

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 634 of 2008

Reserved on: October 29, 2014

Decision on: November 7, 2014

KRISHAN CHANDER Appellant

Through: Mr. N. Hariharan, Senior Advocate with
Mr. Varun Deswal, Mr. Siddharth S.
Yadav, Mr. Amit S. Chauhan, Mr. Sahil
Paul, Mr. Vaibhav Sharma and
Mr. Akshay Bhandari, Advocates.

versus

THE STATE OF DELHI Respondent

Through: Ms. Isha Khanna, APP.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

07.11.2014

1. This appeal is directed against the judgment dated 14th July 2008 passed by the Special Judge, Delhi in CC No. 21/05 convicting the Appellant for the offence under Sections 7 and 13 (1) (d) punishable under Section 13 (2) of the Prevention of Corruption Act, 1988 ('PC Act') and the order on sentence dated 15th July 2008 whereby for each of the aforementioned offences he was sentenced to undergo rigorous imprisonment ('RI') for two years with fine of Rs.5,000 and in default to undergo simple imprisonment ('SI') for two months. Both sentences were directed to run concurrently.

2. The case of the prosecution is that FIR No. 662/04 was registered at Police Station ('PS') Nangloi on 29th July 2004 under Sections 279/337 IPC against one Kishan Kumar (PW-9), the brother of the Complainant Jai Bhagwan (PW-2). PW-9 was arrested on 29th July 2004. PW-2 approached Assistant Sub Inspector ('ASI') Ranbir Singh (PW-11) who was the Investigating Officer ('IO') of the said case for release of PW-9 on bail. PW-11 is stated to have accepted the bail bond of PW-9 and directed the Appellant herein who was a Constable at PS Nangloi, to release PW-9. It is stated that the Appellant, however, demanded a bribe of Rs.5,000 for releasing PW-9. Under duress, Complainant paid the Appellant Rs.4,000 as bribe. Thereafter PW-9 was released and the Appellant asked the Complainant to pay the balance amount of Rs.1,000 on 30th July 2004, between 6 and 7 pm at the Ditchau Kalan Bus Stand, Najafgarh.

3. Since PW-2 was against giving of bribe he approached the Anti Corruption Branch ('ACB') and gave his complaint (Ex.PW-2/A) which was recorded by Inspector Sunder Dev (PW-12) at around 3.30 pm in the presence of Anoop Kumar Verma (PW-6), the *panch* witness, who was at the relevant time a Head Clerk in the Directorate of Education. PW-2 brought with him two government currency ('GC') notes of Rs.500 each. Their numbers were noted in the pre-raid proceedings by PW-12. Thereafter PW-12 applied phenolphthalein powder to the GC notes and gave a demonstration as to its effect. The treated GC notes were given to PW-2, who kept the same in his left shirt pocket. The hands of PW-2, PW-6 and PW-12 were washed and

the solution was thrown away. PW-6 was directed to remain close to PW-2 to overhear the conversation and after being satisfied that bribe had actually been given, to give the pre-determined signal.

4. At around 4.30 pm, PW-2, PW-6, PW-12 and Inspector B.S. Yadav (PW-10), along with SI Bhim Singh and Constable Rajiv and other members of the raiding party left the ACB for the Ditchau Kalan Bus Stand in a government vehicle. They reached there around 5.45 pm. At around 7 pm, the Appellant came there and had a conversation with PW-2. Thereafter PW-2 and the Appellant moved towards a water trolley. There the Appellant took some water and proceeded ahead with PW-2 and PW-6. After sometime PW-2 took out the treated GC notes from the pocket of his shirt and extended them to the Appellant who received them with his right hand and kept the same in the left pocket of his shirt. PW-6 then gave the pre-determined signal upon which the raiding party reached the spot.

5. PW-6 informed PW-12 that the Appellant had demanded and accepted the bribe amount from PW-2. PW-12 introduced himself to the Appellant who became perplexed. The Appellant is stated to have taken out the treated GC notes from the pocket of his shirt with his left hand and thrown the same on the ground. The GC notes were then picked up from the ground by PW-6 on the instructions of PW-12. The serial numbers of the recovered GC notes were tallied with those noted in the pre-raid proceedings. The right and left hand washes of the accused as well as the left shirt pocket wash of the Appellant

turned pink and were transferred into clean bottles which were sealed and labelled appropriately. The Appellant was arrested and the case was filed against him under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC Act.

6. The prosecution examined 13 witnesses. In his statement under Section 313 Cr PC, the Appellant admitted that he was working as a Constable at PS Nangloi and that in FIR No. 662 of 2004, PW-9 was an accused. He, however, stated that he did not know whether PW-11 had accepted any bail bond for release of PW-9. He denied the raid proceedings or his hand washes turning pink. When asked whether he had anything else to say he denied having demanded or accepted any bribe amount. He stated "Complainant wanted to thrust the GC notes in my pocket but I protested and the money fell down on the ground."

7. The trial Court in the impugned judgment first negated the contention of the Appellant that the sanction was not validly granted. This point has not been urged before this Court. In the trial Court PW-2 turned hostile. He claimed that he had inserted the treated GC notes in the left shirt pocket of the Appellant. The trial Court found that the statements of PW-6 and PW-12 totally demolished this version of PW-2. The fact that washes of both of the Appellant's hands turned pink belied the version of PW-2 and the defence of the Appellant that he had taken out the money with one hand and thrown it on the ground. As far as the proof of demand of Rs.1,000 by the Appellant, the trial Court noted that the fact that the Appellant was caught red-

handed accepting the bribe at the Ditchau Kalan Bus Stand at Najafgarh was sufficient to show that PW-2 had been asked to bring the said amount by the Appellant to that particular place. Even on this aspect it was not as if PW-2 had turned completely hostile. The trial Court, therefore, proceeded to convict and sentence the Appellant for the offences with which he was charged.

8. Mr. Hariharan, learned Senior counsel appearing for the Appellant submitted that there were two distinct transactions that had taken place according to the prosecution. One was the payment of Rs.4,000 at PS Nangloi by PW-2 to the Appellant for release of PW-9 on bail. This transaction was held not to have been proven by the trial Court. According to him, the second limb of the transaction was the payment of balance sum of Rs.1,000 integrally linked with the first transaction. Therefore, when the first part of the transaction was disbelieved by the trial Court, the entire prosecution case should have been held not proved. He relied on the decision in *Hari Dev Sharma v. State (Delhi Administration)* (1977) 3 SCC 352.

9. He submitted that there was no occasion for the Appellant to demand any further sum of Rs.1,000 from PW-2 since it had come in the evidence of PW-11 that by the time he left the PS Nangloi at around 10 pm, PW-9 had already been released. As far as the presence of the Appellant at the bus stand is concerned, Mr. Hariharan submitted that he was a resident of Najafgarh and his duty hours were 8 pm to 8 am at PS Nangloi at the relevant time. Therefore he was

supposed to come to the bus stand at 7 pm and that is how he was present there. He pointed out that the evidence of PW-6 does not categorically prove any demand even at the time of meeting of PW-2 with the Appellant at the bus stand. Further PW-2 is stated to have extended his hand towards the Appellant to shake his right hand and it is, therefore, possible that due to that reason the right hand wash of the Appellant turned pink.

10. Mr. Hariharan submitted that it was unsafe to rely on the evidence of PW-6 who appeared to have to be a stock witness and the mere recovery of the treated GC notes cannot by itself constitute a circumstance enough to return the finding of guilt against the Appellant.

11. Ms. Isha Khanna, learned APP referred to the pre-raid proceedings which showed that PW-2, PW-6 and PW-12 had washed their hands after the treated GC notes were given to the Complainant. Therefore his shaking hands with the Appellant at the time of raid could not have resulted in the right hand of the Appellant coming into the contact of the phenolphthalein powder. Clearly, the Appellant had touched the treated GC notes with both his hands when it was extended to him. This was a case where PW-12 himself also witnessed the handing over of the GC notes to the Appellant from a vantage point. Ms. Khanna pointed out that PW-6 had stood firm in his cross-examination. The version that the GC notes were forcibly thrust into his hand was a desperate argument by the Appellant and not supported

by any of the witnesses. She submitted that the evidence of the prosecution fully proved the demand of Rs.1,000 and its conscious acceptance by the Appellant.

12. First, the Court would like to discuss the evidence of PW-2, the Complainant. He admitted that a case was registered against his brother PW-9 under sections 279/337 IPC and the IO had demanded Rs.5,000 from him for the bail of PW-9. He then stated “I was asked by that person to give Rs.4,000 to accused Krishan who was posted as Constable in that PS. On the directions of that IO, I had given Rs.4,000 to accused Krishan on account of duress.” PW-2, however, stated that the said IO had told him that he would send the Appellant to collect balance amount of Rs.1,000 to Najafgarh. Thus it is not as if the involvement of the Appellant in having accepted the balance bribe amount of Rs.1,000 has not been spoken about by PW-2.

13. PW-2 also confirmed the pre-raid proceedings; his producing the two GC notes; them being treated with phenolphthalein powder; his doing so in the presence of PW-6; and the instructions given to both of them by PW-12.

14. In his cross-examination by the APP PW-2 confirmed that the complaint (Ex.PW-2/A) “is in my own handwriting which is recorded by me without any pressure or coercion.” He soon contradicted this by stating that he had not stated therein that PW-11 had asked the Appellant to release his brother and that PW-11 himself went for

some other work and that the Appellant had then demanded Rs.5,000. However, in his cross-examination by counsel for the Appellant he did say “I only made the complaint against the accused because Rs.1,000/- were to be taken by him.” and further “It is correct that IO had told me that the accused would come at bus stop and I was asked to give money to him.” PW-2 also confirmed the pre-raid report (Ex. PW-2/B). Where PW-2 does not support the case of the prosecution is that he stated that the Appellant came there on a motorcycle and “Thereafter I put those treated GC notes in the pocket of the shirt of accused Krishan. Accused took out those treated GC notes from his pocket and threw on the ground.”

15. Consequently, while PW-2 has turned hostile as to the manner in which the treated GC notes reached the Appellant, certain other material aspects, regarding the person to whom the bribe was given, has been confirmed by him.

16. The Court is not persuaded to agree with the submission of Mr. Hariharan that the two transactions, i.e., one concerning the payment of Rs. 4,000 at the police station by PW-2 and subsequent transaction concerning payment of Rs. 1,000 were two parts of the same transaction and because the first part is not proved, the second should also automatically be taken as not proved. As noticed hereinbefore, PW-2 himself states that he gave the complaint because demand of Rs. 1,000 was made to him by the Appellant notwithstanding the payment made of Rs. 4,000. The presence of PW-2 at the spot

otherwise cannot be explained. It is inconceivable that PW-2 will somehow know that he should be present at the Ditchau Kalan Bus Stand, Najafgarh on the date of the raid on his own.

17. It is in the background of the above facts that the evidence of the *panch* witness (PW-6) requires to be examined. He has fully supported the case of the prosecution as far as filing of the complaint (Ex.PW-2/A) by PW-2; the complaint was “regarding demand of bribe by Constable of Police Station Nangloi for releasing the brother of the Complainant.” He has also fully proved the pre-raids proceedings as well as post-raids proceedings. His description as to what happened at the time of the raid completely supports the case of the prosecution.

18. The cross-examination of PW-6 by counsel for the Appellant did not yield much. He specifically denied the suggestion that “the accused did not accept the money from the Complainant and he forcibly inserted those GC notes in the pocket of shirt of the accused and immediately those GC notes on the ground.” He again denied the suggestion that “the accused had thrown the money before Inspector Sunder Dev reached the spot.”

19. Inspector Sunder Dev (PW-12) himself saw what transpired. This is one of those cases where the Raid Officer (‘RO’) was able to observe what transpired. He stated as under:

“At about 7 pm accused present in the Court today,

correctly identified whose name revealed later on Constable Krishan Chander came and had some talk with Complainant and Complainant who was sitting on a takhat stood and moved towards a water rairi along with accused and the *panch* witness and there they had again some talk with each other. Complainant extended those GC notes towards the accused which he took in his right hand and kept the same in the left pocket of his shirt. In the meantime, I received pre-determined signal from *panch* witness and I along with raiding team rushed to the spot. I asked the *panch* witness what had happened and he told me that Krishan Chander had taken bribe money of Rs. 1,000 from the Complainant and had kept in the left pocket of his shirt.”

20. PW-12 too denied the suggestion that the GC notes were already on the ground when he reached the spot. Consequently, the conscious acceptance of the bribe money by the Appellant as well as its recovery by the RO from the Appellant has been consistently spoken of by both PW-6 and PW-12.

21. Mr. Hariharan, placed reliance on the evidence of ASI Ranbir Singh (PW-11), who stated in his examination-in-chief that he had left the PS at around 10.07 pm asking the Appellant to release PW-9. When he came back at 11.55 pm he did not find the Appellant in the PS. No suggestion was given to this witness about Rs. 4,000 having paid by PW-2 to the Appellant for being given to PW-11. It cannot be said that merely because PW-9 had already been released by the time PW-11 left, the demand of bribe of Rs.1,000 by the Appellant was improbable. The above evidence is to be seen in the context of PW-

9's evidence who in his examination-in-chief, clearly stated as under:

“Constable Krishan Chander did not release me and rather demanded a sum of Rs. 5,000 as bribe. My brother told him that we are poor persons and we cannot arrange such a huge sum and thereafter, my brother had arranged a sum of Rs. 4,000 and handed over to Constable Krishan Chander and after taking bribe of Rs. 4,000 Constable Krishan Chander, i.e., the accused present in the Court today released me.”

22. When this witness was cross-examined by learned APP for the State, he denied that the Appellant had asked PW-2 give the balance amount of Rs. 1,000 on the following day, i.e., 30th July 2004 between 6 and 7 pm which was contrary to his police statement (Ex.PW-9/A). However when he was cross-examined by learned counsel for the accused, he supported the prosecution by stating:

“the surety was accepted not by the accused but ASI Ranbir Singh. When the demand of Rs. 5,000 was made by the accused, ASI Ranbir Singh was not present there. I had not made any complaint to ASI Ranbir Singh regarding the demand of bribe. A sum of Rs. 4,000 was paid after arranging the same from our relative from Village Mangol Puri. My brother Jai Bhagwan went to Mangol Puri after arranging the amount and he returned to PS at about 12 night. It is incorrect to suggest that accused never demanded any money or that I am deposing falsely.”

23. In the considered view of the Court, the above witness can be said to support the case of the prosecution as far as the demand of bribe by the Appellant is concerned. As regards the demand of bribe of Rs.

1,000 its conscious acceptance by the Appellant, as already noticed, has been proved by PW-6 and fully corroborated by PW-12.

24. The decision in *Hari Dev Sharma v. State (Delhi Administration)* (supra) turned on its own facts. There the Court was of the view that since the acceptance of Rs. 20 as advance of the total bribe amount of Rs. 100 was disbelieved, the High Court was not justified in affirming the conviction as regards the acceptance of the balance sum since the prosecution case was ‘one integrated story’ which the trial Court had accepted. As far as the present case is concerned, the trial Court has not accepted the prosecution case as, one integrated story. On a careful perusal of the entire evidence, this Court is not persuaded to come to a different conclusion.

25. The demand and acceptance of bribe of Rs. 1,000 by the Appellant has been clearly established by the prosecution beyond all reasonable doubt. Reliance placed on the decision of this Court in *Kanti Prasad Tyagi v. State of Delhi 2014 (1) JCC 803* is also of no assistance to the Appellant. In the facts of that case it is clear that neither the demand nor the acceptance of the bribe was clearly proved by the prosecution.

26. For all the aforementioned reasons, this Court concludes that the trial Court was not in error in convicting the Appellant for the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC Act.

27. On the order on sentence, considering that the Appellant was a police Constable and was entrusted with the duty of enforcement of law and order, the sentence awarded to the Appellant by the trial Court cannot be said to be disproportionate.

28. Consequently, this Court finds no merit in this appeal and it is accordingly dismissed. The bail bond of the Appellant is hereby cancelled. The Appellant is directed to surrender forthwith to serve out the remainder sentence.

29. The trial Court record along with a certified copy of this judgement be sent back forthwith.

S. MURALIDHAR, J

NOVEMBER 7, 2014

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