

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 151 of 2008

KANTI PRASAD TYAGI

..... Appellant

Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. G.C. Tyagi with Mr. Kailash Pande,
Mr. Balendra Tiwari, Mr. Inderajeet Mishra,
Advocates.

versus

STATE OF DELHI

..... Respondent

Through: Ms. Isha Khanna, APP.

CORAM: JUSTICE S. MURALIDHAR

ORDER

03.032014

1. This appeal by Kanti Prasad Tyagi is directed against a judgment dated 13th February 2008 passed by the learned Special Judge, Delhi in Complaint Case No. 49 of 2002 convicting him of the offences under Sections 7 and 13 (1)(d) read with Section 13 (1)(2) of the Prevention of Corruption Act, 1988 (PC Act). It is also against the order of sentence dated 13th February 2008 passed by the Special Judge sentencing the Appellant to undergo rigorous imprisonment (RI) for a period of two years and a fine of Rs. 3,000 for the offence under Section 7 of the PC Act and in default of payment of fine, to undergo SI for a period of two months and further to undergo RI for a period two years and a fine of Rs. 3,000 for the offence under Section 13(2) of the PC Act and in default of payment of fine, to undergo a further SI for a period of two months.

2. The case of the prosecution was that one Raj Kumar @ Babloo, the Complainant (PW-6) was running a shop of repairing puncture of tyre and tubes under the name and style of Vivek Tyres near Kirti Nanak Filling Station, AP Block, Shalimar Bagh. It is stated that around 10 days prior to 17th August 2001, Constable Ranbir Singh, the co-accused took his motor-cycle to the shop of PW-6 for repairing the puncture. When PW-6 informed Constable Ranbir Singh that the valve of his tube had been broken, Constable Ranbir Singh is alleged to have told the Complainant that it is he who had broken the valve and had to replace the tube. PW-6 under compulsion stated to have replaced the tube. It is alleged that Constable Ranbir Singh was annoyed with PW-6 and on 10th August 2001, took him to the police station and there Head Constable Yogender Singh informed PW-6 that a case has been lodged against him and asked him to arrange for a surety and Rs. 5,000. According to the PW-6, after much persuasion and after accepting Rs. 3,000 as bribe Constable Ranbir Singh and HC Yogender released him. On that very date, Constable Ranbir Singh asked PW-6 to pay Rs. 5000 per month failing which he would be implicated in some other case. After much persuasion Constable Ranbir Singh agreed to accept Rs. 3,000 as bribe. However, PW-6 expressed his inability to pay the amount in one go and thus Constable Ranbir Singh is alleged to have agreed to accept the bribe amount in two instalments of Rs.1,500 each. The first instalment was to be paid at around 7.00 p.m. on 17th August 2001.

3. The case of the prosecution was that PW-6 was against giving bribe and therefore, went to Anti Corruption Branch (ACB) on 17th August 2001 and his complaint (Ex. PW 5/A) was recorded. PW-6 handed over three

government currency (GC) notes of Rs. 500 each to Inspector N.S. Minhas, the Raid Officer (PW-7). The GC notes were treated with phenolphthalein and a demonstration was given to the *panch* witness, S.M.A. Jafri, a Junior Engineer (Civil), Irrigation Flood Control (PW-5). A pre-raid report was prepared (Ex. PW-5/B).

4. At around 4.20 pm on 17th August 2001, Raid Officer (PW-7), the Complainant (PW-6), *panch* witness (PW-5), Inspector M.S. Sangha (PW-9), the Investigating Officer (IO) and three to four members of the raiding party along with the driver left the ACB for Nanak Kriti Filling Station, Shalimar Bagh in a government vehicle. Inspector Sangha remained in the government vehicle whereas PWs 5 and 6 went towards the shop.

5. The Appellant who was a Constable attached to Police Station Shalimar Bagh is alleged to have come to the tyre puncture shop of PW-6 at around 5.35 p.m. on a two wheeler scooter. There was one pillion rider in plain clothes whose name was later heard as Sheoraj Singh. PW-7 stated to have received a predetermined signal from PW-5. Thereupon PW-7 along with the raiding party rushed to the spot. PW-5 is stated to have informed PW-7 that the Appellant demanded bribe amount by 'gesture and words'. PW-6 had inquired from the Appellant about Constable Ranbir Singh and the Appellant is supposed to have told PW-6 that he had been sent by Ranbir Singh. Thereupon PW-6 is stated to have given the treated GC notes to the Appellant which were accepted by him with his right hand and kept in the right side pocket of his shirt of the police uniform which he was wearing.

6. PW-7 is stated to have challenged the Appellant about taking Rs. 1500 from PW-6 and offered to allow the Appellant to search him before the Appellant himself was searched. The Appellant is supposed to have declined to do so and became perplexed. On instructions of PW-5, PW-7 is stated to have recovered the bribe amount of Rs. 1500 from the right pocket of the shirt of the Appellant. The serial numbers of the said GC notes tallied with the notes of the pre-raid report. The right hand wash of the accused was taken separately in a colourless solution of sodium carbonate which turned pink. The wash of the right pocket of the shirt was also taken and it turned pink. The solutions were then sealed in empty bottles. The shirt of the Appellant was converted into a *pulanda* with the seal of NSM and was taken into possession vide memo (Ex. PW5/D). The two wheeler scooter on which the Appellant came was also taken into possession.

7. After completion of the investigation, the charge sheet was filed. The investigation was transferred to Inspector H. N. Meena (PW-8). The FSL report (Ex. PW8/A) was obtained. The sanction to prosecute the Appellant was also obtained (Ex. PW1/A and Ex. PW1/B). The charges were framed against the accused for the offences under Sections 7 and 13 (1)(d) of the PC Act read with Section 120-B IPC.

8. Prosecution examined nine witnesses. The most crucial witness was the Complainant himself (PW-6). However, PW-6 turned hostile. In the first place, he stated that his name was not 'Raj Kumar'. It was his brother who was Raj Kumar. His brother had taken the shop and given it to PW-6 for being run. Since everybody started addressing him as 'Raj Kumar' he

adopted that name. After identifying his signatures on the sealed bottles containing the hand wash, PW-6 stated that he was unwell. This was on 1st June 2007. He was thereafter recalled for further examination-in-chief on 6th July 2007. He failed to identify Constable Ranbir Singh. He stated that Constable Ranbir Singh, Gian Chand and HC Yogender had demanded the bribe of Rs. 6000 and that they agreed to accept Rs. 3,000 in two instalments. He confirmed that he had lodged a complaint with ACB on 17th August 2001 at about 2 p.m. He also confirmed the pre-raid proceedings. He identified the Appellant as having come to the shop on a two wheeler scooter. He then stated as under:

“I asked one boy who was working with me to inflate the tyre of the scooter of accused Kanti Prasad. The panch witness insisted me to give those treated GC notes to Kanti Prasad by stating that Ranbir Singh had not come and if I would not give the money to someone the officials of Anti Corruption Branch would implicate me. He kept on insisting me to give the money to Kanti Prasad but in the meantime panch witness gave the signal and the raiding team members rushed there and started beating accused Kanti Prasad. Many persons gathered there and I became perplexed. Thereafter some proceedings regarding hand washes and putting of the clothes of Kanti Prasad took place and I was asked to sign some documents. No money was kept in the pocket of accused Kanti Prasad even then he was taken by the raiding team. I had signed the documents and the paper slip under the fear of police officers of Anti Corruption Branch. Accused Kanti Prasad was arrested in my presence. I do not

remember if the personal search of accused Kanti Prasad was taken as I was in panic.”

9. At the above stage, the Additional Public Prosecutor (APP) with the permission of the trial Court began to cross-examine PW-6. PW-6 denied his previous statement given to the police. He further stated as under:

“It is correct that accused Kanti Prasad had come at my shop on his scooter in police uniform. I did not tell the police that accused Kanti Prasad called me by gesture and asked me ‘Bohni Karwa’ and by the gesture of his hand he demanded money on which I inquired from him about Ranbir Singh and accused Kanti Prasad told me that Ranbir Singh had sent him and thereafter I took out those treated GC notes from my pocket and gave in the right hand of accused Kanti Prasad who kept the same in the right pocket of his shirt (police uniform). (Confronted with portion B to B of his statement Ex. PW-6/A and the contents of post raid report where it is so recorded.”

10. The next prosecution witness was the *panch* witness (PW-5). In his examination-in-chief he stated that the Appellant had come at around 5.35 p.m. to the tyre puncture shop of PW-6 “and demanded the money from the complainant by words and also by gestures”. He confirmed that the treated GC notes had been recovered on the instructions of PW-7 by him from the right side shirt of the Appellant and that the right hand wash of the Appellant turned pink. In his cross-examination on behalf of the co-accused (Ranbir Singh), he stated “I have been a panch witness in two more cases also with Anti Corruption Branch”. He, however, stated that “I have

never seen accused Ranbir nor I can identify him”. In his cross-examination on behalf of the Appellant, he stated as under:

“In the year of 1996 I had been deputed with Anti Corruption Branch as panch witness first time. I have been deputed 10/12 times as panch witness with Anti Corruption Branch. I had accompanied the Anti Corruption Branch officials four times in raids. Today I am deposing first time in the Court. I have not yet been examined in any other case in which I was the panch witness.”

11. In his examination-in-chief, PW-5 stated that the Complainant did inquire from the Appellant about Constable Ranbir Singh and the Appellant told PW-6 that “Ranbir Singh had sent him”. In his cross-examination, he stated as under:

“It is wrong to suggest that accused Kanti Prasad was passing through the shop of the complainant and the complainant had called accused Kanti Prasad and asked him while giving money to him that he should give the same to Ranbir Singh. It is also incorrect that accused Kanti Prasad refused to accept the money and asked the complainant to give the money to the concerned person but complainant insisted and tried to thrust the money in his pocket of the shirt which accused Kanti wanted to return the same to the complainant but at once the raiding party came there and apprehended the accused.”

12. PW-7 who was the Raid Officer, even according to the prosecution was not present at the time when the bribe amount was allegedly given to the

Appellant by PW-6. He could only speak for what happened after he arrived at the spot. Therefore, he was not a witness either to the demand or the giving of the bribe amount.

13. At the outset, it must be noticed that on 6th February 2008, the trial Court passed an order holding that there was no incriminating evidence against the accused Ranbir Singh. A separate judgment was passed on that date acquitting him. Against the said judgment, no appeal has been filed by the State and said judgment has, therefore, become final.

14. From that stage onwards, the case proceeded only against the Appellant herein. By the impugned judgment, the trial Court held the Appellant guilty of the offences under Section 7 and 13 (1)(d) read with 13 (2) of the PC Act. By the order of sentence dated 13th February 2008 sentenced him two years RI and a fine of Rs. 3000 on each count and in default to undergo SI for a period of two months.

15. An analysis of the judgment of the trial Court revealed that it proceeded on the basis that merely because PW-6 had turned hostile did not mean that the entire case of the prosecution should fail. It was held that the *panch* witness (PW-5) had fully supported the case of the prosecution. The statements had been corroborated by the Raid Officer (PW-7). It was held that from the evidence of PW-5 it had been proved that the bribe was demanded by Appellant from PW-6 by 'words and gestures' and the treated GC notes were recovered from his possession. Accordingly, it was held that the presumption under Section 20 of the PC Act got attracted. Also

simply because PW-6 gave a wrong name did not mean that the entire prosecution case should fail.

16. This Court has heard the submissions of Mr. Ramesh Gupta, learned Senior counsel for the Appellant and Ms. Isha Khanna, the learned APP.

17. Mr. Ramesh Gupta, first submitted that with the co-accused Constable Ranbir Singh being acquitted, the case against the Appellant also had to fail since the only allegation against him was that he had accepted the bribe amount on behalf of Constable Ranbir Singh. Merely because three GC notes were recovered from the Appellant, was not sufficient to bring home the charge under Sections 7 and 13 (1)(d) read with 13 (1)(2) of the PC Act. Once the Complainant (PW-6) turned hostile, it could not be said that there was any substantive evidence as regards the taking of the bribe by the Appellant. Mr. Gupta referred to the decisions in *State of Kerala v. C.P. Rao* (2011) 6 SCC 450; *C.M. Girish Babu v. CBI* 2009 II AD (Cr.) (S.C.) 591; *Banarsi Dass v. State of Haryana* 2010 [3] JCC 1842 and *Suraj Mal v. State (Delhi Administration)* (1979) 4 SCC 725. Mr. Gupta also referred to the decision in *G. V. Nanjundiah v. State (Delhi Admn.)* 1988 SCC (Cri) 77 to urge that the evidence of PW-5 a *panch* witness ought not to have been relied upon since he was a stock witness for the prosecution.

18. In reply, Ms. Isha Khanna, the learned APP supported the impugned judgment of the trial Court by relying on the evidence of PW-5 and PW-7. She submitted that both these witnesses corroborated each other as regards the raid proceedings. The fact that the PW-5 spoke about the Appellant

taking the bribe by words and gestures and that this was followed by the recovery of the tainted GC notes from the Appellant was sufficient to attract the presumption under Section 20 of the PC Act.

19. In the first place, it must be noted that the charge framed against the Appellant was that he and Constable Ranbir Singh had entered into a criminal conspiracy to extract illegal gratification from the Complainant to allow him to run his tyre puncture shop. The charge was also framed against Appellant as well as Constable Ranbir Singh under Section 120-B IPC. This charge straightway failed with Constable Ranbir Singh being acquitted by the trial Court by the separate judgment dated 6th February 2008 which was not appealed against by the State.

20. The second charge against the Appellant was that in pursuance of the said conspiracy Constable Ranbir Singh had demanded Rs. 3000 from the Complainant on 17th August 2001. This part of the charge obviously failed. The further part of this charge is that “you accused Kanti Prasad Tyagi obtained Rs. 1500/- from the Complainant for yourself and on behalf of the co-accused, and thereby both of you committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988”. The third charge is also that “in pursuance of the afore-said conspiracy between you two being public servant employed as aforesaid, you accused Kanti Prasad Tyagi obtained Rs. 1500/- from the above named complainant for yourself and on behalf of the co-accused as pecuniary advantage by corrupt or illegal means” or otherwise by abusing your position as such public servant and thereby both of you committed an offence of criminal misconduct as

specified under section 13(1)(d) and punishable under Section 13(2) of the Prevention of Corruption Act, 1988”.

21. A perusal of the charge also shows that the charge against the two accused were in fact inseparable. The offences, according to the prosecution, stemmed from the conspiracy between the two accused. The case against the Appellant was that he had accepted the bribe amount on his own behalf as well as on behalf of the co-accused Ranbir Singh. There was no charge against the Appellant for demanding or accepting separately the bribe amount.

22. In the considered view of the Court, once Constable Ranbir Singh stood acquitted and that acquittal became final the entire prosecution case as projected before the trial Court and on the basis of which the charges were framed, should have failed against the Appellant as well. Once it was clear that Constable Ranbir Singh was not involved in the offence, the question of the Appellant acting in conspiracy with Constable Ranbir Singh and pursuant thereto accepting the bribe money on behalf of Constable Ranbir Singh did not arise. The charge against the Appellant being inseparable from Constable Ranbir Singh meant that the Appellant could not have been convicted of the offence in terms of the charges framed against him.

23. PW-6, the Complainant admittedly turned hostile. Therefore, as regards the pre-raid proceedings and what happened immediately thereafter at the shop of PW-16 had to be proved only by the evidence of PW-5. Admittedly PW-5, a *panch* witness was a stock witness. The Supreme

Court has, in *G.V. Nanjundiah*, discussed the effect of the evidence of stock witnesses. In para 19 of the said judgment in *G.V. Nanjundiah*, it was observed as under [SCC (Cri) @. P.85):

“19. As has been noticed earlier, the learned Special Judge and also the High Court have placed much reliance upon the evidence of R.L. Verma and R.N. Khanna and the Deputy Superintendent of Police as to the acceptance of the bribe by the appellant and recovery of the bribe amount from him. R.L. Verma and R.N. Khanna have been stated to be two independent witnesses. So far as R.N. Khanna is concerned, he categorically admitted in his cross-examination that he had earlier joined three or four such raids for traps organised by the CBI. Khanna and Verma work in the same office and there is substance in the contention made on behalf of the appellant that both of them are very much known to the police. It was the Deputy Superintendent of Police who had called them from their office for the purpose of being trap witnesses. We do not think that in the circumstances either of them can be called an independent witness.”

24. In the present case, it was unsafe for the trial Court to have proceeded to accept the version of PW-5 as regards the demand of the bribe by the Appellant from PW-6 ‘by words and gestures’. If the demand was on behalf of Constable Ranbir Singh then clearly it could not have been merely by gestures. If it was by words, then PW-5 does not say what the words actually used were. On the other hand, PW-6 has totally failed to support the case of the prosecution in this regard. In the circumstances, it was

unsafe for the trial Court to have proceeded to accept the case of the prosecution only on the basis of the evidence of PW-5.

25. As already noticed, PW-5 entered the picture after the signal was given to the raiding party. Therefore he was not a witness either to the demand or acceptance of the bribe by the Appellant.

26. As explained by the Supreme Court in *Suraj Mal v. State*, the mere recovery of the bribe amount cannot itself prove the charge in the absence of any evidence to show that the Appellant voluntarily accepted the bribe amount. Again in *C.M. Girish Babu v. CBI*, it was pointed out that the mere recovery of the tainted money divorced from the circumstances under which it was paid, is not sufficient to convict the accused when the evidence in the case is unreliable.

27. The Court is of the view that the prosecution in this case, has not been able to prove the offence with which the Appellant has been charged beyond all reasonable doubt. The benefit of doubt ought to be given to the Appellant.

28. Accordingly, the impugned judgment of the trial Court is set aside and the appeal is allowed. The Appellant is acquitted of the offences with which he has been charged.

S. MURALIDHAR, J.

MARCH 03, 2014

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CRL.A. No. 151 of 2008

Page 13 of 13