

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2252-SB of 2009

DATE OF DECISION: JANUARY 28, 2015

RAVINDERJIT

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. VIKAS BAHL, SR.ADVOCATE
WITH MR. MANBIR SINGH BATTH, ADVOCATE
FOR THE APPELLANT.

MR. ARSHWINDER SINGH, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Appellant Ravinderjit has challenged the conviction and sentence passed by the trial Court under Section 13(2) read with Section 7 of Prevention of Corruption Act, 1988.

2. It is the case of the prosecution that on 27.3.2005, PW1 Jeet Kaur finding that his brothers had forged her and her sister's signatures and got their share transferred in their name approached accused Ravinderjit who was serving as Halqa Patwari, for issuance of a certified copy of the jamabandi. The accused informed PW1 to come after two days. On 29.3.2005, PW1 proceeded alongwith PW6 Harvinder Singh, who is her brother-in-law, to the office of the accused. But the accused demanded ₹6000/- as bribe for supplying a copy of jamabandi. The amount demanded was settled at ₹4000/-. But PW1 did not part with the bribe money. The

accused prepared the copy of jamabandi. He informed PW1 that he would supply the copy as and when ₹4000/- is paid to him. PW1 accompanied by PW6 approached the Vigilance Bureau with 8 currency notes of the denomination of ₹500/- each. The statement of the complainant was recorded by PW7 DSP Kahan Singh. The numbers of the currency notes were recorded in pre-trap memo Ex.PB. Phenolphthalein test was demonstrated to the witnesses including PW2 Sukhpal Singh who was associated as an official witness.

3. It is the further case of the prosecution that accused having made a demand, received ₹4000/- from PW1 when she proceeded to the office of the accused alongwith PW6. The signature of PW1 was obtained by the accused and copy of the jamabandi was delivered to her. The accused having counted the money, put in his pocket and thereafter put it underneath the file in his almirah. Pre-arranged signal was given by PW6. The police party headed by PW7 alongwith PW2 Sukhpal Singh descended on the office of the accused. Sodium Carbonate solution was prepared. The fingers of the accused turned pink when the accused dipped his fingers in the solution. His pants pocket also turned pink when it was dipped in sodium carbonate solution.

4. PW1 Jeet Kaur spoke about the demand of ₹4000/- for issuance of copy of jamabandi. She failed to identify the accused as the person who demanded the bribe. She also did not speak about the money received by the accused at his office.

5. PW6 Harvinder Singh deposed that on 30.3.2005, she proceeded alongwith PW1 to the Vigilance Bureau, Chandigarh. PW1

suffered a statement before PW7 DSP Kahan Singh and handed over currency notes of ₹4000/- in the denomination of ₹500/- each. The tainted currency notes were handed over to PW1 after noting down the currency numbers by the Vigilance officials. As per the instructions of PW1 and PW6 proceeded to the office of the accused. The accused enquired from PW1 whether she had brought the money. PW1 replied in the affirmative. The accused demanded the bribe money from PW1 and thereafter PW1 handed over the tainted currency notes of ₹4000/- to the accused in the presence of PW6 Harvinder Singh. The accused accepted the tainted currency notes from PW1. He counted them and put the same in his right pocket of his pants. The accused got the signature of PW1 on some receipt and gave a copy of jamabandi to her. PW6 Harvinder Singh gave pre-arranged signal to the police party. Thereafter, the police party headed by PW7 arrived at the office of the accused. Sodium carbonate solution was prepared. The fingers of the accused were dipped in the solution which turned pink. His pants also was put to such a test which also turned pink in colour.

5. PW2 Sukhpal Singh spoke about the sodium carbonate solution test conducted in the office of the accused and the result thereof when the fingers and the pants of the accused were dipped in the solution.

6. PW7 DSP Kahan Singh spoke about the entire process of investigation conducted by him right from the statement suffered by PW1 which resulted in the arrest of the accused and recovery of the tainted money. He also spoke about the result of sodium carbonate solution test and the opinion of the Forensic Science Laboratory.

7. The accused set up a plea in his statement under Section 313 Cr.P.C. that he was falsely implicated. Never had he demanded, nor accepted any money from the complainant. A false case has been foisted on him just to pressurize him to sanction the mutation in favour of PW1 and her sister. The mutation was already sanctioned in favour of the brother of Jeet Kaur.

8. DW1 Parkash Singh who was the Patwari of village Landran with additional charge of village Balongi brought the original DDR register of Patwar Halqa of village Balongi and spoke about the entry found in the DDR register to the effect that complainant Jeet Kaur having paid a sum of ₹4100/- which was the prescribed fee for obtaining copies of jamabandi, khasra girdawari and aks-sajra, received copies of the same.

9. The trial Court was pleased to convict the accused relied upon the evidence of PW1, PW2, PW6 and PW7, in the background of the FSL report.

10. Learned senior counsel appearing for the appellant would vehemently contend that it was totally improbable that the accused would have chosen to keep the tainted money in the almirah when he had already possessed a wallet wherein a sum of ₹11,850/- was found. One nip prepared by PW7 was found to be white in colour. It gives rise to a doubt as to whether the sodium carbonate solution wherein the fingers and the pant's pocket of the accused were allegedly dipped turned positive. He also would submit that PW1, the complainant in this case, never identified the accused. He also did not speak about the demand of money at the time when the tainted money was allegedly parted with. PW6 Harvinder Singh was an

interested witness inasmuch as he is the brother-in-law of PW1. Referring to Ex.PN and Ex.DA, he would submit that the required fee of ₹4100/- was already paid and copies of jamabandi, khasra girdawari and aks-sajra were issued to PW1 on 29.3.2005 itself and therefore, there would have been no occasion for her to approach the accused for obtaining a copy of jamabandi on 30.3.2005. Further, the demand of bribe was not established and therefore, the accused is entitled to acquittal, it is submitted.

11. I heard the submissions made by learned counsel appearing for the State supporting the verdict of conviction and sentence recorded by the trial Court.

12. Of course, as contended by learned senior counsel for the appellant, the evidence of PW1 Jeet Kaur who was the complainant in this case did not implicate the accused. The demand specifically made by the accused and the acceptance of the tainted money were not spoken to by PW1. In other words, PW1 failed to support her version in the first information report. Thus, the first information report which was the foundation for the edifice built by the prosecution was not corroborated by PW1.

13. The first information report is, of course, the foundation of the case of the prosecution. The case of the prosecution cannot be simply thrown out just because the first information report was not corroborated by the author thereof. If the other evidence led by the prosecution could establish beyond reasonable doubt that the accused committed the offence as charged, the accused cannot escape the criminal liability.

14. In the instant case, the evidence of PW6 Harvinder Singh, in

my considered view, establishes the case of the prosecution. He has categorically deposed that on 30.3.2015 when he proceeded alongwith PW1 to the office of the accused alongwith the tainted money in the possession of PW1, the accused demanded bribe and received a sum of ₹4000/- from PW1. The accused also counted the same and put it in his pocket and thereafter kept the same in the almirah.

15. It is true that PW6 Harvinder Singh is the brother-in-law of PW1, inasmuch as he had married the sister of PW1. But I hesitate to buy the argument that PW6 was an interested witness. There was no reason for PW6 to support the case of the prosecution, if at all he was interested in the stand taken by PW1. He would have definitely turned hostile. In the course of action embarked upon PW1, he being the relative of PW1 never thought of succumbing to the pressures. He had intended to come out with the truth despite the fact that his own relative who initiated these proceedings failed to match with the demand of truth. The testimony of such a shadow witness cannot be ignored by the Court of Law. In my considered view, PW6 is not an interested witness, but a witness who stood for truth.

16. The testimony of PW6 would go to establish that the accused in fact demanded bribe from PW1 and received a sum of ₹4000/- from her. Apart from such a reliable testimony, the evidence of PW2 and PW7 also would go to establish that sodium carbonate test conducted in the aftermath of the bribe received by the accused turned positive. The FSL report also corroborates the prosecution version.

17. Learned senior counsel appearing for the appellant would submit, referring to the evidence of PW1 and the evidence of DW1, that on

29.3.2005 itself, PW1 had received copies of jamabandi, khasra girdawari and aks-sajra. Therefore, there would have been no necessity for PW1 to part with a sum of ₹4000/-. At best, it could be construed that the said amount was paid only towards the legal fees collected for furnishing copies of those documents, it was further submitted.

18. The evidence of PW6 would go to establish that the accused having received the bribe, got the signature of PW1 and furnished a copy of jamabandi alone. It is to be noted that it is not the case of the prosecution that PW1 applied for copies of jamabandi, khasra girdawari and aks-sajra. She had only applied for a copy of jamabandi.

19. Further, PW1 would not have approached the accused on 30.3.2005 and the accused also would not have entertained PW1, if at all a copy of jamabandi was already furnished to her on 29.3.2005 itself.

20. The records produced on the side of the defence were in the custody of the accused even as per the evidence of DW1. There was every chance for fabricating such a document. In my considered view, the document had been fabricated by the accused subsequent to the occurrence to make it appear that PW1 in fact applied not only for copy of jamabandi, but also for the copies of jamabandi, khasra girdawari and aks-sajra. Therefore, I have no hesitation to reject the plea set up by the accused that on 30.3.2005 itself, all the copies of documents including copy of jamabandi had been delivered to PW1.

21. It was submitted that the brother of PW6 is a police official, even as per the admission of PW6. Just because PW6 was related to a

police official, there was no reason for him to implicate the accused, more especially when his sister-in-law had turned hostile. Therefore, in my considered view, the position of the brother of PW6 as Police Constable did not have any impact on the outcome of this case.

22. Learned senior counsel appearing for the appellant submitted a decision of the Hon'ble Supreme Court in **M.R.Purshotham vs. State of Karnataka, 2014(4) RCR(Criminal) 444**, wherein it has been held as follows:-

“6. In such type of cases the prosecution has to prove that there was a demand and there was acceptance of illegal gratification by the accused. As already seen the complainant PW1 Ramesh did not support the prosecution case insofar as demand by the accused is concerned. No other evidence was adduced by the prosecution to prove the demand made by the accused with the complainant.”

23. In yet another case in **B.Jayaraj vs. State of A.P, 2014(2) RCR (Criminal) 410**, the Hon'ble Supreme Court has held as follows:-

“8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused.”

24. It is to be noted that in those two cases, there was no evidence

to establish that there was a demand of bribe by the accused. Though possession of the tainted money was established, the Hon'ble Supreme Court in those cases held that when the demand for bribe was not established, the question of convicting the accused does not arise. In other words, there shall be a demand and acceptance of bribe by the accused.

25. In *Anand Parkash vs. State of Haryana, 2008(2) RCR (Criminal) 335*, this Court doubted the version of the complainant and searched for some corroboration which was highly lacking. In other words, the shadow witness failed to support the version of the complainant. Under such circumstances, this Court doubted the case of the prosecution as regards demand and acceptance of bribe by the accused.

26. I find that the evidence of PW6 is completely trustworthy and reliable despite the fact that his own relation who set the law in motion had turned hostile. PW6 had stood for truth and established the demand and acceptance of bribe by the accused. Therefore, the ratio laid down by this Court in the above case does not apply to the facts and circumstances of this case.

27. Learned senior counsel appearing for the appellant also cited the decision of this Court in *Malkiat Singh vs. State of Punjab, 2010(4) RCR(Criminal) 958*. That was also a case where the shadow witness failed to specifically state that demand and acceptance were made by the accused in his presence. In the light of the facts and circumstances of this case, the decision in the above case is quite distinguishable.

28. I find that the trial Court has rightly returned a verdict of

conviction based on the evidence of PW2, PW6 and PW7, in the background of the FSL report.

29. Coming to the question of sentence, I find that the occurrence had taken place about 10 years ago. The accused has already undergone the agony of waiting for the verdict of the appellate Court. Therefore, in my view, awarding of minimum sentence would meet the ends of justice.

30. In view of the above, confirming the judgement of conviction recorded by the trial Court under Section 13(2) read with Section 7 of the Prevention of Corruption Act, the appellant is sentenced to undergo 1 year R.I. instead of 2 years R.I. and to pay a fine of ₹1000/- and in default, to undergo a further period of 2 months R.I.

31. The accused-appellant Ravinderjit is on bail. His bail bond stand cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, SAS Nagar, Mohali. If he fails to surrender, the learned Chief Judicial Magistrate, SAS Nagar, Mohali shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

32. With the above modification in the matter of sentence, the appeal stands dismissed.

January 28, 2015
Gulati

(M. JEYAPPAUL)
JUDGE