellant-convict was recorded, regarding the circumstances appearing in evidence against him, during the trial, wherein he denied the allegation of demand, acceptance and recovery of bribe and pleaded that he has falsely been implicated in this case.

20. Learned trial court after taking into consideration the evidence in the record came to the conclusion that the evidence in record is sufficient to establish the charges against the appellant- convict beyond reasonable doubt and convicted and sentenced him as already indicated above.

21. Mr. Ranjan Kumar Singh, learned counsel for the appellant-convict submits that the learned trial court failed to appreciate the fact that there is absolutely no

evidence in the record regarding the demand of money by the appellant-convict. It is next submitted by Mr. Singh that before the repeal of Section 161 of Indian Penal Code by Section 31 of Prevention of Corruption Act, 1988, the same envisaged punishment for public servant taking the illegal gratification other than legal remuneration in respect of an official act and as the offences involved in this case is punishable under Section 5 (2) read with Section 5 (1) (d) of Prevention of Corruption Act, 1947 as well as Section 161 of Indian Penal Code and as the complainant has categorically stated that the appellant-convict refused to accept the bribe and no independent witness has been examined by the prosecution on the point of demand and acceptance or recovery of the alleged bribe amount from the appellant-convict and only person who has stated about the demand of bribe is Vigilance officer and that too in para-62 of his cross-examination, he has contradicted his examination-in-chief by admitting that in his presence, the appellant-convict had not demanded money from the complainant. Further the testimony of the P.W.1 also suffers from contradictions in the manner that he has categorically stated that the complainant-P.W.12 handed over the currency notes to the appellant-convict kept in an envelope which is contrary to the case of the prosecution, a case of the prosecution is that the complainant handed over the currency notes to the appellant-convict, hence the testimony of P.W.1 is not of unimpeachable character. It is then submitted by Mr Singh that none of the witnesses have stated as to what was the answer of the appellant-convict, when he was allegedly challenged by the trap party; the same vitiates the prosecution evidence by suppressing the material facts. It is next submitted that the prosecution without any plausible reason has avoided producing an important witness like Garvet Hembrom who is stated to be the verifying officer of the complaint of the complainant and also a member of the trap team. It is next submitted by Mr Singh that in view of the fact that the complainant has not supported the case of the prosecution has raised a grave suspicion about the false implication of the appellant-convict in this case, withholding of an important witness like the verifying officer as well as an important member of the trap team from the witness box, has certainly prejudiced the appellant-convict which makes the person of the prosecution suspicious. Hence, it is submitted that in the absence of any evidence of demand of money and in view of the testimony of complainant that the appellant-convict refused to accept the money by him, in this case, the appellant-convict be acquitted by at least giving him the benefit of doubt and therefore the judgment of conviction and the order of sentence be set aside and the appellant-convict be acquitted of all the charges.

22. Mrs. Nehala Sharmin, learned Spl. P.P. on the other hand defended the impugned judgment of conviction and order of sentence and submitted that P.Ws. 1 to 8 and 10 to 13, have supported the factum of recovery of the bribe money from the appellant-convict and upon his fingers being washed with the sodium carbonate solution, the colour of the solution turned pink and this evidence in the record is sufficient to lead one to the only conclusion that the

public servant has committed criminal misconduct by corrupt and illegal means abusing his position as a public servant obtained for himself, cash of Rs.400/-. Hence, it is submitted that this appeal being without any merit be dismissed.

23. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that as has been observed by the Hon'ble Supreme Court of India that in a case where the offences under Section 161 of Indian Penal Code and Section 5 (1) (d) read with Section 5 (2) of Prevention of Corruption Act, 1947 was involved, requiring corroboration of the testimony of the personnel of vigilance department by the independent witnesses was proper, in the case of State of U.P. v. Dharam Chand Jain reported in (1987) 2 SCC 641, paragraph no.4 of which reads as under:-

"4. For non-examination of the two independent witnesses the prosecution only declared that they have been won over but there was no material produced to establish this. This was an additional circumstance considered by the learned Special Judge and in the context of these circumstances after scrutinising the evidence of the Vigilance Inspector in detail the learned Judge came to the conclusion that prosecution has not been able to establish beyond doubt their case, consequently acquitted the respondent. The High Court also refused to grant leave to the State to prefer an appeal against acquittal."

In that case where the offence under Section 161 of Indian Penal Code and Section 5 (1) (d) read with Section 5 (2) of Prevention of Corruption Act, 1947 was involved and independent witnesses were not examined on the ground that they were won over and there was no material produced to establish that such witnesses were won over and only the vigilance inspector supported the case of the prosecution, the Hon'ble Supreme Court of India, concurred that the acquittal of the respondent of that case was proper.

24. The Hon'ble Supreme Court of India in the case of M.R. Purushotham v. State of Karnataka reported in (2014 AIR SCW 5740), in the facts of that case as the complainant did not support the case of demand of bribe and was declared hostile, observed as under :

"When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Exh.P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence of PW3 Kumaraswamy and the contents of Exh.P1 complaint cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused."

25. Now coming to the facts of the case, except the examination-in-chief of P.W. 1 who is the police officer in Vigilance Department, which of course, has been contradicted in para-62 of his deposition, there is absolutely no evidence in the record to suggest that the appellant-convict demanded the bribe. Pitted against the same is the testimony of the complainant himself wherein, he has categorically stated that the appellant-convict refused to receive the money

when he offered by saying that he is busy and even the shadow witness has not seen the money being given or taken by the complainant to the appellant-convict and most of them are post occurrence witnesses. Further it is also a fact that the P.W.1 has stated that the complainant handed over the bribe money to the appellant-convict, by keeping the money in an envelope, which is contrary to the case of the prosecution as well as the testimony of other witnesses of the prosecution that the complainant gave currency notes to the appellant-convict. Further there is no plausible reason has been put forth by the prosecution for not examining the verifying officer as a witness in the case; when he was also a member of the trap team. Thus the sole testimony of the P.W.1, in the considered opinion of this Court falls short of establishing the victim of demand and acceptance of the bribe money by the appellant- convict, beyond reasonable doubt. It is apposite to mention that except the P.W.1 whose testimony is not of unimpeachable character for the reasons already mentioned above, there is no evidence put forth by the prosecution regarding the effect of demand of bribe money by the appellant-convict.

26. Under such circumstances, keeping in view that the fact that charges which the appellant-convict faced are under Section 161 of Indian Penal Code and under Section 5 (2) read with Section 5 (1) (d) of Prevention of Corruption Act, 1947, this Court is of the considered view that this is a fit case where in the absence of any cogent evidence regarding demand of bribe, the appellant-convict be acquitted by giving him the benefit of doubt.

27. Accordingly, the impugned Judgment of conviction and Order of sentence dated 24.03.2003, passed by the learned Additional Judicial Commissioner- cum Special Judge, Vigilance, Ranchi in Vigilance P.S. Case No.25 of 1986 is set aside and the appellant-convict- Vijay Kumar Shankar @ Kumar Vijay Shankar is acquitted of both the charges faced by him in the trial, by giving him the benefit of doubt.

28. Perusal of the record reveals that the appellant-convict- Vijay Kumar Shankar @ Kumar Vijay Shankar is in custody. In view of his acquittal, he is directed to be released from custody unless his detention is required in connection with any other case.

29. In the result, this appeal is allowed.

30. Let a copy of this Judgment be sent to the learned court below forthwith

31. In view of the disposal of the appeal, Interlocutory Applications, if any, is dismissed being infructuous.