

(2012) 07 BOM CK 0254

In the Bombay High Court

Case No : Criminal Appeal No. 6 of 1998

Wamanrao Bakaramji Pawar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 133, 8

Penal Code, 1860 (IPC) — Section 161

Citation : (2012) 07 BOM CK 0254

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : A.J. Thakkar, for the Appellant; R.A. Deshpande, Assistant Public Prosecutor, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Bhangale A.P., J.—This appeal is directed against the judgment and Order dated 21/ 11/1997, passed by learned Additional Sessions Judge, Amravati in a Special Case No. 3 of 1989, whereby the original accused Wamanrao Bakaramji Pawar, Head Constable, B. No. 755 was convicted of offence punishable u/s 161 of the Indian Penal Code and section 5(1)(d) of Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for one month on each count and fine in the sum of Rs. 500/- for offence punishable u/s 5(1)(d) of the Prevention of Corruption Act, 1947 and in default of fine amount, he was directed to suffer simple imprisonment for two weeks. Substantive sentences were directed to run concurrently. Heard submissions at the bar.

2. Facts, in nutshell, as under: -

On 14/5/1987 at about 10.00 a.m., quarrel had taken place between Wasudeo Hande (PW-3) and one Arun Shembe. Mr. Arun Shembe and his brother namely Sudhakar Shembe had beaten up Mr. Wasudeo (PW-3) by cycle chain and in turn Wasudeo (PW-3) and others have abused and assaulted the said Shembe

brothers. There was cross complaint in respect of the incident at Nandgaon Khandeshwar on 15/5/ 1987. According to prosecution, accused Wamanrao Pawar was working as Head Constable at Nandgaon Khandeshwar Police Station. He had referred Wasudeo (PW-3) for medical treatment at Primary Health Centre, Nandgaon Khandeshwar on 1/6/1987. During the course of inquiry/ investigation, the accused had recorded the statement of Shembe brothers. It is alleged that he did not record statements of Wasudeo (PW-3) and his witnesses. It is also alleged that Wasudeo (PW-3) had been called at village Chawadi. The accused had taken Wasudeo (PW-3) aside and informed him that, if his rivals Shembe brothers are to be prosecuted and handcuffed, then Wasudeo (PW-3) shall pay sum of Rs. 500/- to the accused as a bribe. After negotiations, the amount was fixed at Rs. 200/-. Accused had asked Wasudeo (PW-3) to hurry up and pay him the amount. Wasudeo told accused that he had no money and he would make necessary arrangement within a period of two-three days. Accused then consented Wasudeo (PW-3) for the same and asked him to pay the sum of Rs. 200/-till next Wednesday. However, Wasudeo (PW-3) approached to office of the Anti Corruption Bureau, Amravati on 3/6/1987 and reported the incident of demand of bribe by the accused to Deputy Superintendent of Police, Anti Corruption Bureau at Amravati Shri. Asraf khan Pathan (PW-6) was the Deputy Superintendent of Police, A.C.B., recorded the complaint in writing and summoned two employees from the office of Executive Engineer, Uppar Wardha Project, Amravati to act as panch witnesses. Accordingly, Shamrao Dahiwade and Ramesh Ranotkar (deceased) were permitted to act as panch witnesses. The panch witnesses read over the complaint of the complainant at Exh. 17. The complainant Wasudeo (PW-3) had produced four currency notes in denomination of Rs. 50/- each payable to the accused on demand Shri. Asraf khan Pathan gave demonstration of phenolphthalein powder with sodium carbonate solution to make the panch witnesses aware of the fact that in case of contact of phenolphthalein powder with sodium carbonate solution, the colour of the solution changes to pink. Thus, in a ore-trap panchanama, phenolphthalein powder was smeared to both sides of the currency notes produced by the Wasudeo (complainant). At that time, personal search of the complainant was taken and the currency notes were kept in the shirt pocket of the complainant. Necessary instructions were given to complainant-Wasudeo and panch witnesses. Instruction was; Wasudeo should not touch the currency notes unless demand of bribe is made. It was also instructed to panch witness namely Ramesh Ranotkar to remain all the while with the complainant (PW-3) Wasudeo. Mode of signal was also settled. The fingers of the panch witnesses, complainant and police squad were tested in sodium carbonate solution to ascertain absence of phenolphthale in powder. Three empty clean bottles were tested in sodium carbonate solution for the same purpose. Phenolphthalein powder was then sealed. Used paper was torn. Used cotton was kept in phenolphthalein powder bottle itself. The detailed panchanama was drawn with respect to these facts and the complainant, panch witnesses and police squad then proceeded to Nandgaon Khandeshwar in a police jeep. According to prosecution, the raiding party

reached to Nandgaon Khandeshwar at about 8.00 p.m. Jeep was parked by the side of the road while Wasudeo (PW-3) and Ramesh Ranotkar proceeded to the Police Station by walk. It is case of the prosecution that Wasudeo (PW-3) and panch witness Ranotkar initially went to the residential quarter of the accused. The accused was not present at his residential quarter and, therefore, the complainant and panch witness -Ranotkar proceeded towards Police Station. On noticing arrival of the complainant, the accused himself came towards the complainant. The complainant, accused and deceased panch witness - Ranotkar went towards "Neem" tree. Accused was enquired with the complainant as to why there has been delay in bringing money and then demanded bribe amount. The accused put his left hand before the complainant to receive the bribe amount and complainant tendered the tainted currency notes to the accused. The accused accepted the bribe amount of Rs. 200/- by his left hand and put those tainted currency notes in left pocket of his trouser. The complainant then gave signal to the raiding party. The complainant kept the accused busy in talk in anticipation of the arrival of the raiding party. The accused asked complainant and the panch witness to go away and he began to proceed towards Police Station building. The complainant then informed Shri. Asraf khan Pathan (PW-6) and Shri Dahiwade (PW-4) about the acceptance of the bribe amount. The said raiding party immediately rushed towards the accused. On noticing of arrival of raiding party, the accused began to run away. However, raiding party accosted the accused. Raiding party introduced their identity to the accused and personal search of the accused was taken by Shri. Dahiwade (PW-4). Apart from tainted currency notes, the cash amount of Rs. 100/- was found with the accused, which was returned to the accused. Numbers of currency notes were round tallied with each other as mentioned in panchanama. Fingers of both the hands of the accused were tested in sodium carbonate solution. When the fingers of the left hand were put in sodium carbonate solution, the solution was changed to pink violate colour. Left hand pocket of the trouser was tested in sodium carbonate solution which gave positive test. The said solutions were collected in three clean glass bottles and were labeled as "A", "B" and "C". The solution gave negative test when right hand fingers were put into the sodium carbonate solution. the sodium carbonate solution was sprinkled on the currency notes. The dots of solution gave positive test. The fingers and shirt pocket of the complainant were tested in sodium carbonate solution and they gave positive test. The accused was asked to explain about the currency notes found with him and detailed panchanama was drawn covering all above facts. Accordingly, Shri Asraf khan Pathan (PW-6) gave a First Information Report as regards commission of the offence to the Nandgaon Khandeshwar Police Station, which was registered as Crime No. 89/1987 (Exh. 45). Shri Pathan carried out investigation and recorded statement of the accused and muddemal articles were forwarded to the C.A. and C.A. report was received during the course of investigation. The Investigating Officer then forwarded all the investigating papers and relevant documents to the Competent Authority for according sanction. The Competent Authority Shri. Prabhakar Lohar (PW-5) accorded sanction and thereafter accused was charge-

sheeted on 23/3/1989. The trial Court framed charge to which accused pleaded not guilty and claimed to be tried. The prosecution had examined six witnesses in support of the case. The trial Court had also recorded the statement of the accused u/s 313 of the Code of Criminal Procedure. The defence of the accused is of total denial. 4. Learned trial Judge held, that the accused at the relevant time when the offence was committed, was the public servant. He had demanded illegal gratification and agreed to accept it from Wasudeo (PW-3). In fact the amount received by accused was not a legal remuneration. Such gratification so accepted by the accused was with a motive for prosecuting and handcuffing Shembe brothers and not prosecuting Wasudeo (PW-3). Under these circumstances, the accused was found guilty of the offence punishable under sections 161 of the Indian Penal Code and 5(1)(d) of the Prevention of Corruption Act, 1947.

4. Learned Advocate on behalf of the appellant, legal representatives of the deceased and accused took me through the entire evidence and submitted that the offence was not proved beyond reasonable doubt. He also tried to assail sanction order (Exh. 35) on the ground that it was not properly granted. He submitted that Wasudeo (PW-3) must be held as accomplice and his evidence ought to have been disbelieved by the learned trial Judge as unworthy of credit.

5. On the other hand, learned A.P.P. appearing on behalf of the respondent submitted that the fact of demand made by the accused as also voluntary payment of bribe by the complainant were established beyond reasonable doubt in the present case. Learned A.P.P., who took me through the evidence on record, submitted that the accused was caught by the raiding squad with tainted currency notes in his possession and while he was attempting to run away, the prosecution evidence was crystal clear to show that there was demand of illegal gratification by the accused and voluntary payment of bribe amount by the complainant-Wasudeo, which was accepted by the accused as an illegal gratification. It is further submitted that there was no reasonable explanation from the accused as to why money was accepted from the complainant and presumption arising under the act was attracted. Learned A.P.P. submitted that the trial Court had rightly convicted the accused as corruption does not deserve any sympathy or leniency.

6. It appears that learned trial Judge has carefully scrutinized the evidence on record including that of complainant-Wasudeo (PW-3), panch witness-Shri. Dahiwade (PW-4) and Investigating Officer (PW-6) regarding personal search of accused and tainted currency notes in the light of the documentary evidence such as C.A. report on the record the conduct of the accused that he began to run away towards his quarter was unexplainable. The accused gave lame explanation that due to chest pain he was proceeding towards his quarter but it is on record that none of the family members of the accused were at his residence and he was residing alone. Therefore, it was rightly disbelieved by the learned trial Judge the accused ran towards his quarter due to chest pain. The

only inference that can be drawn is that the accused began to run away because of fear of Anti Corruption Bureau squad. The conduct of the accused was relevant in view of section 8 of the Indian Evidence Act, which corroborated the case of the prosecution. The presence of the currency notes in the left side pocket of the trouser of the accused is another incriminating circumstance which was not disputed by the accused. The fact that the accused had come out of the Nandgaon Khandeshwar Police Station, proceeded towards "Neem" tree along with complainant gave rise to only inference that accused wanted to go towards Neem tree with Wasudeo (PW) to accept the bribe amount. The circumstantial evidence that the fingers of the accused were tested in the sodium carbonate solution and the colour of the solution had changed to pink violet as also left hand pocket of trouser of the accused was put into sodium carbonate solution and the colour of the solution was changed to pink violet. Thus, there was ring of truth in the prosecution case and learned trial Judge did consider the argument of the defence that the complainant was an accomplice in view of section 133 of the Indian Evidence Act, as also a presumption that an accomplice is unworthy of credit unless his evidence is corroborated in material particulars. In the present case, however, there was ample corroboration in material particulars stated by complainant-Wasudeo (PW-3) regarding demand of the bribe amount, pre-trap panchanama, trap panchanama, conduct of the accused, the accused ran away and circumstantial evidence collected with the help of phenolphthale in powder and sodium carbonate solution, left no doubt in the mind of the learned trial Judge to accept the evidence of Wasudeo (PW-3) as trustworthy, cogent and reliable. It appears that learned trial Judge also considered the ruling cited and probability of the defence contentions and held that the accused-police constable, who was entrusted with the inquiry matter, has misused his official position to obtain the illegal gratification from the complainant with a motive to prosecute and hand-cuff the Shembe brothers and not Wasudeo (PW-3), and sum of Rs. 200/- was accepted as illegal gratification by the accused. Under these circumstances, no error was committed by learned trial Judge to record conviction in the present case.

7. As regards grant of sanction, evidence of Prabhakar Lohar (PW-5) was led, who deposed that investigation papers were forwarded to him with letter at Exh. 34, which he had carefully perused along with entire record of investigation, scrutinized all the papers and came to his independent conclusion that it was case to grant sanction to prosecute the accused and thus accorded sanction by order dated 28/2/1989- The prosecution led circumstantial evidence beyond reasonable doubt regarding the validity, statutory sanction to prosecute the accused as per sanction order so as to prosecute the accused u/s 161 of the Indian Penal Code and 5(1)(d) of the Prevention of Corruption Act, 1947. Hence, the argument that there was no valid and proper sanction to prosecute the accused also fails.

Having considered the impugned judgment and order in the light of the submissions at the bar, I do not find any fault with it. The conclusion, which was

arrived at by the learned trial Judge, was on the basis of cogent, reliable and acceptable evidence and it was rightly concluded that the prosecution had proved offences beyond reasonable doubt. The appeal, therefore, has no merit, warrants no interference and hence it is dismissed.