

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20th August 2014

Decision on: 28th August 2014

CRL.A. 135 of 2008

SHAKUNTLA CHAUHAN Appellant

Through: Ms. Suman Chauhan, Advocate.

versus

STATE Respondent

Through: Mr. Rajat Katyal, APP.

WITH

CRL.A. 152 of 2008

ATMA RAM Appellant

Through: Mr. Vishal Raj Sehjpal, Advocate.

versus

THE STATE OF DELHI Respondent

Through: Mr. Rajat Katyal, APP.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

28.08.2014

1. These two appeals are directed against the impugned judgment dated 24th January 2008 passed by the Special Judge in Complaint Case No. 39/2000, convicting the appellants for the offences under Sections 7 and 13 (1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 (PC Act) as well as the order on sentence dated *CRL.A. Nos. 135 & 152 of 2008*

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25th January 2008, sentencing each of them to undergo rigorous imprisonment ('RI') for a period of two years along with fine of Rs.2500/- each and in default to undergo simple imprisonment ('SI') for one month for each of the offences under Sections 7 and 13(1) (d) read with Section 13(2) of the PC Act. Both the sentences were directed to run concurrently.

2. The case of the prosecution is that the complainant Vidyanand Prakash (PW-8) was in the business of selling small silver ornaments at a counter in front of his House No. 80-A, Village Munirka, New Delhi. On 15th September 1999, he took his daughter to the hospital for medical check up. On returning his wife Sushila (PW-7) informed him that Sub-Inspector Shakuntla Chauhan (accused no.1) [A-1] and Constable Atma Ram (accused no. 2) [A-2] from Police Station (PS) Vasant Vihar had come to their house and taken away their son Amit. PW-8 and PW-7 immediately went to PS Vasant Vihar and met A-1 and A-2. A-1 and A-2 told PW-8 that he had bought a stolen ring which he denied. A-1 then instructed A-2 to make PW-8 understand. A-2 took him aside and told him that A-1 was demanding a bribe of Rs.10,000 and a gold ring of 9 grams for releasing Amit from custody. PW-8 expressed his inability to pay the bribe amount or give a gold ring. Thereafter, A-2 repeated the demand in the presence of A-1. Both A-1 and A-2 conversed for some time and then A-2 told PW-8 that A-1 had agreed to accept Rs.5,000 and one gold ring. PW-8, under duress and compulsion agreed to give Rs.5,000.

3. PW-8 stated that he and PW-7 returned home and arranged for Rs.5000 out of which Rs.4,000 was his own money and Rs.1,000 was borrowed from one Vinod. A-2 came to his shop and PW-8 gave him Rs.5,000 and one gold ring. Thereafter, PW-8 and PW-7 accompanied A-2 to PS Vasant Vihar. There A-2 informed A-1: "*Kaam Ho Gaya Hai*". A-2 gave Rs.5,000 and the gold ring to A-1 who obtained the signatures of PW-8 on two blank papers and thereafter released PW-8's son Amit.

4. PW-8 then stated that on 16th September 1999, i.e. the following day, A-2 again came to his house and demanded another Rs.4,000 as bribe and stated that he would be coming on 17th September to collect it. As PW-8 was against giving of any further bribe he went to the Anti-Corruption Branch (ACB), where Niranjana Singh (PW-13) was on duty. PW-13 recorded the statement of PW-8 (Ex. PW8/A) in the presence of the panch witness Shiv Kumar (PW-9) LDC, Deen Dayal Upadhyay Hospital, New Delhi. PW-8 produced eight government currency (GC) notes of Rs.500 each before PW-13, who noted down their serial numbers in the pre-raid report (Ex. PW-8/B). Thereafter, PW-13 applied phenolphthalein powder on the GC notes and gave a demonstration. He then handed over the treated GC notes to PW-8 which PW-8 kept in the front side pocket of his shirt. Instructions were given to PW-9 to stay close to PW-8 and give a signal when the bribe money was handed over to the accused.

5. At around 3 pm on 17th September 1999, the raiding party

comprising of PW-13, Inspector M.S. Sanga (PW-12), Sub-Inspector (SI) Ashok Kumar, SI Gurmeet Singh, SI Sunita, SI Kaushal Pandey (PW-10), and Constable Om Prakash left for the shop of PW-8. They reached the shop at around 4 pm in a government vehicle. While PW-8 and PW-9 proceeded towards the shop, the others stayed back and took their positions.

6. In his evidence, PW-9 stated that while he and PW-8 were waiting at the shop of PW-8 at around 4.30 pm, A-2 came on his two-wheeler scooter and informed PW-8 that 'Madam' had called for the money through him. A-2 informed PW-8 that 'Madam' was sitting in the PS. A Maruti Car was parked near the shop. PW-9 stated that PW-8 gave the treated GC notes to A-2 behind the Maruti Car in the presence of PW-9. A-2 accepted the amount with his right hand and counted the same with both his hands. He kept the same in his back side pocket.

7. At that stage, PW-9 gave signal to the raiding party. The raiding party rushed to the spot and PW-13 disclosed his identity to A-2 and challenged him that he had taken bribe from PW-8. A-2 was stated to have become perplexed. A formal search of A-2 was conducted with the help of PW-9 and Rs.4,000 in the denomination of eight GC note of Rs.500 were recovered from the back side pocket of his pant. The washes of right and left hands and that of the pant pocket of A-2 were taken. All of them turned pink and were preserved in separate bottles which were then sealed and labelled. PW-10 was then called to the spot and handed over the custody of A-2.

8. Thereafter, the raiding party with A-2 proceeded to PS Vasant Vihar at around 7.30 pm. A-2 and PW-8 identified A-1, who was present in the room with one SI Arvind Kumar. PW-13 then effected a formal search and recovered a gold ring which A-1 was wearing. It was recovered in the presence of the other police officers who comprised the raiding party and the same was seized under seizure memo PW1/A. From the handbag of A-1 the blank papers signed by PW-8 were recovered.

9. Both the accused were arrested. The hand washes of A-2 were sent to the Forensic Science Laboratory ('FSL'), which confirmed that they contained phenolphthalein powder. The prosecution examined thirteen witnesses.

10. When confronted with the evidence under Section 313 Cr PC, A-1 claimed that she had never demanded any illegal gratification in cash or a gold ring. She stated that a complaint had already been filed regarding stolen articles of one Ms. Shyam Prabha on 15th September, 1999 as per the DD No.31A. She stated that A-2 was never authorized to work with her as regards the said complaint, and it was Constable Rakesh Kumar who had accompanied her. According to her the name of A-2 had been illegally attached with her for some ulterior motive. She denied having accepted any gold ring or that any such gold ring was seized from her. She stated that she was falsely implicated in the case. She stated that Ms. Shyam Prabha had later made a statement on 15th September 1999 itself, that she had found her missing articles. A-

1 denied having detained the son of PW-8 and sending A-2 to the shop of PW-8 for demanding any illegal gratification. She denied that the son of PW-8 was ever brought to the police station.

11. On his part, A-2 denied the entire evidence, including the fact of hand washes and pant pocket wash turning pink. He claimed that he was falsely arrested. He claimed that the treated GC notes had been forcibly thrust into his pant pocket; that the FSL report was biased and the sanction granted was invalid. A-2 claimed that he had gone to the house of Vinod Kumar, the landlord of PW-8, on 17th September 1999 at around 4 pm to have tea and that PW-8 had falsely implicated him. He claimed that PW-9 was a stock witness of the police and was wholly unreliable. PW-8 was an accomplice and therefore an interested witness.

12. On behalf of A-1, Constable Om Prakash (DW-1) was examined. He stated that the daily diary (DD) register for the period 1997-2000 had been destroyed. The other witness was ASI Sudesh Kaushik (DW-2) who proved that A-2 was deputed to some other case. A-1 was sent for inquiry in another matter with Constable Rakesh. Inspector Suresh Dagar was examined as DW-3. He stated that he returned to PS Vasant Vihar, of which he was SHO and that on 17th September 1999 at around 7.55 pm he found that ACB officials had already arrested A-1 and A-2.

13. The trial court on an analysis of the evidence came to the following conclusions:

(a) The defence of A-2 that PW-8 had forcibly thrust currency notes into his pocket was not proved by him. He had even failed to examine Vinod Kumar as a defence witness. It was accordingly proved that A-2 consciously accepted the bribe amount of Rs.5,000 and a gold ring on 15th September 1999, and was caught red handed while accepting Rs.4,000 on 17th September, 1999.

(b) In the bail application filed by A-2, he admitted that upon the receipt of the complaint of theft by Ms. Shyam Prabha, both the accused went to the shop of PW-8, where his son Amit was present and thereafter Amit was brought to the PS for further investigation. It was further stated in the said bail application that in the evening PW-8 had reached PS and had admitted that the maid servant of Shyam Prabha had sold the said gold ring to him. The gold ring of 5 gm was handed over to Ms. Shyam Prabha who later agreed not to register any case and agreed to settle for Rs.4,000. It was further stated that on 17th September 1999, A-2 received Rs.4,000 from PW-8 which was to be returned to Ms. Shyam Prabha as agreed between them. Consequently, a contrary defence had been taken in the trial by A-2.

(c) The evidence of the panch witness (PW-9) could not be rejected on the ground that he was a stock witness. He was not under any pressure from police.

(d) There was no merit in the contention that PW-13 had no authority to recover a ring from A-1 as the investigation was already handed over by then to PW-10. This was if at all an irregularity which did not affect the case of the prosecution. The recovery of the ring from A-1 was proved through the evidence of PW-8 and PW-9 and the police witnesses.

(e) The demand and the acceptance of the bribe amount by A-2 on behalf of A-1, was proved beyond reasonable doubt.

(f) The minor contradictions in the depositions of PW-7 and PW-8 did not affect the credibility of their testimonies. The plea of the accused that since the complaint of Ms. Shyam Prabha was already taken back, there was no occasion to detain the son of PW-8, was disbelieved. The entire case appeared to be manipulated by A-1 from whose bag the blank papers signed by PW-8 (Ex.PW1/B2 and PW1/B3) were recovered. The recovery of the gold ring from the possession of A-1 proved her involvement beyond reasonable doubt.

14. As noted earlier, the trial court convicted the accused for the offences under Section 7 and 13 (1) (d) read with Section 13(2) of the PC Act, and sentenced them in the manner noted above.

15. Ms. Suman Chauhan, learned Amicus Curiae appointed by the Court to appear on behalf of A-1 and Mr. Vishal Raj Shejpal, learned counsel appearing for A-2 have taken the court through the entire

evidence. In the first place, it was submitted that the evidence of PW-9 was unbelievable and unreliable as he was a stock witness. A reference was made to the answer given by him in his cross-examination that since 1994 he had been deputed as panch witness with the ACB four times and in all the raids the accused persons had been arrested. Reliance was placed on the decision of the Supreme Court in *State of Gujarat v. Kumudchandra Pranjivan Shah* 1995 Crl LJ 3623.

16. The Court is unable to accept the submission that PW-9 was a stock witness. Merely because for a period of thirteen years from 1994, the panch witness was associated with four raids conducted by the ACB, he cannot be dubbed as a stock witness. In any event, in each case the evidence of panch witness will have to be evaluated to ascertain if it is trustworthy. The mere fact that the panch witness may have been associated in earlier raids which are four in number over a period of thirteen years would not by itself persuade the court to disbelieve the said witness. However, it would certainly require the Court to examine his testimony with caution.

17. It was next submitted that under Section 17 of the PC Act, the investigation had to be entrusted to an officer not below the rank of Assistant Commissioner of Police (ACP) whereas, in the present case it was entrusted to PW-10, who was only an SI. The above submission overlooks the proviso to Section 17 which permits the State Government to authorise an officer below the rank of ACP to

investigate such cases involving public servants. In the present case, since no question was put to any of the PWs' and in particular to PW-10 about his lack of authority, there was no occasion for the prosecution to produce the relevant notification, authorising an SI to conduct the investigation.

18. On behalf of A-1, it was urged that PW-8 had departed from his version given to the police Ex.(PW8/A), when he deposed in the court. In particular, it was urged that before the police, he had stated that A-2 had come back on 17th September 1999 to say that PW-8 could give Rs.4,000 or a gold ring, while in the Court he stated that a ring was already given to A-2 on 15th September 1999 itself. It was urged that A-2 acted on his own and without any connection with A-1. The mere recovery of the ring from A-1, which could be her own ring especially when it was without any marking could not be held to be sufficient proof of her culpability. Reliance was placed on the decisions in *Keshav Dutt v. State of Haryana* (2010) 9 SCC 286, *M. Jagdish Vyas v. Union of India* AIR 2010 SC 1596, *Dr. S.L.Goswami v. State of Madhya Pradesh* AIR 1972 SC 716, to urge that in the present case, the prosecution had failed to discharge its burden to prove all the ingredients of the offence beyond reasonable doubt. Reliance was also placed on the decision of *State of Maharashtra v. Dnyaneshwar Laxman Rao* (2009) 15 SCC 200 to urge that proof of demand was sine qua non for attracting the offence under Section 7 and 13 (1) (d) of the PC Act. Ms. Chauhan also relied on the decision of *V.D. Jhingan v. State of Uttar Pradesh* AIR 1966

SC 1762, to urge that on her part, A-1 had been able to establish on a preponderance of probability that she was nowhere involved in the transaction between A-2 and PW-8. It was submitted that the non-production of Ms. Shyam Prabha by the prosecution should lead to an adverse inference being drawn against it.

19. An analysis of the evidence of PW-7, PW-8 and PW-9 establishes beyond reasonable doubt, the fact of A-2 coming to the shop of PW-8 and demanding bribe on behalf of A-1. The involvement of A-1 is established by the recovery of gold ring from her on pointing out of both PW-8 and A-2 himself. PW-8 was in the business of selling silver ornaments and therefore the absence of any marking on the gold ring was not unusual. As pointed out by the trial court, the evidence of PW-9 is reliable and trustworthy. He stated that A-2 came to the shop of PW-8 and told him that A-1 was expecting him to pay the balance amount of bribe. The pre-trap, trap and post-trap proceedings have been fully proved by PWs 8 and 9 and corroborated by the FSL test report.

20. It does appear from the evidence of the prosecution witnesses that PW-8 was given to understand that if he needed the gold ring back then he would have to pay Rs.4,000 more. This is clear from a careful reading of the entire statement of PW-8 made to the ACB when he went there on 17th September 1999. The fact that two blank papers signed by PW-8 were found in the bag of A-1 corroborates the evidence of PW-8 and proves the involvement of A-1. The non-

examination of Ms. Shyam Prabha does not affect the case of the prosecution.

21. The key elements of its case, viz., the demand and acceptance of bribe by A-2 on behalf of A-1 has been proved beyond reasonable doubt. The defence witnesses do not help the accused to prove their version even on a preponderance of probabilities. Therefore, this court does not find any infirmity in the conclusion drawn by the trial court regarding guilt of either A-1 or A-2.

22. The two accused were police officials entrusted with law enforcement and were expected to display the highest degree of probity in their public dealings. In the circumstance, the sentence awarded to them can hardly be said to be disproportionate. The Court is not inclined to interfere with the impugned order on sentence either.

23. The appeals are accordingly dismissed. The bail bonds of the appellants are cancelled. The appellants will surrender forthwith to serve out the remainder of their sentence.

24. The trial record be returned forthwith for further steps.

S. MURALIDHAR, J.

AUGUST 28, 2014
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