

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

CRL.A.No. 2445 of 2006

AGAINST THE JUDGMENT IN C.C NO.34/2003 OF THE ENQUIRY
COMMISSIONER & SPL.JUDGE, THIRUVANANTHAPURAM

APPELLANT/ACCUSED:

G. DANIEL,
FORMERLY FIRST GRADE LINEMAN,
ELECTRICAL MAJOR SECTION, PATHANAPURAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT OF KERALA,
ERNAKULAM (DY.S.P., VACB
KOLLAM.)

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ab

P.UBAID, J.

Crl.A No.2445 of 2006

Dated this the 29th day of June, 2015

J U D G M E N T

The appellant herein faced prosecution before the Enquiry Commissioner and Special Judge, Thiruvananthapuram in C.C No.34/2003, on the allegation that on 30.10.2001, he, as a lineman of the Pathanapuram Electrical Major Section, accepted an amount of ₹300/- from the complainant Haneefa Rawther as illegal gratification for straightening an electric post which slanted towards the complainant's house due to some natural causes. An application for the said purposes was made by the complainant before the Assistant Executive Engineer of the Electrical Major Section, and on 27.10.2001 the complainant met the accused as directed by the Assistant Executive Engineer. It is alleged that on 27.10.2001 when the complainant met the lineman, he demanded an amount of ₹300/- and also a bottle of arrack for straightening the electric post. On 30.10.2001 the complainant made a complaint before the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, and as instructed, the

complainant paid an amount of ₹300/- to the accused. Within no time the amount of ₹300/- was seized by the Dy.S.P vigilance from the possession of the accused at the house compound of the complainant, and the accused was arrested on the spot. Accordingly, a crime was registered against him, and after investigation the vigilance (VACB) submitted final report in the trial court.

2. The accused pleaded not guilty to the charge framed against him by the court below under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The prosecution examined five witnesses in the trial court and also marked Exts.P1 to P15 documents and MO1 to MO7 properties including the currency of ₹300/- seized from the possession of the accused. When examined under Section 313 Cr.P.C the accused denied all the incriminating circumstances, and maintained a definite defence that the amount was in fact put in his pocket without demand, by the complainant, as the labour charges required for the manual works. No oral evidence was adduced by the accused in defence, but Ext.D1 was marked during trial. On an appreciation of the evidence, the trial court found the accused guilty under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. On conviction thereunder

he was sentenced to undergo rigorous imprisonment for three years, and also to pay a fine of ₹5,000/- under Section 7 of the Prevention of Corruption Act, and to undergo another term of rigorous imprisonment for three years and to pay a fine of ₹ 10,000/- under Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act by judgment dated 27.11.2006. Aggrieved by the conviction and sentence, the accused has come up in appeal.

3. The points for decision in the appeal are:

(i) Whether the appellant herein had accepted on demand, an amount of ₹300/- from PW1 as a reward or illegal gratification, for straightening the electric post which slanted towards his house, as alleged by the prosecution.

ii) Whether the sentence imposed by the court below requires interference in case the conviction is confirmed in appeal.

4. Point No.1: That the appellant herein was on duty in Electrical Major Section, Pathanapuram as lineman stands proved by the evidence of PW4, the Assistant Engineer of the section and also Exts.P7 and P8 documents. Ext.P7 will show the date on which the appellant joined duty in the Electrical

Major Section as lineman, and Ext.P8 attendance register will show his duty on 30.10.2001. Of course the accused has no dispute regarding this fact that on 30.10.2001, he was a lineman attached to the Pathanapuram Major Section, and he was on duty on the said date.

5. PW1, the complainant, and PW2 the other witness to the trap have given evidence regarding the demand and acceptance of illegal gratification by the accused. PW3 is the Chief Engineer, KSEB examined to prove Ext.P10 prosecution sanction and PW5 is the Deputy Superintendent of Police, who detected the offence and investigated it. There is absolutely nothing in the evidence of PW5 to show that any sort of prejudice was caused to the accused by the investigation conducted by the police officer, who detected the offence.

6. The learned counsel for the appellant submitted that the evidence of PW2 cannot be accepted because he cannot be said to be an independent witness. The learned counsel also submitted that merely on the basis of the evidence given by the defacto complainant who is definitely an interested witness, the accused cannot be found guilty. But the learned Public Prosecutor submitted that the evidence of the material witnesses and the detecting officer is well acceptable, and is not tainted

with any doubt. Just because PW1 is the complainant in this case it cannot be said that he is an interested witness.

7. It is true that PW2, the decoy witness arranged by the vigilance cannot be said to be a fully independent witness. A witness who happened to witness payment and acceptance of illegal gratification, and a witness arranged by the police preparatory to trap, cannot be treated equally by the court. It is settled by the Hon'ble Supreme Court that on the basis of the evidence of the trap witness alone, a conviction will be unjust and illegal. However, when the complainant and others fully support the prosecution, the evidence of the decoy witness arranged by the vigilance to witness the trap cannot be ignored by the court, and in such circumstances such a witness cannot be branded as an interested witness. But in a case where the complainant turned hostile, and the prosecution does not have other material to prove demand or acceptance of bribe, the evidence of the shadow witness arranged by the vigilance preparatory to trap cannot be given much value by the court. Supportive evidence cannot be allowed to take the place of substantive evidence. But here the defacto complainant examined as PW1 fully supported the prosecution on all material aspects, and PW2 fully corroborated him. In such a situation, the

evidence of PW2 cannot be branded as interested evidence or suspicious evidence.

8. PW1 is definite in his evidence that when he met the accused herein on 27.10.2001 with request to straighten the electric post, the accused demanded ₹300/-, and also a bottle of arrack. The accused asked him to make money and procure a bottle of arrack, and he also said that as and when it is ready, he will come for straightening the electric post. PW1 was not prepared to heed to the demand of the lineman. Accordingly, he approached the vigilance and made Ext.P1 complaint. In fact on 29.10.2001 itself he had informed the vigilance and he was instructed to come on 30th to make a complaint. His complaint was registered by the vigilance and an amount of ₹300/- produced by him was recovered as per mahazar. Ext.P3 is the recovery mahazar. The said mahazar was prepared at 7.30 a.m on 30.10.2001. PW1, 2 and 5 are all well consistent that after registering the complaint, the Dy.S.P conducted phenolphthalein test and demonstrated it to the complainant and PW2. The three currency notes (3x100) on which the Dy.S.P applied phenolphthalein were handed over to PW1 with direction to give it to the lineman on demand. Accordingly, they all proceeded to the KSEB office, but the lineman could not be found there. They

were told by the Engineer that the lineman had gone to a rubber estate for some work. Accordingly, they went to the said place, and saw the accused there. As instructed by the Dy.S.P, PW1 and PW2 met the accused and requested him to carry out the work. As demanded by the accused again PW1 paid the amount of ₹300/- to him which he received in his right hand and put in his left side shirt pocket. Just then, on getting signal, the Dy.S.P and team reached there, seized the currency from the possession of the accused, and arrested him on the spot. PW1 and 2 also proved the Ext.P5 recovery mahazar prepared at 1.30 pm. on 30.10.2001. Seizure of the phenolphthalein tainted currency from the possession of the accused is well proved by the Dy.S.P and also PWs 1 and 2.

9. The defence could not bring out anything in the cross examination of PW1 and PW2, to show that the phenolphthalein tainted currency of ₹300/- was put in his pocket by PW1 without demand and without his knowledge or consent. Demand for ₹300/- is well proved by evidence of the complainant himself. Further demand on the spot is proved by evidence of PW2 also. There is clear evidence that an amount of ₹300/- was received by the accused herein at the house compound of PW1

when he reached there on the request for straightening the electric post. As demanded earlier, the accused repeated his demand at the work place also, and he proceeded to start the work only when he received ₹300/- from PW1. PW2 is not an ordinary witness. He is a Tahsildar arranged by the vigilance to witness the trap. It was argued that as a public servant he will be interested in the prosecution. In fact it can be the other way also, that as public servant he will not give false evidence against another public servant. Anyway, the evidence of PW2 is definite and consistent regarding payment of ₹300/- by PW1 on demand by the accused, and also regarding acceptance of the said amount by the accused from PW1 as a reward for straightening the electric post. I find no reason to disbelieve the evidence of PW1 or PW2. Both these witnesses are definite and consistent on all material aspects, including seizure of the phenolphthalein tainted currency of ₹300/- from the possession of the accused. All are consistent regarding the positive result of the phenolphthalein test conducted on the spot, on seizure of the currency from the possession of the accused. PW5 the detecting officer has also given definite evidence regarding the complaint of PW1, the instruction given to him to give the money to the accused on demand, and also regarding the successful trap in

which the public servant was caught with ₹300/- received as illegal gratification.

10. PW4 has given evidence that in the morning of 30.10.2001 the complainant herein had approached him with request for straightening the electric post on his application. He was told that the works would be done by the lineman Daniel, and he accordingly instructed PW2 to meet Daniel. The main part of the evidence of PW4 is that the accused herein was a lineman in the electrical major section and he was on duty on 30.10.2001.

11. The MO1 series currency notes were well identified during trial by PWs1, 2 and 5. Before instructing PW1 to handover the amount to the accused, PW5 had put some mark on the currency, and during trial all of them identified the currency notes. As regards the positive result of the phenolphthalein test also the evidence of PWs1, 2 and 5 is fully consistent and satisfactory.

12. I find that a successful trap stands proved, and that the evidence given by all the material witnesses including the detecting officer is fully consistent on all material aspects. The three witnesses (PWs1, 2 and PW5) well corroborate each other on all aspects of the trap arranged by PW5, including

payment of phenolphthalein tainted currency, acceptance of the illegal gratification by the accused with the knowledge that it is illegal, and also seizure of the said currency from his possession by the Dy.S.P. Prior demand made by the accused is also well proved by the evidence of PW1. He is definite that when he first met the accused with request to straighten the electric post, the accused demanded ₹300/- and also a bottle of arrack. Of course, it is true that such a bottle of arrack was not demanded or paid on the date of detection. But the demand for ₹300/- and also payment of ₹300/- as illegal gratification stands well proved by the evidence of the complainant. There is absolutely no reason why the complainant should make a false complaint against the appellant herein. There is no reason why the Dy.S.P should foist a false case against him with the help of somebody else. PW2 has also no special reason to give evidence against the accused. Just because he is a trap witness, or a public servant arranged for the trap, his evidence cannot be brushed aside when the complainant has well proved all the essentials including demand and acceptance, and the detection is also well proved by the evidence of Dy.S.P. On an appreciation of the evidence given by the material witness, I find that the court below came to the right finding that the accused had demanded and accepted

illegal gratification of ₹300/- from PW1 for straightening the electric post which slanted towards his house due to some natural causes. I find no reason to interfere in the findings made by the court below.

13. The requirement under Section 19 of the Prevention of Corruption Act as a pre-requisite for cognizance also stands well proved in this case. Ext.P10 prosecution sanction is proved by PW3 Chief Engineer who granted sanction. His evidence satisfies the court that he granted such sanction on a consideration of all relevant aspects and materials and on proper application of mind.

14. In view of the finding above, this appeal is liable to be dismissed. I find that the appellant herein was rightly convicted by the court below. However in the particular facts and circumstances, I feel the absolute necessity of some modification in the sentence imposed by the court below. As on the date of commission of offence in this case, the minimum sentence prescribed for the offence was imprisonment for one year. What is imposed by the court below is rigorous imprisonment for three years. The incident happened in October 2001 and now we are in June 2015. The appellant has been facing prosecution for years, since 2001. Considering the long

period of years taken for conclusion in the matter, I feel it appropriate to reduce the sentence to the minimum possible under the law. To that extent the appeal can be allowed in part.

In the result, the appeal is allowed in part to the limited extent of modifying the sentence imposed by the court below. The conviction against the appellant herein made by the court below will stand confirmed. However, the sentence imposed by the court below will stand modified, altered and reduced to simple imprisonment for one year. The fine sentence imposed by the court with default sentence thereon is maintained.

**P.UBAID
JUDGE**

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