

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL. A. 2 of 2008

Reserved on: January 17, 2014

Decision on: January 24, 2014

RAMA KANT SHARMA

..... Appellant

Through: Mr. Vikas Pahwa, Senior
Advocate with Ms. Aeshna Dahiya and
Mr. Kshatrasahl Raj, Advocates.

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP.

CORAM: JUSTICE S. MURALIDHAR

JUDGEMENT

24.01.2014

1. Mr. Rama Kant Sharma has, in this appeal, challenged the judgment dated 23rd November 2007 and the order of sentence dated 26th November 2007 passed by the learned Special Judge in Complaint 77 of 2002 arising out of the First Information Report ('FIR') No. 33 of 2001, holding the Appellant/accused guilty of the offence under Section 12 of the Prevention of Corruption Act, 1988 ('PC Act') and sentencing him to rigorous imprisonment for a period of two years and a fine of Rs. 20,000, and in default thereof, to undergo simple imprisonment for a period of two months.

2. The accused remained on bail throughout the period of trial. During the pendency of the present appeal the sentence awarded to him was suspended.

3. The case of the prosecution was that the accused, as a representative of M/s APS International, went to the office of the Special Protection Group ('SPG') at 1, Safdarjung Lane, New Delhi, on 1st June 2001 where he met one Shri R.C. Saxena (PW1), the Complainant and allegedly gave him an envelope containing Rs. 2,000 as a bribe/illegal gratification. Mr. Saxena is then stated to have taken the accused to his senior officers. A call was made to the Police Control Room ('PCR') and information was given to the Police Station ('PS') at Tughlak Road. It is stated that the in charge of the PCR, SI Gajraj Singh (PW4) and the SI of PS Tughlak Road, Mr. Sunil Kumar (PW-10), came to the SPG office, took the accused to the PS Tughlak Road, where, upon information being given, the officers of the Anti Corruption Bureau ('ACB'), the Inspector, Smt. Sudesh Kumari (PW-11) came with a panch witness, Mr. Pratap Singh (PW-5), to whom PW-1 handed over the envelope given to him in the police station by the Station House Officer ('SHO'). The panch witness is then stated to have taken out the sum of Rs. 2,000 from the envelope after making the necessary documents, the accused was thereafter arrested. It is further stated that PW-11 handed over the investigation to Inspector, Mr. M.A. Salam (PW-12), who filed the chargesheet.

4. The prosecution case was that ten Door Frame Metal Detectors (DFMDs) were supplied by M/s Reliance Electronics, Nashik, through their representative, M/s APS International, to the SPG. Since the products supplied did not conform to the specification and the samples shown at the time of technical evaluation, the supplier was asked to rectify the defect and the bill of M/s. APS International was, therefore, not cleared. The allegation

is that, on 1st June 2001, the accused went to the office of the SPG, met Mr. R.C. Saxena (PW1), who was working as Security Officer (Technical Incharge) SPG. It is further stated that the Appellant kept an envelope in the hand of PW1. When PW-1 asked him about the envelope, the accused told him that he had come from APS International and asked PW1 to clear the bills by telling him that the defects in the DFMDs would be taken care of. Thereafter, PW-1 took him to the senior officers and, according to the prosecution, this led to his ultimate arrest, as has already been described hereinbefore.

5. In his statement under Section 313 CrPC., the Appellant denied the prosecution case. He alleged that his confessional statement was taken under threat and duress and was not voluntary. The accused also filed a written statement under Section 243(1) CrPC. The accused contended that he had gone to the SPG office for seeking information regarding violation of human rights, since, at that point in time, he was an employee of the National Human Rights Commission ('NHRC') and had gained entry into the SPG office on the basis of his NHRC identity card. The Appellant also produced one Mr. Satbir Singh, working in the NHRC, as a defence witness (DW-1). The interview letter and the appointment letter dated 1/2nd May 2001 sent to the accused by the NHRC were exhibited. In his cross-examination he stated that there was no system in the NHRC for maintaining the departure and arrival entries of employees in a daily register.

6. From the above defence statement, the learned trial Court culled out the following 'admissions' by the accused:

- “1. That on 1.6.01 he went to SPG Office
2. That there he met complainant R.C. Saxena
3. That he handed over an envelope to R.C. Saxena
4. That R.C. Saxena took him to Mr. M.C. Joshi
5. That the police was called in SPG office
6. That he was taken to P.S. Tughlak Road
7. That he was taken to the room of SHO
8. That there a lady police officer i.e. PW10 came”

7. The learned trial Court then relied upon the depositions of PW-1, PW-7 and PW-11 to conclude that the envelope did contain currency notes which were opened in the presence of PW-11 and were counted by the panch witness, PW-5. The learned trial Court has also placed reliance on the confessional statement made by the accused (PW7/A). The learned trial Court concluded that since the statement was made to Mr. Ajay Kumar, the Assistant Inspector General, who was on deputation to the SPG, it was admissible in evidence. Reliance was placed on the decision in *State of Gujarat v. Anirudhsing AIR 1997 SC 2780*. It was concluded that there was no reason for PW-1 to falsely implicate the accused and there was no question put to any of the prosecution witnesses that the accused visited the office of the SPG as an officer of NHRC and sought information regarding violation of human rights. No witness even from the NHRC had been examined to prove that any such information was sought for. Once it was proved that the gratification had been offered to the complainant, then the

presumption under Section 20 (2) of the PC Act stood attracted. Unless the contrary is proved, it should be presumed that the accused gave gratification as a motive for reward for doing or for bearing to do any official act. The trial Court referred to the decisions in *C.I. Emdon v. State of UP AIR 1960 SC 548*, *Dhanvantri Balwantri Desai v. State of Maharashtra AIR 1964 SC 575* and *B. Noha v. State of Kerala 2006 IV AD (Criminal) 465 (SC)*.

8. This Court has heard the submissions of Mr. Vikas Pahwa, learned Senior counsel for the accused and that of Ms. Aasha Tiwari, learned APP for the State.

9. Section 12 of the PC Act reads as under:

“12. Punishment for abetment of offences defined in Sections 7 and 11.—

Whoever abets any offence punishable under section 7 or section 11 whether or that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

10. In effect, for the offence under Section 12 of the PC to be made out, it has to be shown that the accused was involved in the abetment of a crime under Sections 7 and 11 of the PC Act. It is not necessary that there should be an actual payment of a bribe as long as it is proved that there was an attempt made to bribe the public servant.

11. It is contended on behalf of the appellant that since the complainant PW-1 did even open the envelope allegedly containing the money offered as

illegal gratification and he in turn simply gave the envelope to Shri M.C. Joshi, who was not examined as a witness, and further, since no bill pertaining to the supply of DFMD was pending with PW-1, he could not have possibly extended any favour to the accused by abusing his official position. In effect, it is submitted that since the public servant did not have the knowledge about the money in the envelope it could not be proved that he was being bribed.

12. The statement of PW-1 in his examination-in-chief clearly states that, on 1st June 2001, while he was having his lunch, the accused, whom he did not know previously, addressed him as Mr. Saxena and that in response, he confirmed that he was Mr. Saxena and asked the accused to wait as he was taking his lunch. PW1 then states that after he PW1 had finished his lunch, the accused came “and kept an envelope in my hand.” When PW 1 asked the accused what it was, “he told me that he had come from APS International which firm had supplied to our office ten DFMDs.” The accused is supposed to have asked PW 1 to clear the pending bills of APS International stating that “the defects in their DFMDs would be taken care of.” PW 1 then states that in connection with the defective DFMDs, he did talk on telephone to one Mr. Anurag Saxena, the representative of Reliance Electronics, Nasik, who told PW-1 that they were expecting some material from Bombay. Two days after PW-1 talked to Mr. Anurag Saxena, the accused came to him with the envelope and he had then taken the accused to “my senior officer Mr. T. Krishna Kumar and M.C. Joshi.” PW-1 states that “I gave that envelope to Mr. Joshi and told him that envelope had been brought by the accused.” PW 1 then returned to his room. Thereafter, he

came to know that the accused had been taken to the Tughlak Road PS, and he went there. He then states that “SHO got written from me one application which I signed.” He states that he narrated everything to the lady officer from the ACB and she also obtained his signatures on some papers. By that time, the currency notes had been taken out from the envelope and were counted.

13. In his cross-examination on 22nd August 2005, PW 1 stated: “It is correct that I did not know the contents of the envelope when it was given by me to my senior officers. I gave the envelope to Shri M.C. Joshi, Senior Security Officer, Technical when he was sitting in his office. I do not remember whether Mr. Joshi had taken out the contents of that envelope or not. After handing over the accused and the envelope I had come back to my office which is on the ground floor. The office of Mr. Joshi is on first floor. Till I came back to my office I had not seen the contents of that envelope. I did not inform the police. I also do not know who informed the police.”

14. The learned trial Court has failed to notice an important omission, both in the chief examination as well as in the cross-examination of PW-1 when compared to the statement purportedly given by him in writing to the police. Exhibit PW2/2 is the hand-written statement of PW 1 given to the police in which he states: “After finishing my lunch I came to my working seat and asked him for what had he come. He gave me a packet which was having money inside it and he said me to clear the consignment of DFMDs and to send the bill for payment.” This statement implied that PW 1 knew that the

packet had money inside it. The remaining part of the statement reads as under:

“I asked him to come with me to my senior officers Sh. T. Krishan Kumar and Shri M.C. Joshi SSO (Tech.). I handed over the person and the packet to my senior officers for further necessary actions. As per Mr. Sharma’s statement in the presence of my senior officers the envelope contains Rs. 2000 in it.”

15. However, in his cross-examination, he repeatedly states that he did not know the contents of the envelope when it was given by him to his senior officers. He also stated that he did not remember whether Mr. Joshi had taken out the contents of the envelope or not. The above material contradiction is to be viewed in light of the fact that Mr. Joshi was not examined as a witness.

16. Mr. Krishan Kumar who was examined as PW-7 gives another version. He states that PW 1 came at 1:40 pm along with the accused carrying an envelope on which “Turbo Consultancy Pvt. Limited” was written. On inquiry, PW 1 told him that the accused had handed over to him one packet “containing currency notes as bribe and Mr. Saxena further told me that the accused had tried to give him bribe for passing the bill.” He states that when he inquired from the accused “he confessed that he had tried to give Rs. 2000 to Mr. R.C. Saxena on instructions from Mr. Anurag Saxena of M/s. APS International, New Delhi who was the representative of above said Nasik firm. Accused was immediately taken to Shri Ajay Kumar, Assistant Inspector General (Tech), who used to sit in the next room. He also directed me to make inquiries from the accused.” In the cross-examination, PW-7 admitted that he did not call the PCR but that the call was made by Mr. Ajay

Kumar and that when the call was made the PCR was not informed that PW 7 and Mr. Ajay Kumar they had detained the accused as he was offering the bribe. The other person in this scenario who may have helped clear the apparent contradictions was Mr. Ajay Kumar, who supposedly called the PCR, before whom the accused made an extra judicial confession. However, he again was not examined by the prosecution as a witness.

17. The chain of events as per PW-1 was that first the envelope was handed over to him and then he handed it over to Mr. Joshi and came back. Neither PW 1 nor PW 7 say that till the envelope reached the Tughlak Road PS (and it is not clear how it reached there) it was opened and the currency notes were found in it. On the other hand, PW-1 states that he saw it for the first time in the PS. PW-7 states that PW-1 gave him the envelope and he gave it further to Mr. Ajay Kumar who called the PCR. So, there is confusion as to whether it was PW-7 or Mr. Joshi to whom the envelope was given by PW 1. PW-7 also states PW-1 gave the envelope to PW-4, Mr. Gajraj Singh. However, PW-4 does not say so. Even PW 1 does not say that he handed over the envelope to PW 4. PW-5 states that the envelope was lying on the table of the Station House Officer ('SHO'). How the envelope reached the SHO is still a mystery. If the envelope was not opened during this entire time, then it is difficult to believe that PW1, PW 7 and the other officers in the SPG knew that it contained the bribe money at the time it was handed over to PW 1. These gaps in the case of the prosecution have not been explained. It is difficult therefore to conclude that the accused was in conscious possession of the envelope containing illegal gratification allegedly recovered from PW-1. Consequently, the case of the prosecution

that the accused offered a bribe to PW 1 has not been proved by the prosecution. The failure to establish that there was money in the envelope when it was allegedly handed over to PW-1 by the Appellant in the first instance takes away the very basis of the case of the prosecution. The finding of the trial court that it was proved that the envelope contained bribe money at the time it was handed over to PW 1 is not supported by the evidence on record.

18. In *State of Orissa v. Sitansu Sekhar Kanungo JT 2002 (8) SC 292*, it was held that the non-production of the *malkhana register* in the context of an offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act 1985 would lead to an adverse presumption under the Evidence Act that its production would have been to the detriment of the prosecution. The immediate seizure was imperative. In the instant case, the seizure memo, which is exhibit PW-1/B, already contained the FIR number. According to PW-5 and PW-12, the FIR was registered at 8:15 pm on 1st June 2001. However, the record shows that the seizure memo was prepared at 6 pm. It is indeed surprising how the seizure memo could contain an FIR number on the top of the document and be handwritten. This was another aspect which throws considerable doubt on the actual recovery of the envelope with the money inside it. The seizure memo in relation to the visitor slip in the name of V.K. Senapati was Ex.PW2/A. It was neither recovered from the accused nor handed over by the SPG to the local police. The said seizure memo is dated 11th September 2002, i.e., more than a year after the actual date of occurrence.

19. The third aspect of the matter which the prosecution has not been able to explain is the failure to put every incriminating circumstance appearing against the accused to him in his statement under Section 313 CrPC. In ***Sujit Biswas v. State of Assam 2013 (3) JCC 1887***, the Supreme Court has explained in para 12 as under:

“12. It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 CrPC., is to meet the requirement of the principles of natural justice, i.e. *audi alterum partem*. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 CrPC., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.”

20. In the present case, the circumstance regarding the envelope containing the bribe money being handed over to PW-1 has not been put to the accused while recording his statement under Section 313 Cr PC. The only question put to him in this regard is Question No.8 which only talks of an envelope being handed over. It reads as under:

“Q8. It is in evidence against you that on 1.6.01 you went to the office of the complainant (PW1) who was having lunch at that time and when after finishing his lunch, he attended you and you had kept one envelope in the hand of the complainant and when complainant asked from you about the abovesaid envelope, then

you told him that you had come from M/s APS International which supplied ten DFMD to the office of the complainant. What you have to say?

Ans. It is incorrect.”

21. In order to establish that the Appellant was acting on behalf of APS International, the prosecution produced Mr. Anurag Saxena (PW-8) as a witness. However, he denied knowing the Appellant or even PW1. He also denied receiving any call from PW1 for sending any representative from his office.

22. The learned trial Court also invoked the presumption under Section 20 (2) of the PC Act. That presumption would get attracted only if it is conclusively proved that the envelope containing the bribe money of Rs. 2,000 in it was, in fact, handed over by the accused to PW-1. As already noted, this crucial fact has not been proved by the prosecution. In *Om Parkash v. State of Haryana (2006) 2 SCC 250*, it was held that where a demand of bribe has not been proved, Section 20 (2) would have no application.

23. The learned trial Court appears to have attached considerable importance to the extra judicial confession of the accused by treating it as having been made to an officer of a reserve police force. The learned trial Court placed reliance on the decision of the Supreme Court in *State of Gujarat v. Anirudhsing*, which dealt with confession made to an officer belonging to the state reserve police force. In the present case, the SPG is

not a separate reserve police force. It is in the nature of an internal specialized division of the police comprised of police officers themselves who are posted there on deputation. It cannot be said that the confession made to a police officer on deputation with the SPG will be outside the ambit of Section 25 of the Evidence Act. Consequently, the extra judicial confession of the Appellant was inadmissible in evidence. The second difficulty is that the voluntariness of the confession could not be said to be established in the absence of the person in whose presence it was made (Mr. Ajay Kumar) being examined.

24. The learned trial court has also dwelt on the implausibility of the defence version. However, that cannot help overcome the failure of the prosecution to establish the guilt of the accused beyond all reasonable doubt.

25. For the aforementioned reasons, the appeal is allowed and the impugned judgment is set aside. The accused is acquitted of the offence under Section 12 of the PC Act.

S. MURALIDHAR, J.

JANUARY 24, 2014

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