
(2011) 12 UK CK 0089

In the Uttarakhand High Court

Case No : Criminal Appeal No. 308 of 2001 (Old No. 918 of 2000)

Yed Ram

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

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

Citation : (2011) 12 UK CK 0089

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Servesesh Kumar Gupta, J.—The challenge in this appeal is to the judgment and order dated 19/20.4.2000, rendered by the Special Judge, Anti-Corruption, Dehradun while concluding the Criminal Case no.13 of 1991, CBI Vs. Yad Ram. The learned Judge found the accused Yad Ram guilty for the offence of Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter to be referred as the Act] and sentenced him to undergo one year R.I. and fine of Rs.500/- . The accused was further sentenced to undergo six months" R.I. with fine of Rs.200/- u/s 7 of the Act. Both the sentences were directed to run concurrently. It was also directed that in case of default of payment of fine, the accused shall undergo six months" R.I. in addition to the above punishment.

2. The brief facts, shorn of unnecessary details, are that accused Yad Ram was a Senior Civil Engineer posted in I.D.P.L., Rishikesh (a government undertaking) and the informer Ram Kumar was a contractor, who used to perform the civil construction work after entering into the contract with IDPL. The contracts were awarded on the basis of a prescribed procedure of inviting the tenders, and according to the said procedure, the contract was awarded to Ram Kumar on 23.2.1991 for cleansing the Sludge Chambers WPP. The work assigned to Ram

Kumar was finished by him in May, 1991. The total consideration of the entire work was Rs.33,000/- . In respect of the said consideration, payment of two running bills was made to Ram Kumar during the course of his working to the assigned task whereas, an amount, to the tune of Rs.8,000/-, was yet to be made. In that respect, he called-on the appellant Yad Ram Sagar, Senior Civil Engineer, IDPL many a times and retreated for making the payments, but he kept on feigning for one reason or the other. Sri Ram Kumar ultimately requested for the said payment on 10.9.91 to Mr. Sagar, who, at that time, demanded Rs.400/- in advance, as his commission for making the said payment. The complainant assured to make the payments due, provided the said amount of commission is paid to him by the succeeding day. So, the estranged contractor Ram Kumar approached to the Superintendent of Police, Central Bureau of Investigation (hereinafter to be called as CBI) Dehradun, with all these facts and expressed that he did not want to give any illegal gratification and as such, he invoked the jurisdiction of the CBI to take appropriate action in the matter. He provided all these facts in writing vide an application which is Ex.Ka-18.

3. Having received this information, Superintendent of Police, CBI assigned the task to Sri H.P. Singh, Inspector, CBI for arranging a trap. The trap party was organized, including two independent witnesses Arun Paul (PW2) and Mahavir Prasad (PW3). Other witnesses of the prosecution are, namely, R.K. Nalwa, Senior Vigilance Executive, IDPL as PW4, Sri C.S. Rawat, Accounts Executive, IDPL as PW5, Sri V.N. Sehgal, Director, Central Forensic Science Laboratory, CBI, New Delhi as PW6, Sri H.P. Singh, Trap Officer, Deputy Superintendent of Police (who posted as Inspector at that time) as PW7, Sri A. Subramaniam Swamy, Deputy General Manager, IDPL as PW8 and Sri S.C. Dandiya, Inspector CBI, who investigated the matter as PW9.

4. The trap party, on 11.9.1991, along with the decoy Ram Kumar, made the pre-trap preparations and even organized a mock demonstration of trapping so that the attempt to trap the accused may not suffer with any laches or lapse.

5. The trap party reached at about 1:45 PM in IDPL Campus, when the accused, after having his lunch from his house, was going to his office. Ram Kumar met him in the Campus and informed that Rs.400/-, as demanded by him, were ready for being offered. These Rs.400/-, which were in the denomination of four currency notes of Rs.100/- each, were applied a particular chemical, which was used by Trap Party and the effect of that chemical was to make the water pink, if the accused, after being trapped, is made to pour his fingers into the water, inasmuch some chemical would certainly be stuck on the fingers of accused while touching the currency notes at the time of receiving the same.

6. Sri Ram Kumar, the decoy, offered Rs.400/- to the accused, and no sooner did the accused receive the said money and kept that in his pocket, he was trapped by Inspector H.P. Singh.

7. The investigation was conducted and the chargesheet was submitted against

the accused for the offences, as stated above, the said chargesheet is Ex.Ka-3.

8. The accused was levelled with the charges of Section 7 and 13(1)(d) r/w Section 13(2) of the Act on 5.5.1992. He abjured his guilt and claimed trial. So, the prosecution examined all these witnesses, as aforementioned.

9. After recording the statement of the prosecution witnesses, the accused was rendered opportunity to explain his part, by way of recording his statement u/s 313 Cr.P.C. He admitted his posting as Senior Civil Engineer, being a public servant in IDPL in the year 1991. He also admitted Sri Ram Kumar, decoy as a contractor to do the civil work in the IDPL and it was also admitted that a contract was awarded to Sri Ram Kumar on 22.2.1991 for cleansing the Sludge Chambers. He admitted that two running bills had already been paid to Ram Kumar. In his statement, he has accepted that on 11.9.1991, when he was going to his office from his home after having his lunch, he was raided by CBI, Inspector Sri H.P. Singh and was escorted to the I.D.P.L. Guest House.

10. The accused has also got examined five defence witnesses, who are Surendra Singh (DW1), working as charge-man in IDPL, Om Singh (DW2), retired executive assistant from IDPL, Umanand (DW3) Cook of the guest house of IDPL, Prabhu Nath Ram (DW4), Assistant Foreman, IDPL and Harish Chandra Mishra (DW5), retired as civil engineer from IDPL.

11. This Court has heard learned counsel for the parties and has gone through the evidence of all the prosecution witnesses as well as that of the defence.

12. PW1 Ram Kumar is the victim contractor who was facing the exploitation at the hands of the accused engineer. His tender was accepted for quoting the lowest cost for cleansing the Sludge chambers, WPP, and the payment of two running bills had already been made to him, leaving the payment of Rs.8,000/- to be made later on. He has proved that he asked the accused to make the payment of his work; firstly, the accused kept on postponing the same on one pretext or the other, but finally on 10.9.1991, the accused demanded Rs.400/- as commission, for making the payment. Sri Ram Kumar, the contractor had completed the task which was assigned to him under the contract. This fact has also been proved by other prosecution witnesses, who are IDPL senior responsible officers. Sri Ram Kumar, the decoy has proved the entire narration of trapping the accused/appellant very systematically. He has also proved the information given by him to the Superintendent of Police, CBI at Dehradun, who arranged a trap party, which consists of other CBI personnel. The mock demonstration and applying the chemical on the currency notes has been proved by him, which too has been corroborated by two independent witnesses, namely, Arun Paul (PW2) and Mahavir Prasad (PW3). These independent witnesses were posted in BHEL at the time of organizing the Trap and the CBI Party had a short stay in BHEL Guesthouse prior to leaving for organizing the Trap. So, it was natural for the CBI party to take the witnesses from there. It was also quite natural for them not to take any witness from the IDPL, inasmuch as, had any

information been precipitated in the Campus itself, regarding the prospective raid of the accused, then the entire purpose of Trapping would have definitely been frustrated. These two independent witnesses have fully corroborated the sequence and incidents of trapping, which has been made by the CBI and its officials.

13. PW4 R.K. Nalwa is the Vigilance Executive of IDPL itself, who has proved the particulars of service of accused Yad Ram as well as the awarding of sanction by his appointing authority to the CBI for launching the prosecution against him.

14. PW5 is C.S. Rawat, who at the time of awarding the contract to Mr. Ram Kumar, was the Accounts Executive in IDPL and his work was to check the files pertaining to the proposal of engineering work. He has proved the awarding of work order regarding closing of the Sludge Chambers of WPP to Mr. Ram Kumar and other aspects of the impugned contract and payments.

15. PW6 is V.N. Sehgal, who is the Director of CFSL. He is the chemical engineer. He has chemically examined the currency notes stained with the chemicals and also other exhibits, sent for chemical examination in the laboratory presided by him. He has also proved the report which was given by him proving the prosecution case against the accused.

16. PW7 H.P. Singh was the Inspector at the time of trapping the accused. Later on, at the time of adducing his evidence, he was the Deputy Superintendent of Police, CBI and he has proved the sequence of all the happenings of the trap verbatim.

17. PW8 A. Subramaniam Swamy is the General Manager of the IDPL. He was a very senior officer and has proved the contract which was awarded to Mr. Ram Kumar for a total consideration of Rs.33,000/- and he has also proved the exact procedure of awarding the contracts and releasing of the funds in lieu of work done by the contractor. He has opined that the task assigned to the contractor had been completed and his bill could not be hampered by the Engineer. He has categorically proved that the approach of the accused Engineer, not to make the payment to Ram Kumar, cannot be said to be justified because he himself had looked after the task which was assigned to the contractor and that has been got done.

18. It has been contended on behalf of the prosecution that the argument raised by the defence regarding the checking of the payments to the contractor was due to non-completion of work, is not justified because had it been the case, then it was incumbent upon the accused Engineer to issue a notice to the contractor, however no such notice was ever given by the accused engineer to the contractor. This fact has also been ratified by PW8 A. Subramaniam, Deputy General Manager, IDPL.

19. PW9 is S.C. Dandriyal, Inspector CBI/I.O. of the case, who after completing the investigation, has submitted the chargesheet against the accused and proved

the same in the court.

20. Having gone through the judgment of the court below word by word, it is obvious that the same is very exhaustive, having a very elaborate discussion regarding each and every aspect of the case and it would not be in the fitness of things to reproduce and scrutinize in detail all those minute formalities of the procedure which had been done by the CBI before and after making the trap.

21. Learned counsel on behalf of the appellant has pointed out some minor inconsistencies or discrepancies in the evidence of the prosecution witnesses but this Court is of the view that such discrepancies, inconsistencies or incongruities are not of such a degree as to throw aside the entire prosecution case.

22. Learned counsel for the appellant has relied upon a precedent of the Hon'ble Apex Court in the case of "State of Haryana Vs. Ram Singh reported in 2002 SCC (Cri) 350" wherein it was held that the defence witnesses are entitled to the equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution.

23. The status of the defence witnesses undoubtedly should be honoured and they should be treated at par with that of the prosecution witnesses but at the same time, it is also to be remembered that these CBI personnel along with very higher and top officers of IDPL, who have been examined by the prosecution to prove the every fact and formality and technical requirement against the accused, did not have any grudge with the accused. Even otherwise, all the defence witnesses are either colleague engineers or once subordinate to the accused persons. So, them being hand in glove, to earn the favour of the accused person or under his influence, cannot be denied.

24. The Court should have in its mind the law laid down by the Hon'ble Apex Court in the case of State of Maharashtra Vs. Narsingrao Gangaram Pimple, wherein, it was held that every minute detail and omission should not be magnified with a view to falsify prosecution evidence. Such an approach would be ante-thesis of a correct judicial approach to the evidence of witnesses, particularly in a trap case. If such a harsh touchstone is prescribed to prove a trap case, it will be difficult for the prosecution to establish any case at all.

25. In view of what has been stated above, this Court thinks that the appeal is meritless and the same is liable to be dismissed. The appeal is, accordingly, dismissed. Judgment and order passed by the court below dated 19/20.4.2000 is hereby affirmed. Bail of the appellant/convict is hereby cancelled. His bail bonds and sureties are discharged. A copy of this order along with the lower court record be sent back to the court below for ensuring the caption of the convict.