

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 2578 of 1999

APPELLANT

: Johan Singh, aged 54 years,
Son of late Harakhram,
Vanpal, Murvand, P.S. Keskal
District – Bastar, M.P. (Now C.G.)

VERSUS

RESPONDENT

The State of Madhya Pradesh
(now the State of Chhattisgarh)
Through, Special Establishment of Police

POST FOR PRONOUNCEMENT OF JUDGMENT ON 20 JANUARY, 2015

Sd/-
Inder Singh Uboweja
Judge

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[Criminal Appeal u/s 374 (2) of the Code of Criminal Procedure, 1973]

Present:

Mr. R.S. Marhas and Ms. Anubhuti Marhas, Advocates for the appellant.
Mrs. Shobha Kashyap, Dy. Government Advocate for the State.

SB: Hon'ble Mr. Inder Singh Uboweja, J.

J U D G M E N T

(Delivered on ..20.. of January, 2015)

1. Challenge in this appeal is to the judgment of conviction & order of sentence dated 14.09.1999 passed by the Special Judge, Special Court, Raipur (constituted under Prevention of Corruption Act, 1947), in Special Case No.83/91, whereby the trial Court has convicted the appellant under Section 161 of the Indian Penal Code (for short, 'the IPC') and under Sections 5(1)(d) read with 5(2) of the Prevention of Corruption Act, 1947 (for short 'the Act') and sentenced him to undergo R.I. for one year and fine of Rs.1,000/-, in default, additional S.I. for three months and R.I. for one year and fine of Rs.1,000/-, in default, additional S.I. for three months.
2. Conviction is impugned on the ground that without there being an iota of evidence the trial Court has convicted & sentenced the appellant as aforementioned and thereby committed illegality.

3. As per case of prosecution, the appellant was posted as forester in village Murvand, P.S. Keskai, District -Kondagaon. Complainant - Ramsai (PW-1) was called by the appellant for returning his carpenter registration license, which was seized by the forest department in relating to forest offence against the complainant. Appellant has demanded Rs.300/-, instead, complainant approached Lokayukta and submitted a complaint (Ex.P-1). Madan Gopal Pandey, S.P. Lokayukta deputed DSP, M.C. Sharma (PW-8) to arrange a trap for the appellant. Ramdayal Bele (PW-6) and S.P. Poya were deputed by the Collector, Raipur for his assistance. Shadow witnesses Kosal Singh and Pothiram also came with the complainant. Three currency notes denomination of Rs.100/- were taken from the complainant and treated with phenolphthalein powder and handed over to the complainant with necessary directions. Preliminary memorandum (Ex.P-2) was prepared at 1.30 p.m. DSP, M.C. Sharma (PW-8) along with other members of the trap party including Madan Gopal Pandey, S.P. proceeded to village Murvand near the house of the appellant and scatter there taking their positions. Complainant gave currency notes of Rs.300/- to the appellant who kept the same in his table. On appointed sign being given by the complainant Ramsai (PW-1), M.C. Sharma (PW-8) rushed and caught both the hands by wrist of the appellant. His hands were dipped in the solution of Sodium Bi-Carbonate, the solution turned pink. Currency notes of Rs.300/- were recovered from the possession of the appellant. Memo (Ex.P-4) was prepared on spot. Seizure memo of currency notes and table were prepared separately. Spot map (Ex.P-3) was drawn. Appellant was arrested on the spot. M.C. Sharma (PW-8) prepared a Dehati Nalishi (Ex.P-9) and on the basis of which FIR (Ex.P-10) was

registered by him. Packets containing phenolphthalein and solutions turned pink were sent to FSL. After obtaining necessary sanction from Law and Legislative Department vide Ex.P-8, charge sheet was filed against the appellant.

4. Appellant pleaded not guilty. According to him, complainant wanted to take undue advantages from him by getting change the statement of the witnesses in forest case, which was pending against him. On refusal, complainant got him falsely implicated in trap case. He has not examined any defence witness.
5. Learned Special Judge believing the prosecution version and disbelieving the defence story of the appellant, convicted and sentenced the appellant as aforementioned.
6. It is well settled that proof of both demand of bribe and acceptance thereof is necessary to uphold conviction, [kindly see **Suresh Kumar Shrivastava vs. M.P. State (AIR 1994 SC 245)**, **Surajmal vs. State (Delhi Administration) (AIR 1979 SC 1408)**]. It is also well settled that burden is upon the prosecution to prove its case beyond reasonable doubt. These principles are so well settled that elaborate discussion on these is not necessary.
7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.
8. Learned counsel for the appellant has submitted that the appellant was falsely implicated by the complainant as he had booked him under forest offence. Appellant came to his room with fainted money and asked to change his statement with regard to Beet guard, Surendra Kumar Shukla, when he refused, then the complainant tried to forcefully hand

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over the fainted notes to him, after that the complainant placed the notes on the table and started going out. When the appellant asked him to take away the money, the trap party came. Appellant cannot be convicted as the prosecution has not been able to prove its case beyond all reasonable doubts. None of the witness of the trap party has been able to listen to the conversation between the appellant and the complainant. The complainant status is that of an accomplice as giving of bribes, which is also an offence under Section 165 of the IPC. In absence of any independent corroboration, the appellant could not have been convicted, especially in view of the defence plea which has been proved by him.

9. Learned counsel for the appellant placed reliance in the matter of **C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779**, in which Hon'ble Supreme Court in paras 21 & 22 held as under :-

21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that the accused received the amount towards gratification.

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.

"4..... It is well established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading

evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under Section 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. *As soon as he succeeds in doing so, the burden is shifted to the prosecution which still has to discharge its original onus that never shifts* i.e. that of establishing on the whole case the guilt of the accused beyond a reasonable doubt." (emphasis supplied) (See *V.D.Jhingan v. State of U.P. AIR 1966 SC 1762 at p. 1764, para 4.*)

10. On the other hand, learned State counsel opposed the appeal and supported the judgment of conviction and order of sentence passed by the Special Judge.
11. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
12. In the present case, appellant has substantially not disputed that at the relevant date & time he was posted as forester at village Murvand. Ramsai (PW-1) submitted an application (Ex.P-1) to the effect that to return the seized papers of forest offence, appellant was demanding a bribe of Rs.300/-. On the basis of which, M.C. Sharma (PW-8)

constituted the trap party consisting S.P. Poya and Ramdayal Bele (PW-6). In the presence of these witnesses, three currency notes of the denomination of Rs.100/- were treated with phenolphthalein. Preparing preliminary panchnama (Ex.P-7) the currency notes were given to Ramsai (PW-1) for onward delivery to the appellant. Thereafter, the trap party proceeded further. Ramsai (PW-1) entered in the house of the appellant and has come out from the house, members of the trap party in presence of S.P. Poya and Ramdayal Bele (PW-6) apprehended the appellant. The currency notes of the denomination described in preliminary panchnama (Ex.P-7) were recovered from him. The hand wash of the appellant turned pink, as such panchnama (Ex.P-7) was prepared. After obtaining sanction for prosecution, the appellant was charge-sheeted initially under Section 161 of the IPC, Section 5(1)(d) read with 5(2), thereafter charge-sheeted under Section 7 and 13(1)(d) read with 13(2) of the Act.

13. Ramsai (PW-1) is the complainant. He stated that the appellant had come to his house after the registration of forest offence against him and had seized his carpenter license and receipt. After one month, the appellant again came to his house, but he could not meet him and left message for him to come Murvand. Thereupon, he went to the house of the appellant, but could not meet him and on the way near Dadargarh, appellant met him. Appellant asked him to bring an amount of Rs.300/- and take his license and receipt to enable him to start his work of carpenter. He went to the house of his brother Naval Singh and borrowed money from him and informed him that the money was required to get his license back. When he went to Kanker, he met one

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Chherka, he is a peon. He had asked to come after 2-3 days to meet one Khatuwala, who had earlier got someone trapped. They met Khatuwala, who advised him to meet Madan Gopal of Lokayukt. Then, he went to Lokayukt and complaint (Ex.P-1) was made by him, thereafter preliminary panchnama was prepared. This witness further stated that the trap was laid and he had given the fainted money to the appellant. In his statement he has stated that at the time when the notes were given to the appellant, one patwari Laxman Singh was also present there. Prosecution has not examined the witnesses Naval Singh brother of the complainant, Chheraka and Khatuwala for support of statement of the complainant. So, in absence of their statement it cannot be believed that complainant had met them and they discussed about problem of the complainant.

14. Except Laxman Singh (PW-5) no other prosecution witness was present in the room at the time of delivering the currency notes to the appellant. Laxman Singh (PW-5) has stated in his statement that the complainant came and shakes hand with the appellant. He further stated that Ramsai (PW-1) gave money to the appellant asking him to change the statement of Surendra Kumar Shukla, Beet Guard. He also stated that when Ramsai (PW-1) gave money, the appellant returned the same to Ramsai and refused to change the statement, then Ramsai left the fainted money on the table and left the house of Ramsai.
15. Ramdayal Bele (PW-6) was the member of trap party, he was the panch witness, who accompanied the trap party, supports the laying of trap, but admits in his statement that he could not hear the conversation between the complainant and the appellant. He further stated that when

he and other members of the trap party entered the house of the appellant, the appellant was moving the notes towards the complainant saying that he does not want to have them.

16. Investigating Officer M.C. Sharma (PW-8) has supported the trap laid by the prosecution. In his statement, he has stated that when he entered the room of the appellant, he saw that Laxman Singh (PW-5) was sitting inside the room.
17. All the above evidence shows that only Ramsai (PW-1) has stated that the appellant was offered three currency notes of the denomination of 100/- and it is also clear that by evidence of Laxman Singh (PW-5) and Ramdayal Bele (PW-6) that the appellant declined to do so, however, he kept the currency notes in his hands. The appellant immediately kept those currency notes on the table. Since the currency notes were kept in the hands of the appellant, it was quite natural that the hand wash of the appellant turned pink.
18. In **Smt. Meena Balwant Hemke v. State of Maharashtra, AIR 2000 SC 337**, it has been held that the result of the phenolphthalein test should be viewed in the context only that the appellant also come into contact with the currency notes when those were kept in his hands by Ramsai (PW-1) and he pushed it away on the table. The currency notes aforesaid were said to have been recovered from the appellant under the circumstances stated and explained by Laxman Singh (PW-5). It is rightly contended that the relation to the alleged recovery of currency notes vide Ex.P-4, no presumption under Section 4 could be drawn against the appellant.

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19. The word presumption in its largest and most comprehensive signification may be defined as in the sense of actual certainty of the truth or falsehood of a fact or proposition, an inference affirmative or negative to that truth or falsehood which is drawn by a process of probable reasoning from something which is taken for granted, it is however rarely employed in jurisprudence in this extended sense, like presumptive evidence, it has there obtained a restricted legal signification, and it used to designate an inference affirmative or disaffirmative of the existence of same fact. Prosecution has failed to establish the demand of bribery by reliable, cogent and trustworthy evidence. Only bald statement of Ramsai (PW-1), it was not proved that the appellant had demanded money to return his license and money receipt.
20. In these circumstances, as has been held in **Banshi Lal Yadav v. State of Bihar, AIR 1981 SC 1235**, the alleged recovery of currency notes by itself will not be sufficient to raise presumption against the appellant particularly where prosecution has failed to prove that the appellant had demanded money to return his documents. Certainly the defence taken by the appellant had been consistent from very beginning and the same could not have been brushed aside so lightly. It is well established that the appellant is not bound to prove his defence beyond reasonable doubt. Thus from evidence on record, it is not proved beyond reasonable doubt that the appellant had demanded and taken Rs.300/- as a bribe.
21. The appellant has pleaded not guilty. From evidence on record, no offence under Sections 5(1)(d) read with 5(2) of the Act and Section 161



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of the IPC have been proved. His appeal merits to be allowed. He is acquitted from the charges and sentence awarded to him be set aside.

22. Consequently, the appeal deserves to be allowed and is hereby allowed. Conviction and sentence of the appellant are hereby set aside. He is acquitted of the charges framed against him. Fine amount, if any paid, be returned to the appellant.

23. It is stated that the appellant is on bail. His bail bonds shall continue for a further period of 6 months as per requirement of Section 437-A of the Code.

Sd/-
Inder Singh Uboweja
Judge

chandra