

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPEAL NO. 463 OF 2000

Hanumant s/o Yadavrao Pund,
aged 63 years, occ. Service,
at present retired pensioner,
r/o S.R.T. 168, Vishwas Nagar,
Aurangabad (died)

Smt. Rajani Hanumantrao Pund has been
granted permission to prosecute the appeal
as per Hon'ble Court's order, dated
15.10.2012, passed in Criminal Application
No. 4534 of 2012.

...Appellant

VERSUS

The State of Maharashtra

...Respondent

.....
Shri Satej S.Jadhav, advocate for appellant
Shri U.S.Mote, A.P.P. for respondent/State
.....

CORAM : V.M.DESHPANDE, J.

DATED : 9th July, 2015

ORAL JUDGMENT : -

1] Accused Hanumant s/o Yadavrao Pund was
convicted by the learned Additional Sessions Judge and
Special Judge, Jalna on 21.11.2000 in Special Case No. 21 of

1994. By the said judgment and order of conviction, accused was convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and was directed to suffer rigorous imprisonment for six months and to pay a fine of Rs.250/-, in default of payment of fine further to suffer rigorous imprisonment for one month.

He was also convicted for the offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and was directed to suffer rigorous imprisonment for one year and to pay a fine of Rs.250/-, in default of payment of fine further to suffer rigorous imprisonment for one month. Hence, this appeal.

2] The present appeal was admitted on 20.12.2000 and the appellant was released on bail.

During the pendency of the present appeal, accused Hanumant Yadavrao Pund expired. However, widow of deceased appellant filed Application No. 4533 of 2012 seeking permission to prosecute the appeal. This court on 15th October, 2012 allowed the application and permission was given to the widow of original appellant Hanumant to prosecute the appeal.

3] I have heard Shri Satej S.Jadhav, learned counsel for the appellant, and Shri U.S.Mote, learned Additional Public Prosecutor for respondent/State.

4] Complainant Uddhav Dagduji Sonule (PW 1) lodged a complaint with Anti Corruption Bureau on 15.7.1994. The said complaint is at Exh.32.

Complaint states that the complainant has obtained a card of Employment Exchange, Jalna on 27.9.1991. The validity period of the said card was up to 27.9.1994, however, since he did not receive a single call for employment, he went to the office of District Employment, situated at Collectorate on 14.7.1994. There he met Clerk Pund (deceased appellant). Complaint further reveals that the complainant pointed out to Shri Pund that till today he has not received any call letter. Upon that, Pund replied that there is one post at State Bank of Hyderabad, Old Jalna as "Safai Kamgar". It is further alleged in the complaint that deceased appellant thereafter demanded Rs.400/- for inclusion of the name of the complainant in the list to be sent to the Bank. However, according to the complaint, the deal was fixed for Rs.200/-. According to the complaint, the complainant was to go to the office of the appellant on 15.7.1994 for payment of Rs.200/-.

Since the complainant was not ready to give bribe, he approached to the Anti Corruption Bureau and lodged the complaint.

5] Lalsing Paliwal (PW 6) was the Deputy Superintendent of Police, Anti Corruption Bureau, Jalna in the year 1994. After taking complaint (Exh.32) from the complainant, two panchas were called. After following the usual procedure, a pre-trap panchanama (Exh.36) was drawn, since it was decided to lay a trap on deceased on 15.7.1994.

6] PW 2 Pandurang Kachole was directed to act as shadow panch and was directed to remain constantly with PW 1 Uddhav Sonule and observe the happenings. Accordingly, on 15.7.1994, PW 1 Uddhav and PW 2 Pandurang went in the office of Employment Exchange. According to the prosecution, there a demand was made by deceased appellant and the tainted amount was accepted by him and it was put by him in his left side chest pocket of shirt. After acceptance, PW 1 Uddhav gave agreed signal to the raiding party, which was hiding nearby. Thereafter the raiding party apprehended the deceased appellant. Tainted amount was recovered from the deceased appellant. Both the hands of the deceased appellant

were seen under the ultra violet lamp, which showed existence of anthracene powder, also the same was found in the shirt pocket of the deceased appellant. A detailed panchanama was recorded. It is at Exh.37.

7] The initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon prosecution.

In the present case, in order to prove demand, the prosecution has relied upon the evidence of Uddhav Sonule (PW 1) and Pandurang Kachole (PW 2).

In so far as first demand is concerned, it was made to Uddhav (PW 1) in the office of the deceased appellant.

In order to challenge the claim of Uddhav about the demand on 14.7.1994 in the office, in his cross-examination it is brought on record that other 7-8 employees were working in the said office. However, it appears that the said cross-examination is made half heartedly. The said cross-examination is not taken to its logical end. In his entire cross-examination, it is not established through his cross-examination that when the demand was made to Uddhav, that time the other co-employees were present in the office and/or they were within the hearing distance from the deceased appellant.

8] In so far as demand on the date of trap is concerned,

the evidence of the prosecution is consistent. According to the complaint (Exh.32), agreed amount was Rs.200/-. In that context, evidence of Uddhav (PW 1) shows that deceased asked as to whether he has brought the amount, to which Uddhav replied that he has brought Rs.200/-. The version of PW 1 Uddhav is duly corroborated by PW 2 Pandurang, who was constantly with PW 1 Uddhav. The evidence of PW 2 Pandurang in respect of the demand shows as under : -

“ The accused Pund then asked the complainant Sonule whether he brought the amount. Complainant Sonule replied that he has brought the amount. Complainant Sonule tookout the currency notes from his pocket and handed over to the accused Pund. The accused counted the currency notes and put it in his pocket.”

The evidence of PW 1 Uddhav Sonule about the demand and consequent acceptance by deceased appellant is duly corroborated by independent witness Pandurang Kachole (PW 2). Their evidence has not shaken at all. No improvements and/or contradictions are noticed in their version. The evidence of these two witnesses inspires confidence and there is no difficulty to accept their version.

9] Admittedly, the tainted amount was found in

possession of the deceased appellant. Admittedly, his hand was found stained with anthracene powder. Not only that, the pocket of his shirt wherein the tainted notes were kept, also showed positive test of anthracene.

10] Section 20 of the Prevention of Corruption Act, 1988 is in respect of presumption. Section 20 reads as under :-

“20. Presumption where public servant accepts gratification other than legal remuneration. — (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain from himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that

gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.”

The presumption arises as soon as the prosecution has proved that the accused person has accepted the tainted amount.

In the present case in view of the unimpeached evidence of the complainant and the panch witness, the prosecution has proved that the deceased applicant accepted the tainted amount.

The presumption under Section 20 of the Prevention of Corruption Act, 1988 raises rebuttable presumption.

In that behalf, learned counsel for the appellant Shri Satej Jadhav invited my attention to the evidence of defence witness Dindas Jain (DW 1). This gentleman owned a cloth shop, which is known as 'Sudarshan Textiles'. According to his evidence, deceased appellant and 3-4 employees from his office were his customers and when they used to purchase the

clothes he used to issue a bill. Through this witness, a bill is brought on record, which is at Exh.50. This bill shows that deceased appellant has purchased clothes and handed over the same to PW 1 Uddhav, the complainant.

11] According to the learned counsel Shri Satej Jadhav, in the month of March, 1994, complainant PW 1 Uddhav was in need of Rs.225/-, since he was to purchase clothes and those clothes were purchased by deceased appellant for PW 1 Uddhav as per document Exh.50 and on 15.7.1994 to discharge the said debt, amount of Rs.200/- was paid to deceased appellant, which was accepted by him.

12] At the out set, the court cannot rely on the evidence of defence witness Dindas Jain. In his cross-examination, he has candidly admitted that it is his practice, if the goods are purchased on credit, he used to obtain signature on the bill. He was candid enough to admit that Exh.50 does not disclose the signature either on its original or in the carbon copy. What is important is that when PW 1 Uddhav was under searching cross-examination of the learned cross-examiner on behalf of deceased appellant, document Exh.50 was not confronted to him. In that view of the matter, no importance can be attached

to the said document.

Further, there is no concrete evidence available to reach to the conclusion that the relations between deceased appellant and PW 1 Uddhav were so thick, so that Uddhav would demand amount to purchase of sarees. In that view of the matter, the explanation, as sought to be offered, cannot be accepted.

13] In the present case, the prosecution has cogently and consistently proved the demand to PW 1 Uddhav and acceptance of the bribe amount from him. The learned Judge of the court below has correctly appreciated the prosecution case warranting no interference from this court.

14] In the result, the appeal is dismissed.

[V.M.DESHPANDE, J.]

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