

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL APPEAL No. 31 of 2008

Reserved on: April 29, 2014

Decision on: May 7, 2014

R.C. JAIN

..... Appellant

Through: Mr. Anil Kumar Gupta with
Mr. Sahil Dhawan, Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Aashaa Tiwari, APP.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

07.05.2014

1. This appeal is preferred against the impugned judgment dated 12th December 2007 passed by the learned Special Judge in Complaint Case No. 23 of 1999 convicting the Appellant for the offence under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 13th December 2007 by which, for the offence under Section 7 PC Act, the Appellant was sentenced to undergo rigorous imprisonment ('RI') for a period of three years and a fine of Rs. 10,000 and in default, to undergo simple imprisonment ('SI') for three months and, for the offence under Section 13 (2) read with Section 13 (1) (d) of PC Act, the Appellant was sentenced to undergo RI for a period of three years with a fine of Rs. 10,000, and in default, to

undergo SI for three months. Both the sentences were directed to run concurrently.

2. The case of the prosecution was that the Appellant was working as a Junior Engineer ('JE') with the Delhi Development Authority ('DDA'). His duty was to detect the unauthorized construction being carried out in the development area. In December 1994, he is stated to have reported about the unauthorized construction being carried out by one Risal Singh, Dharampal and Bhim Singh, the Complainant in the present case (PW-7). On the basis of the report, a complaint was filed in the court of the Metropolitan Magistrate ('MM') against the aforementioned persons. The defence of PW-7 was that he had been falsely implicated.

3. The above case was listed before the learned MM on 17th March 1998. PW-7 is stated to have met the Appellant and informed him that he had been falsely implicated as he was not carrying out any unauthorized construction. The Appellant informed PW-7 that he would get the case closed with a small fine if PW-7 paid a bribe of Rs. 15,000. When PW-7 expressed his unwillingness to pay the said sum, the Appellant agreed to accept Rs. 10,000 as bribe. On 17th March 1998, before the learned MM, statement of Mr. Chawla, Deputy Director, DDA was recorded in part and the case stood adjourned to 3rd April 1998.

4. According to PW-7, the Appellant repeatedly called him at his

residence. Ultimately on 23rd March 1998, when the Appellant called at the residence of PW-7 at 7.30 am, he is stated to have threatened PW-7 that if the bribe amount was not paid on that date he would get PW-7 convicted. PW-7 is stated to have again asked for scaling down of the bribe amount but the Appellant insisted on being paid Rs. 10,000. The Appellant is stated to have asked PW-7 to come with the bribe amount to the Vikas Minar office of the DDA between 12 noon to 1pm. The Appellant further told PW-7 that when he reaches the reception office, he must tell the Receptionist that he wishes to meet the Appellant sitting on the 16th floor and, on being informed, the Appellant would himself come there. The Appellant further told PW-7 to come alone otherwise he would not accept the bribe.

5. PW-7 was against giving of the bribe. He went to the Anti-Corruption Branch ('ACB') and lodged a complaint (Ex.PW-7/A). The complaint was recorded in the presence of panch witness, B.K. Wason (PW-11). PW-7 brought 100 government currency ('GC') notes of Rs. 100 each. The serial numbers of these GC notes were noted down by Inspector Satyavir Tyagi (PW-13) in the pre-raid report (Ex.PW-17/H). Thereafter, phenolphthalein powder was applied to the GC notes and a practical demonstration was given by PW-13. The treated GC notes were given to PW-7 who kept the said notes in the pocket of his shirt. Thereafter, PW-13 instructed PW-7 to remain close to PW-11. PW-11 was also instructed to remain close to PW-7 and to overhear the conversation and see the transaction and,

after being satisfied that the bribe was actually given, he was to give a signal by hurling his hand over his head.

6. The raiding team left the ACB at about 12.45 pm in a government vehicle. Inspector Sheoji Tiwari, Investigating Officer ('IO') (PW-12) remained in the government vehicle which was parked at some distance away from the spot. PW-7 and PW-11 went into the office of the DDA and the members of the raiding team took their positions.

7. In the evidence of PW-7, he stated that the Appellant met him and PW-11 at the reception and asked PW-7 as to why he was late. The Appellant enquired from him whether he had brought the money and PW-7 replied in the affirmative. PW-11 too stated that the Appellant asked PW-7 to "do his work". Both the witnesses stated that PW-7 took out the treated GC notes from his pocket and gave them to the Appellant, who received the same in his right hand and shifted them to his left hand and kept them in the left side pocket of his pant. PW-7 stated that the incident took place in the canteen of the DDA where they were taking tea. At that time, PW-11 had given the signal to the raiding team upon which the raiding team entered. On seeing the raiding team, the Appellant threw the money from his pocket on the ground. PW-13 disclosed his identity to the Appellant and the Appellant is stated to have admitted his fault.

8. On the direction of PW-13, PW-11 picked up the GC notes which were lying on the ground at the spot and then tallied the said notes

with the numbers noted down in the pre-raid proceedings. The hand washes of both hands and left side pant pocket when taken at the spot turned pink. They were transmitted to the bottles, which were then sealed and labelled. The Appellant was arrested and a personal search was conducted. The Central Forensic Science Laboratory ('CFSL') confirmed the presence of phenolphthalein as regards the washes.

9. By an order dated 24th July 2003, charges were framed against the Appellant for the offences under Section 7 and 13 (2) read with Section 13 (1) (d) of PC Act. The prosecution examined 13 witnesses.

10. In his statement under Section 313 Cr PC, the Appellant denied that he had demanded or accepted bribe. According to him, the prosecution witnesses had been tutored by the officials of the ACB and, hence, deposed falsely. In his defence, the Appellant examined four witnesses. DW-1, Anil Kumar, Assistant Engineer, DDA brought the summoned files. He testified that, as per the record, the agricultural land of village Aali was notified as development area by DDA and no one was permitted to make any construction thereon. DW-2, Vipin Ahuja, Director (Vigilance), DDA was examined to prove that the Appellant had made a representation regarding threat extended by PW-7 which was then forwarded to the Land Protection Branch of the DDA. DW-3, Mukesh Kumar, Assistant Ahlmad of the Court of the learned MM brought the judicial file of the case arising out of FIR No. 25 of 1995 (*State v. Bhim Singh*). DW-4, Durga

Talwar, Assistant Director, DDA who was posted at the reception at Vikas Minar could not bring the records as they were not traceable.

11. The first issue dealt with by the learned trial Court in the impugned judgment dated 12th December 2007 was regarding the validity of the sanction accorded by Mr. R.K. Bhandari, Retired Member Engineer (PW-5). The trial Court noted that at the relevant point in time the Engineer Member was competent to remove a JE from office. Although the Appellant was appointed by the Vice Chairman (VC), the power of removal was delegated by the VC to the Engineer Member. It was proved that the Appellant had been appointed by the Commissioner (P), DDA who was subordinate to the Engineer Member. Consequently, the sanction granted by the Engineer Member to prosecute the Appellant was held to be valid.

12. Mr. Anil Kumar Gupta, learned counsel for the Appellant, drew the attention of the Court to the reply dated 14th October 2008 received from the DDA pursuant to an application made by the Appellant under the Right to Information Act, 2005 ('RTI Act'). It stated that the appointing authority of the Appellant was the VC. Accordingly, it is submitted that the trial Court erred in upholding the validity of the sanction order.

13. The above reply of the DDA was sought and received by the Appellant after the impugned judgment of the trial Court. The trial Court has discussed in some detail Ex.PW-10/A which contained the

personal data of the Appellant. Column No. 12 of the said document mentioned the appointing authority of the Appellant as the Commissioner (Planning), DDA. The above fact was not rebutted by the Appellant during the trial. There is no explanation as to why the information relied upon by the Appellant was not obtained and produced earlier. If it had, then the prosecution would have had an opportunity to clarify the position. In any event, Section 19 (3) of the PC Act states that the mere fact of any defect in the order granting sanction will not vitiate the trial. Further, since the Engineer Member was delegated the power to remove a JE, and since he was superior to the Commissioner (P), there was be no illegality in the Engineer Member sanctioning the prosecution of the Appellant. The cross-examination of PW-5 showed that he had applied his mind to the materials placed before him while sanctioning the prosecution of the Appellant. In the circumstances, the Court concurs with the opinion of the trial Court as regards the validity of the order granting sanction to prosecute the Appellant.

14. On merits, Mr. Gupta submitted that the Appellant was a victim under the hands of the land mafia. PW-7 was found to be involved in huge unauthorized constructions and had a grudge against the Appellant for reporting about them. It was submitted that at that moment, PW-7 realized that after the examination of the prosecution witnesses he would be convicted, he extended a threat to the Appellant on 17th March 1998. The Appellant reported the matter on 18th and 20th March 1998 to his superiors. He was instructed to file an

application before the trial Court for cancellation of the bail of PW-7. It is at this stage that, according to the Appellant, PW-7 lodged a complaint with the ACB on 23rd March 1998 in conspiracy with the officers of the ACB.

15. Mr. Gupta also referred to the deposition of PW-7 wherein he stated that the unauthorized construction was carried out not by him but by Dharm Pal and Risal Singh. The Appellant further contended that Risal Singh was even ready to pay some money to the Appellant. According to PW-7, there was a heated exchange of words between Risal Singh and the Appellant which resulted in the FIR being registered against all of them. He further referred to the answer given by PW-7 in his cross-examination that he along with Risal Singh and Dharm Pal approached the Appellant for settling the matter by negotiation. PW-7 was also involved in another case of an unauthorized construction as was proved by DW-1. Mr. Gupta submitted that since the very foundation of the case was weak, the entire case of the prosecution should fail. Mr. Gupta further submitted that with the alleged demand having been made on 17th March 1998, by waiting till 23rd March 1998, there was an unexplained delay in lodging the FIR.

16. In reply to the last submission, it was submitted by Ms. Aashaa Tiwari, learned APP for the State, that it has come in the evidence of PW-7 that it was when the Appellant extended a specific threat to PW-7 i.e., when he called the latter on the morning of 23rd March

1998, that PW-7 decided to approach the ACB. The above explanation appears to be convincing. The Court is of the view that there was no delay as such in PW-7 approaching the ACB with his complaint and in the FIR being registered.

17. There is no evidence to back the sweeping allegation that PW-7 was acting in connivance with the officials of the ACB. PW-7 was no doubt being prosecuted for carrying on unauthorised construction. While those proceedings were required to be taken to their logical conclusion, that did not weaken the case against the Appellant as regards his demand and acceptance of bribe money from PW-7. The trap transaction involving the Appellant has, as will be discussed hereafter, been comprehensively proved beyond reasonable doubt.

18. It was next submitted by Mr. Gupta that there was no evidence regarding the telephonic conversation that took place between the Appellant and PW-7 during the period between 17th and 23rd March 1998. As regards the demand of bribe at the spot, PW-11, the panch witness, stated that he could not hear any conversation that took place between the Appellant and PW-7 regarding the demand of money.

19. The evidence of PW-7 is natural, cogent and truthful. Only he and the Appellant were privy to the telephonic conversations. PW-7 has not been shaken in his cross-examination. As regards the demand at the spot, PW-7 stated that the Appellant started talking with him and told him to give the money. The *panch* witness PW-11 in his cross-

examination stated that he heard the Appellant tell PW-7 '*Laa Mera Kaam Kar De*'. It cannot, therefore, be said that there is no evidence to prove that there was any demand made by the Appellant at the spot.

20. Mr. Gupta referred to the decision in *Suraj Mal v. The State (Delhi Administration)* AIR 1979 SC 1408 to urge that where the witnesses make inconsistent statements, their evidence would become unreliable and untrustworthy, and the mere recovery of money pursuant to a trap transaction would not be enough to convict the accused. The Court finds that, in the present case, both PW-7 and PW-11 have spoken consistently as to the trap transaction.

21. Mr. Gupta next submitted that the evidence as regards the acceptance of bribe amount by the Appellant was both unreliable and untrustworthy. He submitted that a person who has been caught hold off by his wrists could not have thereafter put his hands in his pant pocket and thrown the money on the ground. Mr. Gupta further pointed out that while PW-7 talks of removing the treated GC notes from the wrapper before handing them over to the Appellant, the wrapper was neither seized nor was its wash taken.

22. PW-7 stated that he had handed over to the Appellant the treated GC notes after taking it out from the wrapper. He stated that "when accused was caught hold from behind, he threw some GC notes on the road." He stated that he did not remember as to how many GC notes were found lying on the road and how many GC notes were recovered

from the pant pocket of the Appellant. PW-11 stated that “the accused had thrown the GC notes before being caught hold.” PW-13, Inspector Satya Vir Dagar, SHO Preet Vihar, Delhi stated that when he disclosed his identity to the Appellant, he “took out the treated GC notes from his left side pocket of his pant and threw the same on the ground.” This part of the evidence has remained uncontroverted in the cross-examination. PW-13 further stated that once he saw the raiding team, the Appellant threw the treated GC notes from his pocket before he was apprehended. This corroborates the evidence of PW-7. When the depositions of PWs 7,11 and 13 are read as a whole, it does appear that after the accused took out the treated GC notes from his pant pocket and threw them on the ground, he was caught hold by his wrists.

23. The above depositions are fully corroborated by the CFSL report which established that the hand washes and the right pant pocket wash contained phenolphthalein and sodium carbonate. The fact of the right side pant pocket wash turning pink establishes that the Appellant received the bribe money and kept it in his pant pocket.

24. Mr. Gupta urged that when PW-7 tried to thrust the treated GC notes in his pocket, the Appellant threw them on the ground. He relied upon the decisions in *State of Himachal Pradesh v. Tej Ram* 1990 Crl LJ 995, *Meena v. State of Maharashtra* 2000 (2) RCR Crl. 661, *Babu Lal Bajpai v. State of U.P.* AIR 1994 SC 1538, *Resham Lal v. State* 1989 (4) Crimes 100 (Del) and *Ram Narayan Pattnaik. v. The*

State 1989 Crl LJ 973 to urge that in the circumstances of the present case, the presumption under Section 20 PC Act was not attracted.

25. In the present case, the prosecution has proved beyond reasonable doubt that the treated GC notes which were kept by the Appellant in the left side pant pocket of the Appellant were thrown by him on the ground and recovered from there. There is no evidence to prove the defence that PW-7 attempted to thrust the GC notes into the pant pocket of the Appellant. The decisions cited by Mr. Gupta are distinguishable on facts. In the present case PW-7, corroborated by PW-11 and PW-13 clearly spoke about the Appellant taking out the treated GC notes from his pocket of the pant and flinging them on the ground. The presumption under Section 20 PC Act has not been rebutted by the Appellant even on a preponderance of probabilities.

26. It was then submitted by Mr. Gupta that PW-11 was unreliable since he was a stock witness who had been to the ACB's office many times on duty. He pointed out that PW-11 had reported at the ACB's office at about 9.30 am on 23rd March 1998 even before PW-7 reached there. Reliance was placed on the decisions in *Ram Prakash Arora v. The State of Punjab* (1972) 3 SCC 652 and *Mohinder Singh v. The State of Punjab* 1990 (3) RCR 44.

27. The deposition of PW-11 reveals that that on 23rd March 1998 he was posted as an Inspector in the Labour Department and was on duty as *panch* witness in the ACB. He reported to the office ACB on 9.30

am on 23rd March 1998. He was not aware as to when precisely PW-7 came there. There is nothing elicited in his cross-examination to suggest that he was a stock witness and not acting independently. He stated that while he had been on duty many times in the ACB, he acted as *panch* witness only on 23rd March 1998. His evidence does not indicate that he was either a partisan or had anything against the Appellant. In any event, PW-7 has spoken truthfully about what transpired at the trap proceedings.

28. The description of the colour of the pant being black in the seizure memo whereas it was found to be dark brown having small checks when produced in Court cannot be termed as a material discrepancy. It does not *per se* indicate that what was produced was not the seized pant. Also, the mere fact that the washes were sent for chemical examination on 27th April 1998, i.e., seven days after they were taken does not *ipso facto* show that the samples were manipulated. The failure to seize the wrapper in which the treated GC notes were kept does not affect the veracity of the prosecution version. The submission that when the Appellant came out of his office, PW-7 took advantage of the lunch time and the crowd around the canteen area and tried to plant the money in the pant pocket of the Appellant without his knowledge inside the Vikas Minar boundary, and the Appellant pushed away his hand and in that process money fell down on the road is also unsubstantiated.

29. Mr. Gupta then submitted that while PW-12 stated that the

Appellant was caught near Gupta Photo State at Azad Bhawan Road, PW-13 stated that he caught the Appellant inside the office complex. The above discrepancy also does not appear to be a material one. The fact remains that the Appellant was apprehended and his hand and pant washes turned pink.

30. Mr. Gupta submitted that the place where the trap proceedings took place was a busy one and failure to associate public witnesses was fatal to the case of the prosecution. Relying on the decision in ***G.V. Nanjundiah v. State (Delhi Administration) AIR 1987 SC 2402***, Mr. Gupta submitted that acceptance of the money as described in the case has happened in an unusual manner and, therefore, it was unbelievable. He further submitted that in the disproportionate assets (DA) case instituted simultaneously against him, the Appellant was acquitted by the trial Court

31. In several decisions it has been acknowledged by the Supreme Court that despite efforts an independent witness does not come forward to assist the prosecution and that failure to associate independent witnesses is not fatal to the case of the prosecution. In the present case, it cannot be said that recovery of money took place in the most unusual manner. The presumption under Section 20 of the PC Act did get attracted in the facts of the present case. The Appellant failed even on a preponderance of probabilities to rebut the presumption. A perusal of the judgment of the trial Court in the DA case shows that it turned on an analysis of the evidence led in that

case. That decision does not affect the case of the prosecution or the quality of the evidence led in the present case.

32. For the all aforesaid reasons, the Court finds that no ground has been made out interfere with the impugned judgment of the trial Court holding the Appellant guilty of the offence under Section 7 and Section 13 (2) read with Section 13 (1) (d) of PC Act.

33. On the question of sentence, it is seen that the trial Court sentenced the Appellant to undergo RI for three years with a fine of Rs. 10,000 for the offence under Section 7 PC Act and similar sentence as far the offence under Section 13 (2) read with Section 13 (1) (d) PC Act. Considering that the Appellant is 62 years old and that the trial has gone on for over two decades, the Court reduces the sentence awarded to the Appellant to RI for one year for each of the offences under Section 7 and Section 13 (2) read with Section 13 (1) (d) PC Act with both the sentences being directed to run concurrently. The fine amounts imposed by the trial Court are maintained.

34. Consequently, this Court upholds the conviction of the Appellant as ordered by the trial Court by the impugned judgment dated 12th December 2007, but the Court modifies the order on sentence dated 13th December 2007 in the manner indicated in para 34 above.

35. The appeal is disposed of in the above terms. The bail bonds of the Appellant are cancelled. He will surrender forthwith, failing which he

will be taken into custody forthwith, to serve out the remainder sentence. The trial Court record be sent back forthwith. A copy of this order be given *dasti* under the signature of Court Master.

S. MURALIDHAR, J.

MAY 7, 2014

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