
(2015) 04 GUJ CK 0077
In the Gujarat High Court
Case No : Criminal Appeal No. 534 of 2002

Yashwantrao Handurao Borse

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2015) 04 GUJ CK 0077

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : K.B. Anandjiwala, for the Appellant; M.H. Bhatt, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Kaushal Jayendra Thaker, J.—This is an appeal by the original accused, challenging the judgment and order of the learned Addl. Special Judge, Valsad at Navsari (for short, "the trial Court"), Dated: 31.05.2002, rendered in Special Case No. 12 of 1992, whereby, the trial Court convicted accused for the offence punishable under Section 7 of the Prevention of Corruption Act ("the Act", for short) and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs. 5,000/- and in default to undergo further simple imprisonment for six months. The trial Court also convicted the accused for the offence punishable under Section 13(2) of the Act and sentenced him to undergo rigorous imprisonment for one and a half year and to pay fine of Rs. 5,000/- and in default to undergo further simple imprisonment for six months.

2. For the sake of convenience, the parties shall be referred to as they stood before the trial Court, i.e. the original accused, the complainant etc.

3. The brief facts of the case of the prosecution, as set out before the trial Court, are that the original complainant lodged a complaint, wherein, he stated that on 15.11.1991, while he was undergoing treatment in a hospital, his servant came

and informed him that police had arrested his brother-in-law, i.e. P.W. - 4. The complainant, hence, called P.W. - 5 and send him to the concerned police station. On returning from police station, P.W.-5 informed the complainant that the accused, herein, demanded Rs. 50,000/- for releasing and not lodging an FIR against P.W. - 4, however, the matter was settled at Rs. 15,000/-. The complainant, then, paid Rs. 10,000/- to the accused through P.W. - 5. It is alleged in the complaint that on the very same day, the complainant and P.W. - 5 went to the quarter of the accused, as the accused had insisted for remaining amount and at that time, since, the complainant requested for sometime, the accused told him to give remaining Rs. 5,000/- in four five days either at the police station or at an ice cream shop, where the accused used to sit during evening hours. Since, the complainant did not want to given the aforesaid amount, he approached the ACB officials and a trap was arranged, wherein, the accused was allegedly apprehended. At the end of the investigation, on finding sufficient evidence, charge-sheet was filed against the accused. In order to prove the guilt of the accused, the prosecution examined the following witnesses;

4. Over and above the oral evidences, the prosecution also produced the following documentary evidences in support of its case;

5. At the end of the trial, the further statement of the accused under Section 313 of the Cr.P.C. came to be recorded, and then, the trial Court passed the impugned judgment and order, as referred to herein above. Hence, the present appeal.

6. Mr. Anandjiwala, learned Sr. Advocate for the accused-appellant, submitted that the trial Court committed a grave error in convicting the accused, inasmuch as it failed to appreciate the material on record in its proper perspective. He submitted that the trial Court ought to have appreciated that there was no demand on the part of the accused nor the acceptance. He, further, submitted that the trial Court ought to have appreciated the fact that the prosecution failed to prove beyond doubt the charges leveled against the accused. He, hence, prayed that the appeal be allowed.

7. On the other hand, learned APP for the Respondent-State, herein, opposed the appeal and submitted that the trial Court convicted the accused after perusing the entire material on record, and hence, no interference is called for at the hands of this Court and the appeal be dismissed.

8. Heard the learned Advocate for the original accused-appellant, herein, as well as the learned APP for the Respondent-State and perused the material on record with their assistance.

9. Having heard the learned Counsels for the parties and having perused the material on record, the conviction of the accused cannot be sustained. As early as in the year 1976, the Apex Court in Hari Dev Sharma Vs. State (Delhi Administration), AIR 1976 SC 1489 : (1976) CriLJ 1176 : (1977) 3 SCC 352 : (1976) 8 UJ 603 has held that in cases of corruption, the prosecution has to

prove the entire case threadbare and not relying on the said judgment has only caused miscarriage of justice, which would be evident from the discussion I am going to have hereunder. If, the learned trial Judge had taken recourse to the judgment of this Court in 1998 (1) GLH 943 and that of the Bombay High Court in 1986 Cr. L.R. 100, it would have been clear that the accused, herein, could not have been convicted, leave apart the fact that the prosecution witness No. 1, i.e. the complainant and his star witness did not support the case of the prosecution. Even in the complaint it is stated that one Gaffur was told that money was demanded. However, strangely, aforesaid Gaffurbhai was not examined by the prosecution. Further, Ezajahmed Gulamanwar @ Dr. Khan-P.W. - 5, who was asked to pay and who is alleged to have been paid Rs. 15,000/-, at the time of recording of his evidence, takes a somersault and states that he never paid any amount. If, we look at the complaint also, it emerges that the accused had never demanded any money. It also emerges from the record that the person, who was arrested by the police, was released much before the so called demand was raised. I am conscious that the evidence of a hostile witness, as submitted by Ms. Mehta, is required to be seen and acted upon to the extent he supports the prosecution case. According to Ms. Mehta, the learned trial Judge committed no error on relying on the evidence of the hostile witness. However, I do not wish to comment upon the same. But, there is one thing, which I wish to highlight and that is morality and legal evidence do not go hand in hand. They are like railway tracks that run parallel, but, never meet. In this case, the evidence is clinching that the accused had made no demand.

10. This takes this Court to the next aspect, i.e. acceptance and recovery. If, the evidence in the complaint are seen, where, the money were lying, it appears that the lights in the shop went out. I am unable to understand as to why the complainant, who had come all the way from Ahmedabad to Vapi, meet the police personnel, who was not in his police station, at shop. It is not the case of the prosecution that the complainant had inquired about the police, and then, had gone to the shop. The evidence of the other witnesses are non-corroborative and the conviction based on their evidence cannot stand. In my view, I am supported by a recent judgment of this Court in Criminal Appeal No. 713 of 2003 in the case of "Somabhai Badribhai Kumbhar Vs. State of Gujarat", wherein, this Court relied upon a decision of the Apex Court in Rakesh Kapoor Vs. State of Himachal Pradesh, (2013) 1 Crimes 92 : (2013) 1 Crimes 379 : (2013) 1 RCR(Criminal) 211 : (2012) 11 SCALE 255 and set aside the conviction of the accused, therein. Therefore, the submission of Ms. Mehta that this is a case where the accused, who are policemen, demanded illegal gratification so as to release the accused, cannot be accepted and the decision of the Apex Court in Vinod Kumar Vs. State of Haryana(2015) 1 AD 513 : AIR 2015 SC 1032 : (2015) CriLJ 1250 : (2015) 1 RCR(Criminal) 532 : (2015) 1 SCALE 121 : (2015) 3 SCC 138 : (2015) 1 SCJ 367 cannot be applied to the facts of the present case. I am also supported in my view by a recent judgment of this Court in Criminal Appeal No. 477 of 2000 in the case of "Navinbhai Chandrakant Joshi Vs. State of

Gujarat" and an allied matter. In above view of the matter, I am not delving into the submission of Mr. Anandjiwala about the flows in investigation.

11. In the case on hand, the original complainant, who was examined as P.W. - 1, did not support the prosecution case either on the aspect of demand or acceptance and recovery. In that view of the matter, here, it would be relevant to refer to a decision of the Apex Court in M.R. Purushotham Vs. State of Karnataka, (2014) AIRSCW 5740 : (2014) 3 SCC 721 , the allegation against the accused-appellant, who was discharging duties as Second Division Surveyor, was that he demanded and accepted Rs. 500/- from complainant for issuance of survey sketch and the Apex Court, while setting aside the conviction of the accused, held that the complainant himself not supporting prosecution case insofar as demand by the accused is concerned, mere possession and recovery of the currency notes from accused without proof of demand would not attract offence under Section 13(1)(d).

12. In the result, this appeal is ALLOWED. The judgment and order of the trial Court, Dated: 31.05.2002, convicting the accused for the offence under Section 7 and Section 13(2) of the Prevention of Corruption Act, 1988, is QUASHED and set aside and accused is ACQUITTED. His bail bonds stand discharged. The amount of fine, if any paid, be refunded to him. R&P be sent back to the concerned Court, forthwith.