

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 295/2005

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Reserved on: 14th May, 2013

Decided on: 22nd July, 2013

RAM NARESH PANDEY

..... Appellant

Through: Mr. Prag Chawla, Mr. Shiv K. Tyagi
and Mr. Sanjeev Soni, Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for the State
with SI Anil Kumar, Anti Corruption
Branch.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal the Appellant lays a challenge to the judgment dated 15th March, 2003 whereby he has been convicted for offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (in short the PC Act) and the order on sentence dated 19th March, 2005 whereby he has been directed to undergo rigorous imprisonment for a period of one year each and also to pay a fine of Rs. 1000/- on each count and in default of payment of fine to undergo further rigorous imprisonment for a period of two months.

2. Learned counsel for the Appellant contends that though the complaint stated about demand at Radhu Place, however the raid was conducted at Preet Vihar Office. Though PW3 prepared the memo Ex.PW3/A, however there is no corresponding entry in the register No.19. As per PW8 the

money was demanded by Mr. R.B. Singh and not the Appellant because Mr. R.B. Singh was the person competent to sanction the loop connection sought by the complainant. The Appellant is only a Telephone Operator and had no role to play in the sanction of the loop connection. The complainant has not been able to prove the initial demand. He has been confronted on all material aspects. The trap laying officer PW9 Inspector Abhey Ram admitted that he did not verify the complaint that the bribe money was to be given at 2.00 PM at Radhu Place. PW7 the complainant admitted that he had not met the Appellant prior to the raid. Thus there was no question of initial demand. Once the demand was by R.B. Singh who was at Radhu Place, it is not known how the raid was conducted at Preet Vihar office. The evidence of hand-wash cannot be used as the bottles were not deposited in malkhana. The link evidence has not been proved. Further when the bottles were produced before the learned Trial Court, they did not have pink colour solution. There is no material on record as to who took the solution to the CFSL and brought back as the same was not deposited in the malkhana. There is material contradiction in the sense that the complainant states that all proceedings took place in his presence at the spot, however on the other hand he states that he remained at the anti-corruption branch upto 5/ 5.30 PM. In view of the fact that the prosecution has not been able to prove the initial demand, demand at the time of alleged acceptance and acceptance, the Appellant be acquitted of the charges framed.

3. Learned APP for the State on the other hand contends that PW1 and PW2 have proved that the Appellant was working at Preet vihar Office. Though bottles were not deposited with Moharar malkhana PW3, however

PW11 S.K. Sharma clearly stated that he handed over Ex. LH1 and P1 along with samples seals to ACP A.K. Singh who kept the same in his almirah in lock and key. Further PW4 A.K. Singh stated that S.K. Sharma the investigating officer deposited the wash with him which he kept in safe custody. It is further deposed by PW11 that he took the samples from PW4 A.K. Singh and deposited the same in the CFSL. Thus the safe custody of the samples and link evidence has been duly proved. PW9 the trap laying officer duly proved the recovery from the Appellant and in view thereof presumption is raised against the Appellant which he has failed to discharge. Reliance is placed on *State of U.P. Vs. Dr. G.K. Ghosh (1984) 1 SCC 254* and *Hari Kishan Vs. State 2011 X AD (Delhi) 553* to contend that though shadow witness has turned hostile, the conviction can be safely based on the testimony of the complainant and the trap laying officer.

4. Heard learned counsel for the parties. Briefly the case of the prosecution based on the complaint of PW7 Mohan Chand is that he was posted as a Constable in Delhi Police and had applied for a loop connection in Delhi Vidyut Board near Radhu Place Cinema. On 9th April, 1992 he went to the DESU office at Preet Vihar for meeting Inspector R.B. Singh in connection with his meter but he did not find him present in the office. In his office Appellant was present who told him that Inspector R.B. Singh had not yet come and there was no difference between the Appellant and Inspector R.B. Singh. The Appellant demanded Rs. 500/- from the complainant and assured that his electricity meter would be installed but he refused to pay Rs. 500/- to the Appellant and the deal was struck for Rs. 300/-. The complainant stated to the Appellant that he would bring Rs. 300/-

at about 2.00 PM. Thereafter the complainant went to the office of anti-corruption branch where he met Inspector Abhey Ram and narrated the facts. He exhibited his complaint as Ex.PW7/A on the basis of which a raiding party was organized along with the panch witness. The complainant gave three notes of Rs. 100/- denomination to Inspector Abhey Ram who applied powder thereon and for testing the wash was taken in his presence which turned pink. Thereafter all the three notes of Rs. 100/- denomination were given by the Inspector to the complainant which he kept in the left side pocket of his shirt. The memo of pre-raid proceedings were prepared by Inspector Abhey Ram and was exhibited as PW7/B. On reaching the DESU office, the Appellant met them at the gate of the office. The complainant talked to the Appellant and enquired about Inspector R.B. Singh. The Appellant again stated that there was no difference between him and Inspector R.B. Singh and asked the complainant to give the money to him and the work would be done. On the demand of the Appellant the complainant took out Rs. 300/- from his pocket and gave the same to the Appellant. The Appellant received the money from his left hand and kept the money in his left side pocket of his shirt. Thereafter panch witness Gurinder Singh PW8 gave the signal to the raiding party and the Appellant was apprehended. From the search of the Appellant three notes of Rs. 100/- denomination were recovered from his left side pocket of the shirt. The numbers were tallied and thereafter washes of his left hand and the pocket were taken. The same were recovered by recovery memo Ex. PW7/C which bear the signatures of the complainant.

5. PW7 the complainant has supported the prosecution case in its entirety. However, learned counsel for the Appellant stated that once the complainant had gone to Radhu Place office, it is not known as to how the raid was conducted at Preet Vihar office. No doubt these are two offices of the DESU, however the witnesses have clearly stated that at the time of raid the Appellant was present at Preet Vihar office and thus the raid was conducted at the said office. Further PW1 and PW2 have proved that the Appellant was working as a Junior Clerk-cum- Telephone Operator at Preet Vihar office. Even though the complainant had applied at DVB office near Radhu Palace cinema he had met the Appellant at Preet Vihar where he went to meet Inspector R.B. Singh on 9th April, 1992 and instead met the Appellant when the initial demand was made. Thus the complainant again met the Appellant at the Preet Vihar office where he was working. The complainant has further clarified the facts in cross-examination. He stated that he had applied for the connection at the counter at Radhu Palace. There the receipt clerk told him that Inspector R.B. Singh was his area Inspector who can install the meter and give the connection. Thus he had gone to meet Inspector R.B. Singh but he was on leave and he was told that the Appellant was looking after his work. He clarified that he never met R.B. Singh.

6. Though the contention of learned counsel of the Appellant is that Inspector R.B. Singh demanded the bribe, however this version is neither of the complainant before the Court nor in his complaint Ex. PW7/A. However this is the version of PW8 Shri Gurinder Singh, the panch witness. Though this witness has supported the prosecution case in all material aspects, however the endeavour of PW8 is to exculpate the Appellant on material

aspects. PW8 deposed about the acceptance of Rs. 300/- by the Appellant, however tried to exonerate him by stating that demand and acceptance was for Inspector R.B. Singh. PW8 has also supported the prosecution case in relation the recovery made from the Appellant. It is thus apparent that despite shielding the Appellant, PW8 has corroborated the version of PW7 on material aspects. This witness has been duly cross-examined by the learned APP and confronted with his earlier statement wherein he had not stated that the complainant had given the money to the Appellant on demand for Shri R.B. Singh.

7. The version of complainant PW7 is further supported by PW9 Inspector Abhey Ram the trap laying officer who has proved pre-raided proceedings and the statement of the complainant recorded by him vide Ex.PW7/A. This witness has also proved the recovery from the Appellant and he stated that on receiving the signal he went towards the Appellant and recovered the money from the Appellant.

8. The contention of learned counsel for the Appellant that the prosecution has failed to preserve the hand-wash and pocket-wash solution and have not proved the link evidence is also liable to be rejected. PW11 Inspector S.K. Sharma stated that on 9th April, 1992 after his apprehension Inspector Abhey Ram handed over the Appellant to him along with the seized exhibits i.e. three currency notes of denomination of Rs. 100/- each, Ex. P6 to P8, the shirt, the pocket and hand wash and the bottles were marked P1 and P2 duly sealed with the seal of AR. He stated that he prepared the site plan, arrested the Appellant and prepared his personal search memo. He further stated that on his return to the anti-corruption

branch, he handed over Ex. LH1 and P1 along with sample seal to ACP A.K. Singh who kept the same in his almirah under lock and key and it was sealed by him with his seal "SK". The remaining exhibits i.e. currency notes and jamatalashi articles were deposited by him in intact condition with MHCM, PS Sabji Mandi. He further stated that on 10th April, 1992 he received the Ex. LH1 and P1 from ACP A.K. Singh after seal of the almirah was duly checked and broken in his presence. The exhibits were taken out by ACP Shri A.K. Singh in intact condition. He took the exhibits to FSL and deposited the same in intact condition. The exhibits when reached the FSL the seals were found to be intact as per the report Ex.PW6/A duly proved by PW6 ACP Ram Singh. This version of PW11 is supported by PW6 ACP Ram Singh.

9. Learned counsel for the Appellant contends that PW7 the complainant in his testimony has admitted that the solution when produced in the Court was white. Thus the hand wash and pocket wash have not been proved. This contention is also fallacious. PW7 the complainant has no doubt admitted that when the solution was produced in the Court, it was white but he also stated that the powder was visible in the bottles. It may be further noted that the solution reached the CFSL in intact condition as per Ex.PW6/A and when they were received there on 10th April, 1992 i.e. immediately on the next day of the raid the same were pink in colour. The report Ex.PW6/A clearly opines that Ex. No. LH1 and P1 gave positive test for phenolphthalein and sodium carbonate. It is thus proved beyond reasonable doubt that the hand-wash solution and the shirt pocket-wash solution had turned pink and gave positive test for phenolphthalein. In the

present case the raid was conducted in 1992 and when the solution was shown to the witness when it was found to be white was on 7th December, 2004 i.e. nearly after more than 12 years. In such a situation the pink colour evaporating cannot be ruled out. In *E.V. Shaji Vs. State of Kerala 2011 (4) KLJ 400* while dealing with a similar situation it was observed:

“13. The learned counsel for the appellant advanced a contention that though the evidence of PW s 1, 7 and 8 is consistent that when the corner of M.O. 1 series were dipped in the solution the solution turned pink, at the time when the evidence was taken M.O. 5 solution was colourless. That is not at all a reason to reject the prosecution case as such because the very case of PW s. 1, 7 and 8 is that only a corner of M.O. 1 was dipped. So the presence of Phenolphthalein powder in M.O. 5 is very minimum on the upper layer of the solution. If the solution is shaken the pink colour might spread and disappear. Phenolphthalein is an organic compound of the phthalein family. It is widely employed as an acid-base indicator. It is colourless below PH 8 and attains deep red hue above PH 10. When the corner of the currency notes is dipped in the surface, PH value in the surface solution would exceed PH8 and would become pink. When shaken the average PH value would go down and the colour would disappear. In other way, Phenolphthalein is colourless in acidic solution and pink in basic solution. In strong basic solutions its pink colour undergoes a rather slow fading and would become colourless again. Therefore, the possibility for fading the colour by course of time also cannot be ruled out. That shall never be a reason to disbelieve the prosecution because Phenolphthalein test is only a procedure adopted by the trap officer to detect the crime. That procedure is not a mandate of the PC Act or any statute. Mainly it is depended to establish the manner of acceptance of bribe. It is not always relied on as a proof of demand or acceptance, though some times, it may be evidence for acceptance also. Suppose the public servant accepts the bribe money with hand, the stain on hand would be a piece of evidence to establish that

it was accepted by hand. There may be clever bribe takers. They may ask the bribe giver to put it in the drawer of the table or place it on the table or even over any file or paper. In such cases, if the trap is made soon after so doing, there may not be any stain on hand. Therefore, in such circumstances, what is more relevant is the credibility of other evidence, whether it is believable or not. If believable, even if there is no Phenolphthalein test conviction would lie. The appellant has no case that M.O. 1 series were not recovered from the drawer of the table or that the corner of M.O. 1 series was not dipped in the solution. Even otherwise, regarding the identity of M.O. 1 series Ext. P13 which is not at all disputed stares at the appellant. The serial numbers of the notes are noted in Ext. P13. M.O. 1 series also bear the initials of PW. 8. Verification and assertion of identity after recovery deposed by PW. 7 and 8 remains unassailed. So, identity of M.O. 1 series can no way be disputed. In the above circumstances, especially taking into account the nature of the defence advanced, even though M.O. 5 solution was found colourless at the time of evidence, it is not at all a sufficient reason to reject the prosecution case as such. Adding to that in Ext. P14 what had transpired after the giving of bribe is specifically narrated. It is a contemporaneous document prepared on the spot under the signature of PW s 7, 8 and other independent witnesses. In Ext. P14, there is clear narration of Phenolphthalein test and the result. Adding to the above, there is the unimpeached evidence of PW s 7 and 8 that when the right hand of the appellant was dipped in calcium solution, the hand as well as the solution turned pink. Ext. P14 would corroborate with PW. 7 and 8. That evidence would show that appellant accepted M.O. 1 series with right hand and put into the drawer. Voluntary acceptance is evident. The story that PW. 1 put M.O. 1 series into the drawer of the table is devoid of merit and reflects the fact that appellant has no consistent case. Therefore, the fact that M.O. 5 solution, in which a corner of MO. 1 series was dipped, was found colourless at the time of evidence would not enure to the defence.”

10. In the present case the version of the complainant is duly supported by the trap laying officer and scientific evidence besides the investigating officer. Merely because the panch witness PW8 has not supported the case of the complainant with regard to demand and acceptance and has given another story, the case of the prosecution cannot be said to be not proved beyond reasonable doubt. In *State of U.P. Vs. Dr. G.K. Ghosh (1984) 1 SCC 254* it was held:

“10. It is now time to deal with the criticism urged as a matter of course in the context of the police officer leading the raiding party namely that he is an interested witness. This is true, but only to an extent - a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected and the role of his department in the protection of such citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government servant, would resort to perjury and concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the length of concocting a false seizure memo for prosecuting and humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience. The court may therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the

prosecution case. The present case appears to be a case of that nature. If the circumstantial evidence is of such a nature that it affords adequate corroboration to the prosecution case, as held by the learned Special Judge, the appeal must succeed. If on the other hand the circumstantial evidence is considered to be inadequate to buttress the oral testimony, the appeal necessarily must fail.”

11. Further, this Court in *Hari Kishan Vs. State 2011 X AD (Delhi) 553* also held that even if the panch witness has turned hostile, his part testimony can be looked into to seek corroboration to the testimony of the complainant and the trap laying officer. In the present case also PW8 the panch witness has corroborated the version of PW7 on material aspects like joining the investigation, treating three notes of Rs. 100/- denomination and the recovery from the Appellant after a raid was conducted at Preet Vihar office of DESU.

12. The explanation of the Appellant in his statement under Section 313 Cr.P.C. was that he never demanded money or accepted the same as he was not competent to do the work of the complainant and stated that on the day of the raid he came to him and enquired about Inspector R.B. Singh, he showed his ignorance on which the complainant took out the money and tried to hand-over the same to him to be given to Shri R.B. Singh which he pushed by his hand and refused to accept. However, this explanation of the Appellant is not borne out from the record as the recovery was not from the ground but from the left side pocket of his shirt and the wash of the shirt was also taken.

13. In view of the evidence on record, the prosecution has proved its case beyond reasonable doubt against the Appellant and hence I find no illegality

in the impugned judgment convicting the Appellant for the aforesaid offences and the order on sentence. Appeal is accordingly dismissed. Bail bond and surety bond are cancelled.

(MUKTA GUPTA)

JULY 22, 2013

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