BAIL SLIP

The Appellant No.I/Accused No.I, namely S.SoundarRajan(Died) S/0.Subba Naidu was directed to be released on bail as per order of this court dated 25/11/2003 made in Crl.M.P.No.11330/2003 in Crl.A.No.1663/2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.1663 of 2003

Date of Reserving the Orders	Date of Pronouncing the Orders
31.03.2015	06.04.2015

S.Soundar Rajan (died) ... 1st Appellant/A1

P.Sujatha ... 2nd Appellant/A2

(A2 impleaded as proposed appellant as 2nd appellant
made in M.P.No.2 of 2015 in Crl.A.No.1663 of 2003
by an order dated 10.03.2015)

vs.

State rep. by
Deputy Superintendent of Police
Vigilance and Anti-Corruption
Salem.
Cr.No.3/AC/92/Special ... Respondent/Complainant

Prayer:Criminal appeal filed under Section 374 Cr.P.C. read with 27 of Prevention of Corruption Act, against the judgment of conviction and sentence dated 29.10.2003 made in Spl.C.C.No.20 of 1994 on the file of the Special Court-cum-Chief Judicial Magistrate, Salem.

For Appellant : Mr.V.Shivalingam for
M/S.Siva Associates

For Respondent : Mr.V.Arul,
Government Advocate (Crl.side)

J U D G M E N T

The Criminal appeal arises out of the judgment of conviction and sentence dated 29.10.2003 made in Spl.C.C.No.20 of 1994 on the file of the learned Special Judge-cum-Chief Judicial Magistrate, Salem, whereby the accused was convicted for the offence under Section 7 of the Prevention of Corruption Act and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.2,500/- in default in payment to undergo three months rigorous imprisonment and for offence under Sections 13(2) read with 13(1)(d) of the P.C.Act, he was sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.2,500/- in default in payment to undergo three months rigorous imprisonment. The sentences are ordered to be run concurrently.

2.During appeal, first appellant/A1 died and hence, his daughter was impleaded as second appellant/A2. For the sake of convenience, A1 was referred to as "first appellant".

3.The case of the prosecution based on the prosecution witnesses is as follows:

(i)From 18.04.1991 to 28.10.1992, first appellant was working as District Registrar, Salem and he was staying at room No.10, YMCA hostel, wherein P.W.7/Errick S.Sagayam was working. P.W.6/Rajagopal and P.W.2/Nagarajan were working in Salem Anna Transport Corporation Employees Co-operative Housing Society (hereinafter called as "Society"). P.W.2 and P.W.5/Chandrasekaran were doing real estate business. During 1992, P.W.6 has given notice to purchase a land for the Society stating that P.W.2 has a land at Kumarasamipatti. Therefore, P.W.6 wrote a letter to the Joint Sub-Registrar II, to fix a price to that land. The Joint Sub-Registrar II had sent a letter by fixing Rs.1,50,000/- per acre. Likewise, for S.Nos.150, 152 and 153, Rs.1,59,400/- was fixed and for S.No.154 and 156, Rs.1,52,400/- was fixed. The land owner has given power of attorney in favour of P.W.2. As per the letter of Joint Sub-Registrar II, 21 documents were written, out of which, one document for common path and other documents are sale deeds.

(ii)P.W.9/Rajappa, Salem Joint Sub-Registrar II, deposed that six documents were registered and they kept pending to ascertain the nature of the land by the District Registrar. On 18.06.1992, six documents were registered; On 19.06.1992, six documents were registered; On 22.06.1992, three documents were registered and totally 15 documents were registered on behalf of the Society. On 25.06.1992, P.W.9 was suspended. So the documents were not returned to the persons by P.W.9.

(iii)P.W.10/Parvatham, Sub-Registrar, deposed that the Society has registered six sale deeds to the total extent of 2 Acre 76 cents. The documents kept pending to ascertain whether those lands are housing sites, even though the Society had purchased the lands as agricultural lands. She sent a letter to the District Registrar, which was marked as Ex.P15.

(iv)P.W.11/Gurusamy inspected the documents registered by P.W.9 and P.W.10. On 12.10.1992, the District Registrar has sent a notice stating that the lands pertain to the pending documents in 70 to 75 of 1992 are agricultural lands. Therefore, P.W.11 has assigned numbers to the six documents and handed over to P.W.6. One Kannangurichi Ammasi has given a petition Ex.P16 to P.W.11 stating that the lands sold at very low price to the Society. P.W.11 has sent the same to the District Registrar. In pursuance of the same, the District Registrar sent a letter to the Special Deputy Collector, Stamp duty, to take action under Sections 47A(1) and 47(3) of the Stamps Act.

(v)P.W.8/Janarthanam, Special Tahsildar deposed that 20 documents belong to the Society were sent to him for re-consideration and he inspected the lands on 03.12.1992 and sent a report stating that the stamp duty was paid correctly. On 07.12.1992, Special Deputy Collector again conducted audit on the said lands stating that stamp duty was paid according to the current market value and the file was marked as Ex.P14. Thereafter, P.W.2, P.W.5 and P.W.6 gave letters to first appellant to release the documents. The first appellant, who was staying at Room No.10, YMCA Hostel, said that he has released six documents and to release other documents, he demanded Rs.10,000/- as illegal gratification. P.W.2 and P.W.5 said that they have to make discussion between themselves for the above said demand.

(vi)On 27.10.1992, at about 8.00 a.m., P.W.2 and P.W.5 went to the room of first appellant. First appellant asked them as to whether they brought money as told by him. P.W.2 and P.W.5 answered that they are unable to give Rs.10,000/-. So the first appellant reduced it to Rs.5,000/-. P.W.2 and P.W.5 said that they would come tomorrow. Since P.W.2 and P.W.5 are not willing to give bribe amount of Rs.5,000/-, they lodged a complaint Ex.P2 before the Vigilance and Anti-

Corruption Wing on 28.10.1992 at about 4.00 p.m.

(vii) During 1992, one Krishnasamy was working as Deputy Superintendent of Police, V and AC, Salem, but he died. P.W.12/Panneerselvam, Inspector of Police, was working along with the said Krishnasamy. After receiving Ex.P2 complaint, he registered a case in Crime No.3/AC/92 under Section 7 of the Prevention of Corruption Act and prepared printed F.I.R. Ex.P19. Then he laid trap with the official witnesses namely, P.W.3/Balasubramaniam and one Jayaraman and prepared Ex.P3/Entrustment mahazar and phenolphthalein test was explained.

(viii)On 29.10.1992, at about 7.10 a.m., P.W.2, P.W.3, P.W.5 and one Royar Police went to YMCA Hostel. Then P.W.2, P.W.3 and P.W.5 alone entered into the room of first appellant. At that time, first appellant demanded money and P.W.2 gave him Rs.5,000/- and first appellant kept in small rexin bag. After came out of his room, they made signal to Krishnasamy and P.W.12. They went to the room of first appellant and conducted phenolphthalein test, which was ended in positive. Rexin bag was marked as M.O.7 and he prepared the mahzar Ex.P4. He also prepared Ex.P5 search warrant and drew rough sketch Ex.P6. The file relating to P.W.2 was marked as Ex.P7 and the same was seized under Ex.P8 mahazar.

(ix) P.W.13/Velliangiri, Deputy Superintendent of Police, took up the case for further investigation. He examined the witnesses and recorded their statements. Then he sent the seized material objects for chemical analysis. The chemical report was marked as Ex.P11. On 03.11.1992, Pachamuthu, Inspector, Madurai made a house search on the house of first appellant and seized Rs.18,000/-.

(x)P.W.1/Rajaraman, Secretary, Income Tax Department after perusing entire records, he applied his mind and issued Ex.P1 sanction order for prosecution of first appellant.

(xi)P.W.13 after completing investigation, filed a charge sheet against the first appellant under Sections 7 and 13(2) read with 13(1)(d) of P.C.Act, 1988.

4.The learned Special Judge after following the procedure, framed necessary charges. Since the accused pleaded not guilty, the Special Court examined the witnesses P.W.1 to P.W.13 and marked the documents Exs.P1 to P20 and material objects M.O.1 to M.O.8 and placed the incriminating evidence before the first appellant and first appellant denied the same in toto. On the side of first appellant, D.W.1 and D.W.2 were examined and Ex.D1 was marked. The

Special Court after considering the oral and documentary evidence, convicted and sentenced the appellant/accused as stated above.

5.Challenging the conviction and sentence passed by the Special Court, learned counsel for appellants submitted that P.W.2, who is the defacto complainant, is doing real estate business along with P.W.5/Chandrasekaran. But they turned hostile and hence, they have not supported the case of prosecution. The second limb of argument is that the documents are not with first appellant and he has no power to release those documents, since he has not in possession of the same. P.W.10/Parvatham, Sub-Registrar, is in possession of the documents, but she has not sent any letter for clarification to first appellant with regard to 14 documents and she has also not sent those documents to first appellant. As per Ex.P15 dated 16.07.1992, P.W.10 sent a letter to the District Registrar/first appellant and first appellant has been properly replied to her as per Ex.P18 dated 12.10.1992. So there is no necessity for first appellant to demand bribe for releasing the documents. The third limb of argument is that the case of prosecution is that on 20.10.1992 and 27.10.1992, P.W.2 and P.W.5 met first appellant who is staying at Room No.10, YMCA Hostel and at that time, first appellant demanded bribe for releasing the documents. But on both days, first appellant is neither in his office nor at Room No.10, YMCA Hostel and the same has been proved by way of examining D.W.1 and D.W.2 and marking Exs.D1 and also Ex.P20. As per the evidence of P.W.2 and P.W.5, first appellant kept the amount in the rexin bag. But first appellant has given plausible explanation for possessing the amount which was recovered from him. The Special Court failed to consider the above aspects and erroneously convicted and sentenced the first appellant as stated above. Therefore, he prayed for allowing the appeal.

6.Resisting the same, learned Government Advocate (Crl.side) submitted that evidence of P.W.2, P.W.3 and P.W.5 are corroborated with each other and it clearly proved the first and second demand, acceptance and recovery. Furthermore, phenolphthalein test was ended in positive. It is further submitted that the Special Court has considered all the aspects in proper perspective and rightly convicted the first appellant. Therefore, he prayed for dismissal of the appeal.

7.Considered the rival submissions made on both sides and perused the materials available on record.

Sanction:

8.Admittedly, first appellant is the District Registrar working at Salem. During relevant time, P.W.1/Rajaraman is the competent person to accord sanction. Competency of appointing authority is not disputed and the validity of Ex.P1 sanction order is also not disputed. Hence, I am of the view, Ex.P1 sanction order is valid and the Special Court has also rightly considered the same.

First demand:

9.Now this Court has to decide whether the evidence of P.W.2/Nagarajan, P.W.3/Balasubramanian and P.W.5/Chandrasekaran are reliable? P.W.2 and P.W.5 are doing real estate business and they made arrangements to sell the plots to the Society. In pursuance of the same, 21 sale deeds were executed. During the relevant time (i.e.) in the year 1992, only six documents were released and remaining documents were not released. Hence, P.W.2 and P.W.5 approached first appellant for releasing those documents. It is alleged that the first appellant demanded bribe for releasing those documents.

10.On perusing the evidence of P.W.2 and P.W.5, it reveals that they are giving one version in one part of their chief examinations and another version in other part of their chief examinations. They were cross-examined by the prosecutor, since they turned hostile. So it clearly shows that there are three different versions in the chief examinations of P.W.2 and P.W.5. So their evidence is not trustworthy.

11.On perusing the evidence of P.W.3/shadow witness, it reveals that he is not an independent witness and his evidence is not wholly reliable, it needs corroboration. As per the dictum of the Apex Court in (2013) 2 SCC (Cri) 364 (State of Rajasthan v. Babu Meena), there are three types of witnesses, first one is wholly reliable; second one is partly reliable; another one is wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be given without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. If the evidence is partly reliable, corroboration is necessary.

12.As already stated that P.W.2 and P.W.5 turned hostile. It is true, the testimony of hostile witnesses need not be ignored. The Court should scrutinize the testimony of hostile witnesses and accept the portion of the same which receive corroboration from other evidence on record. As already stated that P.W.2 and P.W.5 deposed different versions in their evidence. In such circumstances, it is unsafe to convict first appellant on the basis of the evidence of P.W.2 and P.W.5.

13.It is pertinent to note that first appellant has examined D.W.1 and D.W.2 and marked Ex.D1 and also Ex.P20 to prove his defence. Ex.P20 is the diary maintained by first appellant. As per Exs.D1 and P20, on 20.10.1992, first appellant inspected Veerapandi Sub-Registrar's office. According to the prosecution, on 20.10.1992, P.W.2 and P.W.5 met first appellant in his office at 6.00 p.m. and at that time, first appellant demanded Rs.10,000/- as bribe to release the documents. D.W.1/Gopalpillai was examined to prove that on 20.10.1992, first appellant had gone to Veerapandi Sub-Registrar's office for annual inspection and first appellant was present in that office at 7.00 p.m. and they came to Salem at 8.00 p.m. So there is no evidence to show that the first appellant was present in the office on 20.10.1992 at 6.00 p.m. In such circumstances, the first demand is not proved by the prosecution.

Second Demand:

14.Now this Court has to be decided whether P.W.2 and P.W.5 met first appellant on 27.10.1992 at about 8.00 a.m. in Room No.10, YMCA hostel. At that time, it is alleged that first appellant reduced the amount from Rs.10,000/- to Rs.5,000/-. It is pertinent to that D.W.1 in his evidence deposed that first appellant had gone to Mecheri for inspection on 27.10.1992 and the same has been proved by Exs.D1 and P20. In the cross-examination of D.W.1/Writer, Sub-Registrar's office, Salem, a suggestion was posed to him that on 27.10.1992, at about 8.00 a.m., first appellant is present in his room, but he denied the same. So the documents under Exs.D1 and P20 clearly proved that on 27.10.1992, first appellant was not present in his room. So the allegation that the first demand of Rs.10,000/- made by the first appellant on 20.10.1992 at about 6.00 p.m. and reduced the amount to Rs.5,000/- on 27.10.1992 at about 8.00 a.m. in room No.10 at YMCA Hostel is unacceptable.

15.Admittedly, P.W.3/Balasubramaniam, is the shadow witness. As per the dictum of the Apex Court, shadow witness is not an independent witness, so this Court has to scrutinise his evidence. While considering his cross-examination, his evidence is not wholly reliable, which needs corroboration. Moreover, the mode of payment is also not proved by the prosecution. So there is no evidence to show that second demand made by first appellant and the acceptance, which was also not proved. In such circumstances, I am of the view, second demand is also not proved by the prosecution beyond reasonable doubt.

16.It is to be noted that P.W.2 in his cross-examination himself admitted that he kept the money in the bag. Further he stated that he shook the hands of first appellant. It shows that it is the reason for the phenolphthalein test which was ended in positive. As already stated that the evidence of P.W.2 and P.W.5 are not reliable.

17.Now it is to be decided whether first appellant is the competent person to release the documents? According to P.W.10/Parvadham, Sub-Registrar, the Society has purchased plots to the extent of 2 acres 76 cents, for which, six sale deeds were executed. Since P.W.10 has to clarify whether the plots purchased by the Society are housing sites, she sent a letter Ex.P15 dated 16.07.1992 to the District Registrar for clarification. Therefore, she has not assigned numbers to the sale deeds and kept pending. The first appellant has also sent a reply dated 12.10.1992 as per Ex.P18. In her cross-examination, P.W.10 deposed that she took charge from P.W.9/Rajappa, who received 14 documents. She fairly conceded that she has not sent any letter for clarification regarding 14 documents and she has also not handed over those documents to the concerned parties. Except the letter dated Ex.P15, P.W.10 has not sent any letters to first appellant for clarification. P.W.10 herself admitted that she is in possession of 14 documents. She sought for clarification in respect of 6 documents as to whether the property has been valued as agricultural or housing sites. As per Ex.P18 dated 12.10.1992, six documents have been released and after that, P.W.10 has not sent any letter sought for clarification. But the Special Court erroneously held that the first appellant has demanded money for releasing the documents, which are not in his possession.

18.As per Ex.P16/complaint, the documents are not properly valued. Therefore, P.W.8/Janardhanam, Special Tahsildar had gone to inspect the property on 03.12.1992 and gave report stating that stamps have been properly collected. It clearly shows that the first appellant is not a competent person to possess the documents. It is to be noted that 14 documents are only with P.W.10 and not with the first appellant. Under such circumstances, it is unbelievable that first appellant demanded bribe for releasing the documents.

19.It is pertinent to note that during trap proceedings, the first appellant has possessed some files in Room No.10. When the trap laying officer questioned him, first appellant stated that he has to see those files since so many works are pending. Admittedly, there are 34 files in the room of first appellant, but they were not recovered. The sale deeds have not been found place in room No.10. Ex.P16/complaint dated 30.10.1992 was received and on that basis, P.W.8/Janardhanam, inspected the property on 03.12.1992 and gave report stating that property has been valued correctly and hence, there is no necessity for collecting additional Court fee.

20.To sum up,

(i) The evidence of P.W.2 and P.W.5 are not reliable.

(ii) The first appellant has probabilised his defence by way of examining D.W.1, D.W.2 and marking Exs.D1 and P20 to prove that on 20.10.1992, 27.10.1992, he is neither in his office nor in room No.10, YMCA Hostel. So first demand fails.

(iii) In respect of second demand is concerned, P.W.3 shadow witness was examined. He is not an independent witness and his evidence requires corroboration. But there is no corroborating evidence was available to prove that on 27.10.1992, first appellant had demanded money. Therefore, second demand also fails.

(iv) P.W.10 sent a letter dated 16.07.1992 under Ex.P15 to the first appellant sought for clarification regarding six documents. As per Ex.P18 dated 12.10.1992, first appellant sent reply and six documents were released. But P.W.10 has not sent any letter to the first appellant sought for clarification with regard to 14 documents. Further, P.W.10 admitted that she is in possession of 14 documents.
In a criminal jurisprudence, it is the duty of the prosecution that the accused is guilty beyond all reasonable doubt. But the Special Court has convicted the first appellant only on basis of inferences, which is against law.

21.Considering the aforestated circumstances of the case, I am of the considered opinion, the prosecution has miserably failed to prove that the appellant/accused was guilty for offences under Sections 7 and 13(2) read with 13(1)(d) of P.C.Act beyond all reasonable doubt. The benefit of doubt is given in favour of the first appellant and he is acquitted from the charges levelled against him. The Special Court has committed an error in convicting the first appellant for the aforesaid offences and hence, the judgment of conviction and sentence passed by the Special Court is hereby set aside.

22.In fine,

- This Criminal Appeal is allowed by setting aside the judgment of conviction and sentence dated 29.10.2003 made in Spl.C.C.No.20 of 1994 on the file of the Special Court-cum-Chief Judicial Magistrate, Salem.

- Since the first appellant died, the fine amount paid by the first appellant is ordered to be refunded to A2/second appellant herein, who is the daughter of the first appellant.

- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Special Judge-cum-Chief Judicial Magistrate,
The Special Court-cum-Chief Judicial Magistrate,
Salem.

2.Deputy Superintendent of Police
Vigilance and Anti-Corruption
Salem.

3.The Public Prosecutor
High Court, Madras.

4.The Record keeper
High Court, Madras.

+1cc to Mr.Siva Associates, Advocate, S.R.No.18687
+1cc to the Public Prosecutor, High Court, Madras , S.R.No.18909

Crl.A.Nos.1663 of 2003

EV(CO)
CA(13/04/2015)