

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL APPEAL No. 326 of 2008

Reserved on: July 7, 2014

Decision on: July 17, 2014

SHANTI LAL MEENA

..... Appellant

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Sidharth Arora and
Mr. Atif Shamim, Advocates.

versus

STATE THROUGH: CBI

..... Respondent

Through: Mr. Manoj Ohri, Special
Public Prosecutor.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

17.07.2014

1. The challenge in this appeal is to a judgment dated 29th March 2008 passed by the learned Special Judge in CC No. 194 of 2001 convicting the Appellant for the offences under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act') and an order on sentence dated 31st March 2008 whereby the Appellant was sentenced to rigorous imprisonment ('RI') for two years with a fine of Rs.15,000 and in default to undergo simple imprisonment ('SI') for 15 days and RI for two years with a fine of Rs.15,000 and in default to undergo SI for 15 days for the offence under Section 13(2) read with Section 13(1)(d) of the PC Act with both sentences directed to run concurrently.

The Complaint

2. The case of the prosecution is that Shashi Bhushan Singh (PW-5) was running the Gold Cable Network at Dabri, New Delhi. On 7th January 2001 there was a scuffle between his brother Brij Bhushan Singh and one Sandeep Goswami. FIR No. 98 of 2001 was registered at police station Dabri on that day. On 11th January 2001, the Appellant who was the Investigating Officer ('IO') of the said case visited the residence of PW-5 and arrested his nephew Dani. According to PW-5 on 12th January 2001, the Appellant contacted PW-5 over the telephone and demanded a bribe of Rs.25,000 for releasing his nephew and closing the case. He is stated to have told PW-5 over the telephone to come to Janak Cinema with the bribe amount, failing which, he would be *challaned*. At the request of PW-5, the Appellant is stated to have agreed to wait till 13th January 2001.

Pre-raid proceedings

3. Since PW-5 was not willing to pay the bribe, he approached the Anti Corruption Branch ('ACB') of the Central Bureau of Investigation (CBI) on 13th January 2001 and gave a written complaint (Ex.PW-5/A) in Hindi. On the basis of the said complaint, a case was registered and the investigation was entrusted to C.K. Sharma (PW-7). PW-7 associated two independent witnesses, Dasrath (PW-2), a Lower Divisional Clerk ('LDC') in the Delhi Development Authority ('DDA') and Ram Saroop (PW-3) also an LDC in the DDA. PW-5 produced Rs.12,000 in government currency ('GC') notes the numbers of which were noted down in the pre-raid proceedings by PW-7. The GC notes

were treated with phenolphthalein powder and handed back to PW-5 with directions to hand it over to the Appellant when he demanded the bribe. The treated GC notes were kept in the left side pant pocket by PW-5. The other formalities were noted down in the handing over memo.

The raid proceedings

4. At around 12.40 pm on 13th January 2001 the CBI team reached the residence of PW-5 at Mahavir Enclave, New Delhi. PW-5 is stated to have received a telephone call from the Appellant in the presence of PW-2 asking him to come to Janak Cinema at around 1.30 pm. The Appellant is stated to have come there at 1.30 pm and then left the spot in the car of PW-5. PW-2 accompanied them in the same car. The three of them had lunch in a restaurant and thereafter the Appellant is stated to have demanded the bribe of Rs.12,000 from PW-5 in the presence of PW-2. According to the prosecution, the Appellant accepted the bribe money in his right hand and kept it in his right pant pocket.

5. After leaving the restaurant, the car was left near PS Dabri. PW-5 and PW-2 are stated to have contacted the CBI team at Janak Cinema and informed them that the bribe money had been paid to the Appellant. Thereafter the CBI team reached PS Dabri; apprehended the Appellant and recovered Rs.12,000 from his right pant pocket. The money was recovered by PW-3. The numbers of the recovered GC notes were tallied with the numbers noted in the handing over memo. The hand washes and the pant pocket washes of the Appellant turned pink. They

were preserved in separate bottles and sealed and labelled. The washes when tested by the Central Forensic Sciences Laboratory ('CFSL') were confirmed to contain phenolphthalein. After the competent authority accorded sanction to prosecute the Appellant, a charge sheet was filed. He was charged with the offences for which he was tried.

The defence of the Appellant

6. Nine witnesses were examined for the prosecution. In his statement under Section 313 Cr PC, the Appellant claimed no knowledge of PW-5 running a cable network business. Apart from the knowledge that Sandeep Goswami had lodged a complaint regarding grievous hurt in the Dabri police station, he had stated that he had no further knowledge. He, however, admitted that he was the IO of the said FIR No. 18 of 2001 and that on 11th January 2001 he had arrested the nephew of PW-5 in the said case. He denied having demanded or accepted any bribe from PW-5. He denied that the recovery of any treated GC notes was so made from him. He claimed that he was wrongly detained by the CBI officials. He denied the preparation of the recovery memos; the fact of the washes turning pink and stated that the CFSL report was itself manipulated.

The trial court judgment

7. The trial Court has, in the impugned judgment, first dealt with the defence of the Appellant that he was at the relevant time, i.e., around 3 pm on 13th January 2001 at a distance of 3 km from the police station. In support of his plea *alibi* the Appellant gave a suggestion to Inspector

A.K. Pandey, PW-9 in his cross-examination that he was discharging his duties 1 km away from the police station at the relevant time and this was denied by PW-9. The trial Court also discussed the evidence of the defence witnesses, i.e., ASI Sheotaj Singh, DW-1, Constable Chetan Kumar, DW-2 and Prembir Singh, DW-3. None of them brought the originals of the records of the daily dairy upon which they relied. The trial Court noticed that in the cross-examination of PW-5 and PW-7 no suggestion was put that the Appellant was at some other place situated at a distance of 1 km or 3 km away from the police station. Accordingly, the trial Court held that the Appellant had failed to prove the defence of *alibi*.

8. On the question of demand and acceptance of bribe, the trial Court noticed that PW-5 had, in his deposition in the Court, added details to the original complaint. He stated that one Rehmad Khan had come to his residence and informed him that the Appellant was the IO of the case arising out of the FIR registered on 9th January 2001 and that they would have to spend at least Rs. 1 lakh; he stated that he again received a phone call on the intervening night of 11th/12th January 2001 for the same from Rehmad Khan and was informed that the Appellant wanted to talk to him. Thereafter the Appellant told PW-5 that he should contact him on the next date failing which all the members of his family would be arrested; and further that Rehmad Khan told PW-5 that that he would have to pay at least Rs. 25,000 and he would arrange a meeting between them. The trial Court noted that despite PW-2, the shadow witness turning hostile, he confirmed in his cross-examination the pre-

raid proceeding including demonstration and also explained the significant fact of the chemical power being applied on the GC notes. He also admitted that the mobile number of the CBI was appended on the mobile of PW-5 for giving signal to the CBI team regarding completion of the transaction. He also confirmed the preparation of the handing over proceedings conducted in the CBI. The recovery witness, PW-3 did not support the case of the prosecution.

9. The trial Court concluded that PW-5 had tried to unsuccessfully to help the Appellant with the introduction of Rehmad Khan into the transaction. PW-5 also tried to help the Appellant by changing the place of recovery on the person of the Appellant to the shirt pocket of the Appellant instead of the pant pocket. The trial Court concluded that the entire evidence of PW-5 could not be rejected as a whole. As long as the evidence of PW-7 who laid the trap proceeding was trustworthy, there was no need to seek any corroboration. The trial Court further observed the fact that PW-5 was examined in the Court more than two and half years after the incident in the first instance and thereafter cross-examined more than five years after the incident, would have resulted in faded memory. As long as the tainted money was recovered from the person of the Appellant and was proved there was no need for a specific demand for money to be proved. There was neither cross-examination nor any suggestion put to PW-5 that the Appellant did not demand any bribe on the intervening night of 11th/12th January 2001. The fact that the washes of the right hand and right side pant pocket turned pink in colour was confirmed by the CFSL. It was also

corroborated by the evidence of PW-5 and PW-6. There was no question put to PW-1 Mr. K.S.Chabra, Senior Scientific Officer, CFSL that the samples had been tampered with by the prosecution. It was further held that the Appellant had not shown that PW-7 and PW-9 had any enmity with him and that he had been unable to rebut the statutory presumption under Section 20 of PC Act. Accordingly, the Appellant was found guilty for the offences and sentences in the manner indicated hereinabove.

10. This Court heard the submissions of Mr. Sandeep Sethi, learned Senior counsel for the Appellant and Mr. Manoj Ohri, learned counsel for the CBI respectively. It must be mentioned at this stage that although the question as regards the illegality of the sanction granted for prosecuting the Appellant was argued before the trial Court and held against the Appellant, the said point is not urged in this Court in appeal.

Demand and acceptance of bribe

11. The first aspect of the matter to be examined is the conscious demand and acceptance of the bribe amount by the Appellant was proved beyond reasonable doubt by the prosecution. The key witness is the Complainant, PW-5. It is not in doubt that in the FIR No. 98 of 2001 registered against the two brothers and father of PW-5 by Sandeep Goswami (PW-8), the Appellant was the IO. It is also not denied that the complaint (Ex.PW5/A) contained his signature at point 'A' and was in his handwriting. In examination-in-chief, PW 5 confirmed that "whatever written in the complaint Ex.PW5/A are correct." A perusal

of the compliant shows that on the night of 11th January 2001 the Appellant who was attached to the police station Dabri took away the nephew of PW 5 from his house and on the same night he made a call to PW 5 on Mobile No. 9810377865 requiring him to pay Rs.25,000 for releasing his nephew. It is alleged that on the following night the Appellant again called and demanded the said amount of bribe. The Appellant asked PW-5 to come to Janak Cinema. He also told PW-5 that he should arrange for the money on 13th January 2001 and he would tell him the time and venue for such payment. It was at that stage that PW-5 decided that he would go to the ACB and lodge a complaint.

12. In the examination-in-chief of PW-5, more or less stuck to the prosecution version except that while he deposed in Court, he introduced another character viz., Rehmad Khan who was described as a tout of the police. PW-5 stated in Court that Rehmad Khan had come to his residence and told PW-5 that he would have to spend at least one lakh failing which his family members would have to face problems. He further added that on the night intervening 11th/12th January 2001 he received a call from Rehmad Khan who told him that the Appellant wanted to talk him. However, PW-5 maintained that “Meena told me that I should contact him on the next day otherwise he will put all the members of my family behind the bars. He also talked about the money and Rehmad Khan told me that at least Rs. 25,000 had to be spent and told that he will arrange a meeting in myself and Meena.” He further stated that “on the same night when I had talked with Meena, the police

from Dabri Police Station arrested my nephew and in that police party Meena and Rehmad Khan were also there.”

13. As pointed out by the trial Court, the introduction of Rehmad Khan seems to be a deliberate attempt by PW-5 to create confusion. In his examination-in-chief, he confirmed that “At Janak Cinema Meena came along with a Constable on his scooter. There I was introduced with Meena by Rehmad Khan. Meena told me that he will not discuss any matter here and directed me to proceed to Aggarwal Sweets, Sagarpur. On this Shanti Lal Meena sat in my car and we proceeded towards the place told by Shanti Lal Meena and the Constable followed us on two-wheeler.” He was also told that the trap team would contact him at that stage. In the car the Appellant told him that they were proceeding to B-1, Market. On reaching the market, there were four persons, i.e., PW-5, PW-2, the Appellant and the Constable who followed on the two-wheeler and they entered the restaurant. PW-5 then stated as under:

“There we had some snacks/drinks. Shanti Lal Meena told me that the complainant of the case registered against us was telling the name of twenty persons. And I told him that it was a false case registered against us rather the Complainant had beaten my brother. Shanti Lal Meena told me that for getting the person bailed out at Rs. 5,000 were spent, therefore, I would have to spent at least Rs. 1 lakhs in our case. I told him that I had only Rs. 12,000 with me and Shanti Lal Meena told me to produce all my family members and he will help me for their bail. In the restaurant I gave him Rs. 12,000 which he kept in his shirt pocket after accepting the same from me. Shanti Lal Meena used my mobile

and made a call at police station for giving a message that he was sitting somewhere and if there is any urgent message that can be conveyed on my cell phone which number he gave to the person attending the phone at police station.”

14. The above evidence of PW-5 is categorical as regards the conscious demand and acceptance of the bribe by the Appellant. Thereafter, what happened as described by PW-5 was fully corroborated by PW-7. PW-5 called the CBI officials and told them that they were at Janak Cinema. PW-5 told them that he had already given the bribe amount to the Appellant and would be bringing him to Janak Cinema. On the way even a call was received from the police station on the cell phone of PW-5 for the Appellant, and the Appellant told PW-5 to drop him at the police station. Thereafter PW-5 then came back again to the police station Dabri along with the CBI officials and identified the Appellant. Thereafter the CBI officials rushed into the police station and apprehended the Appellant.

15. The bribe amount recovered was originally stated to be from the right pant pocket of the Appellant but in his examination-in-chief PW-5 stated that it was recovered from the shirt pocket. However, he confirmed that the hand washes and pant wash of the Appellant turned reddish. PW-7 fully corroborated the trap proceeding.

16. It was submitted that PW-5 is an unreliable witness and it was unsafe for the Court to proceed and convict the Appellant on the basis

of such evidence. The Court is unable to accept the above submission. When the entire evidence of PW-5 is read as a whole, it does appear to be consistent. He was first examined in chief on 3rd June 2003. He identified the Appellant on 24th March 2004. He also identified the tainted GC notes which were recovered. He stated that “GC notes Ex.P1 to P24 in the denomination of Rs. 500 are the same which were given to the accused as bribe money and recovered from them.” It is thereafter when he cross-examined after a gap on 8th and 9th February 2005 that he began making certain inconsistent statements.

17. On analysing of the evidence of PW-5, the Court is of the view that there was a conscious demand and acceptance of the bribe amount by the Appellant. The evidence of PW-5 cannot be wholly rejected on account of certain inconsistencies in his deposition. All the material particulars have been spoken to by him and have been fully corroborated by PW-7.

Link evidence

18. It was urged that there was an absence of link evidence to show that the hand washes of the Appellant and the right hand pant pocket wash remained free of tampering till the time they were sent to the CFSL for testing. It is pointed out that there was an unexplained delay of 17 days in sending the washes to the CFSL for testing and there was no evidence to show that during this period they were kept at the *malkahana*.

19. While it is true that there was a time gap in sending samples to CFSL, the Court finds that no question was put to the Scientific Officer (PW-1) that this resulted in any distortion of the test result. PW-1 denied the suggestion that the samples were tampered. He stated that “on 30th January 2001 three sealed bottles were received in the laboratory and seal was intact and tallied with specimen seal”. As regards the difference in the shades of red of the washes, the following question and answer in the evidence of PW-1 is relevant:

“Q: Is it correct that colour deep red and pink are two different colours”

Ans: When the quantity of phenolphthalein is less than we call pink colour and when the quantity of phenolphthalein increases and the intensity of pink colour increases we call it deep red.”

20. The Court is, therefore, not persuaded to hold that there was tampering with the hand washes and pant wash of the Appellant or with the forensic evidence and that the CFSL report cannot be relied upon.

Other evidence

21. The Court finds that the inconsistency in the evidence of PW-5 as regards the tape recording device does not really affect the case of the prosecution. Even in the absence of proof of such conversation, there was sufficient evidence on record to prove the guilt of the Appellant. The evidence of the cell phone conversations has been discussed in detail by the trial Court. The non-production of Rehmad Khan who appears to have been introduced as by PW-5 would also not make much difference in the facts and circumstances of the case.

Conclusion

22. Consequently, this Court is not persuaded to hold that the impugned judgment of the trial Court finding the Appellant guilty of the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC Act suffers from any legal infirmity.

23. As regards the sentence, the Appellant was a Sub Inspector and entrusted with the task of law enforcement. In the circumstances, the punishment awarded by the trial Court cannot be said to be disproportionate. The sentence awarded to the Appellant by the trial Court is upheld.

24. The bail bond of the Appellant is cancelled. He is directed to surrender forthwith to serve out the remaining sentence.

25. The appeal is dismissed but with no order as to costs.

26. A certified copy of this order along with the trial Court record be delivered by Special Messenger to the trial Court concerned forthwith

S. MURALIDHAR, J.

JULY 17, 2014

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