

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1306-SB-2002

DATE OF DECISION: OCTOBER 30, 2015

D.K.SHARDA

...APPELLANT

VERSUS

C.B.I.

...RESPONDENT

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

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

PRESENT: MR. JASWINDER SINGH, ADVOCATE FOR THE APPELLANT.
MR. SUMEET GOEL, ADVOCATE FOR THE RESPONDENT-CBI.

M. JEYAPPAUL, J.

1. Accused D.K.Sharda was convicted under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo 3 years R.I. and to pay a fine of ₹5000/- and in default, to undergo a further period of 6 months R.I. and was also convicted under Section 13 (2) of the Act and sentenced to undergo 3 years R.I. and to pay a fine of ₹5000/- and in default, to undergo a further period of 6 months R.I. by the trial Court. He has challenged the above conviction and sentence passed by the trial Court.

2. The brief case of the prosecution is as follows:-

a) PW3 Pawan Kumar was the power of attorney of M/s Rajaji Construction Company. The company was holding 4 contracts with Railway Electrification, Ambala Cantonment where accused D.K.Sharda was serving as Executive Engineer. Approximately ₹4 lac was due and payable by the Railways to M/s Rajaji Construction Company. As no action

was taken in spite of the letter written to the Chief Engineer/RE, Allahabad, PW3 met the accused D.K.Sharda who demanded ₹10,000/- as bribe on 11.10.1996 for releasing the amount. PW3 did not want to give bribe amount to the accused. On 14.10.1996, he proceeded to the CBI Office at Chandigarh and lodged a written complaint with Superintendent of Police, CBI, Chandigarh. PW4 Sada Kumar who was working as Assistant Surveyor and PW7 Dilip Pandita, Chief Administrative Officer, New India Assurance Co. were associated by the CBI for the purpose of trap. PW4 was deputed to visit Ambala alongwith PW3 to confirm whether there was any demand made by the accused. On the same day, PW3 and PW4 visited Ambala and met the accused in his office. He demanded ₹10,000/-, but PW3 gave a false assurance that bribe money would be paid the next day on 16.10.1996. Thereafter, PW3 and PW4 returned to the office of CBI, Chandigarh. It was decided that PW3 should reach the office of CBI, Chandigarh on 16.10.1996 with bribe amount of ₹5000/-.

b) On 16.10.1996 at about 8.30 a.m., PW3, PW4 and PW7 assembled at the office of CBI, Chandigarh. The number of the currency notes were noted down on a paper. Demonstration qua the effect of Phenolphthalein powder was shown to PW3 to PW7. After treating the currency notes of ₹5000/- with Phenolphthalein power, it was entrusted to PW3 with the instruction that he should hand over the same to the accused on his demand only. PW4 was directed to remain with PW3 to watch the transaction.

c) The trap team headed by PW10 DSP R.Upasak reached the

Ambala Railway Station from Chandigarh. PW3 and PW4 visited the office of Executive Engineer, Ambala. They entered into the office of the accused. After the visitors in the room of the accused left, PW3 talked to the accused. Thereafter, the accused wanted to see the work going on at the site at that point of time. The accused informed PW3 that he wanted to go to DRM Office and asked PW3 to accompany him. PW4 Sada Kumar was left behind.

d) PW3 and the accused proceeded in a white Maruti car owned by the accused. After the car had taken a round of the building, the accused demanded the amount. PW3 took out the money from his bag. The accused asked PW3 to place the money in the front dicky of the car which was in front of PW3. PW3 placed the money in the front dicky. As the car crossed the bridge, the accused asked PW3 to get down from the car as he had to go to DRM Office and thereafter to home for lunch. Accused promised PW3 that he would get his work done. The accused also asked PW3 how much amount was kept in the front dicky. PW3 informed him that he had kept ₹5000/-. Accused enquired why the entire amount of ₹10,000/- was not given. PW3 replied that he had brought only ₹5000/- because he could not go over to Delhi. PW3 came back to the place where the entire team was standing and shared everything with PW10.

e) The CBI team proceeded to the house of the accused where his car was not found. Thereafter, they proceeded to DRM office. On enquiry from the contractor site, they came to know that accused had left for his house for lunch. Then they proceeded to the house of the accused. The car

of the accused was seen parked outside his house. PW10 introduced himself to the accused and asked about the bribe money he accepted. The accused stated that he did not even know PW3. PW10 caught hold of the accused. Sodium Carbonate solution was prepared and the right hand of the accused was washed. The colour of the solution turned light pinkish. His left hand also was dipped in a separate sodium carbonate solution. His left hand also turned light pinkish in colour. The left side pocket of his pants was also washed in separate solution prepared. It also turned pinkish in colour. The bribe amount was not found in the front dicky of the car. But some papers were recovered from the front dicky of the car and were dipped in sodium carbonate solution prepared separately. The colour of the solution turned pinkish.

f) On interrogation of the accused by PW10, in the presence of independent witness PW7 Dilip Pandita, accused suffered disclosure statement. Based on the disclosure statement Ex.PW4/1, the accused was brought to the house of PW9 Major D.K.Tyagi. PW9 has stated that a briefcase was placed by the accused in his house and was taken away after some time by his wife. As per the instructions given by PW10, PW9 proceeded to the house of the accused and brought the briefcase. The briefcase was opened with the code number disclosed by the accused. The number of the currency notes found in the briefcase was tallied with the numbers of the currency notes recorded already in the memo Ex.PW3/3. The currency notes Ex.P6 to P55 were found to be the same.

3. The accused stated in his statement under Section 313 Cr.P.C.

that he did not know PW3 Pawan Kumar, nor had he dealt with him at any stage. He never dealt with any file concerning M/s Rajaji Construction Company at any point of time. Some payment might have been pending on account of addendum and corrigendum before the Deputy Chief Engineer Sh.Dalbir Singh who was the competent authority to sanction addendum and corrigendum and release the payments. The accused had no concern with those payments. He came to know that Mr.Dalbir Singh, Deputy Chief Engineer purposely rejoined the office on 17.10.1996 and released the payments to M/s Rajaji Construction Company. The accused was not on good terms with Mr.Dalbir Singh. The accused was never vested with any financial powers to deal with sanctioning of addendum and corrigendum necessary for releasing the payment to M/s Rajaji Construction Company. He submitted that he was falsely implicated by Dalbir Singh to settle his grouse against him.

4. On the side of defence, DW1 Jagdeep Singh who was Deputy Chief Signal and Telecommunication Engineer, Railway Electrification, was examined. He deposed that addendum and corrigendum of any tender was sanctioned by the Authority who had accepted the tender and none else. DW2 Anirudh Behal who was the neighbourer of the accused deposed that the accused was taken away by the CBI team at 2.00 p.m., as per the information shared by his wife of the accused to him. DW3 Mrs. Sunita Rani, Addl.Ahlmad of the Court of CJM, Ambala spoke about the criminal complaint given by the Depepak Sharda against Ashwani Singh and S.S.Gurm pending in the Court of CJM, Ambala.

5. The trial Court having relied upon the evidence of PW3, the complainant in this case, PW4, shadow witness, PW7, independent witness to the disclosure and recovery of the currency notes and evidence of PW9 Major D.K.Tyagi who retrieved the briefcase from the wife of the accused and entrusted to the CBI, came to the conclusion that the charges framed as against him stand duly proved.

6. The entire evidence adduced by the prosecution was thoroughly scanned by me. PW1 Avinash Chander Malhotra was working as Sr.Personnel Officer, Railway Electrification, Ambala Cantonment at the relevant point of time. His categorical deposition is that the accused who was posted as Executive Engineer-I was placed Incharge of the Deputy Chief Engineer, as Deputy Chief Engineer Dalbir Singh was on long leave. PW2 Tejinder Singh Kalra, Chief Project Manager, Railway Electrification Projects, Ambala Cantonment at the relevant point of time stated that the Deputy Chief Engineer was the Head of Civil Engineering Department under his control. As Dalbir Singh, the Deputy Chief Engineer had proceeded on long leave and no substitute could be provided by the Head Office and the contractors also sought for clearance of their bills, the duties of the Deputy Executive Engineer were assigned to the accused to get the work smoothly executed. It was he who passed an order on 13.8.1996 and put the accused in-charge of the post of Deputy Chief Engineer. In compliance with his orders, the accused also started discharging the duties assigned to him and he also appended note to that effect. PW2 was very categorical that the accused had been authorized to deal with the said bills

during that period when Dalbir Singh was on leave.

7. PW8 Rishi Pal Yadav was the Office Superintendent in the office of Chief Project Manager, Railway Electrification, Ambala Cantonment at the relevant point of time. He also deposed that Dalbir Singh who was posted as Deputy Chief Engineer remained on sick leave for four months. In his place accused D.K.Sharda was put in-charge of the office. He has deposed that accused D.K.Sharda had also put his signature qua second addendum and fourth corrigendum in the file. He was very assertive that the accused was competent to sanction addendum and corrigendum in the absence of Dalbir Singh, Deputy Chief Engineer.

8. Learned counsel appearing for the appellant vehemently submitted that relevant file was not produced by the prosecution. Further referring to the evidence of PW2, he submitted that sanction of addendum and corrigendum was within the competence of Dalbir Singh, Deputy Chief Engineer only and not within the domain of the accused. It is his further submission that the accused was not competent to sanction addendum and corrigendum.

9. The above evidence of PW1, PW2 and PW8 would go to establish that it was only accused who had dealt with the file relating to the payment to be made to M/s Rajaji Construction Company. Their evidence also convinced the Court that the accused who was placed in-charge of the Deputy Chief Engineer was competent to sanction addendum and corrigendum and release payment. There was no reason for the officials, namely, PW1, PW2 and PW8 to depose against the accused who was

holding a responsible post in the very same office. Though the relevant file was not produced, I do not find any reason to reject the official version of PW1, PW2 and PW8. Therefore, it is held that the accused who was empowered to discharge all the functions of the Deputy Chief Engineer including sanction of addendum and corrigendum had, in fact, dealt with the file relating to M/s Rajaji Construction Company.

10. PW3 Pawan Kumar has deposed that the accused originally made a demand of ₹10,000/- as bribe for releasing payment on 11.10.1996. After he lodged a complaint with the Superintendent of Police, CBI, Chandigarh, he proceeded alongwith PW4 Sada Kumar, Assistant Surveyor on 15.10.1996 to the office of accused who reiterated the demand of ₹10,000/- as bribe for clearing the bills. PW4 Sada Kumar, Assistant Surveyor (Works) who was a shadow witness in this case has corroborated the demand of bribe of ₹10,000/- made by accused on 15.10.1996. On 16.10.1996, PW3 and PW4, as per the instructions given by PW10 had descended on the office of accused. Of course, PW4 Sada Kumar stated that beforever accused left alongwith PW3 in the Maruti car, the accused asked PW3 whether he brought the bribe amount and PW3 responded that he had brought ₹5000/- as he could not arrange ₹10,000/-. Whereas, PW3 has come out with a slightly varied version to the effect that he accompanied the accused in his Maruti car to DRM Office leaving behind PW4 Sada Kumar and the accused demanded the amount when the car took a round of the building.

11. Learned counsel appearing for the accused-appellant submitted

that there is a contradiction as regards the demand allegedly made by the accused on 15.10.1996, inasmuch as PW4 has deposed that in his presence demand of bribe was renewed, whereas PW3 has stated that after PW4 was left behind, such a demand was made.

12. Such a variation in the evidence of PW3 and PW4 does not throw any doubt on the case of the prosecution. Assuming that the accused had not revived his demand of bribe in the presence of PW4, the evidence of PW3 that he placed the bribe amount ₹5000/- in the front dicky as per the command of the accused who revived his demand of bribe cannot be ignored, more especially when the earlier demand on 11.10.1996 and 15.10.1996 stood established by the prosecution.

13. In a case where the prosecution relied upon only one occasion of demand of bribe made by the accused and such a demand also was contradictorily projected by it, it may give rise to doubt as to the demand of bribe put forth by the prosecution. In a case where more than one demand of bribe had been made by the accused and the demand of bribe at the time when the amount was parted with was established, there was no question of rejecting the case of the prosecution.

14. In the instant case, the prosecution has come out with a very natural sequence of events. PW4 Sada Kumar, the shadow witness had accompanied PW3 to watch the sequence of events. He had been asked by the accused to keep away and therefore, he could not accompany the accused. It was only PW3 who was permitted to accompany the accused in his Maruti car. The testimony of PW3 that the accused having demanded

the bribe amount very intelligently asked PW3 to place the bribe amount in the front dicky and PW3 obliged the command of the accused is found to be credible and trustworthy. The accused had not only kept away the company of PW4, but had been over cautious by asking PW3 as well to get out of the car after the money demanded was put on the front dicky. Such a natural sequence of events narrated by PW3 completely convinces the Court that the accused having demanded the bribe money took possession of the same by directing PW3 to place it on the front dicky of the car. The accused had also verified the amount of bribe brought by PW3. The reason assigned by PW3 for bringing only a sum of ₹5000/- out of ₹10,000/- had also convinced the accused.

15. Learned counsel appearing for the accused submits that the prosecution has come out with a very strange case that the accused had not received the money, but the amount was put on the front dicky as per his direction. Learned counsel appearing for the respondent-CBI submitted that the amount was placed on the dicky only as per the direction of the accused. Therefore, it would amount to taking possession of the bribe money by the accused.

16. I do find force in the submission made by learned counsel appearing for the respondent-CBI. Though the bribe amount was not received physically by the accused and the amount was placed on the front dicky, it should be construed that the accused took possession of the money the moment the bribe amount was put on the dicky as per his wishes. The accused came into exclusive possession of the said money after he had

dropped PW3 in the midway. Therefore, the accused cannot escape from the charges on the ground that he had not touched the money.

17. PW7 Dilip Pandita, Administrative Officer from New India Assurance Company had been drafted as an independent witness by the CBI. He had categorically deposed that based on the disclosure statement suffered by the accused, the trap team alongwith the accused proceeded to the house of PW9 Major D.K.Tyagi and unearthed the bribe money at his instance. PW9 Major D.K.Tyagi was the old class-fellow of the accused. He has categorically stated that a briefcase was left at his home by the accused around 1.30 p.m. on 16.10.1996 and the same was taken back by his wife after some time. The evidence of PW7 and PW9 would go to establish that the brief case which was retrieved by PW9 from the house of accused contained the bribe money which was already noted down by PW10 in his office.

18. It is submitted by learned counsel appearing for the appellant that there was a major flaw in the investigation process, inasmuch as the investigating official had not thought it fit to go over to the house of the accused to immediately recover the brief case. It was also submitted that the brief case was not exhibited before the Court. Learned counsel appearing for the respondent-CBI submitted that non-recovery of brief case would not have an adverse impact on the case of the prosecution. The investigating official completely believed PW9 Major D.K.Tyagi who was in the Military service and therefore, the recovery of the brief case made by the investigating official does not weaken the case of the prosecution, he

submitted further.

19. The prosecution was to establish whether the accused demanded the bribe and received the same. The brief case was not a material object which will have a direct bearing on the charge against the accused. Therefore, I do not find any merit in the above submissions made by learned counsel appearing for the appellant.

20. PW9 Major D.K.Tyagi who was an old class-fellow of the accused would not have chosen to fabricate a version. His rank in the Military as well as his close proximity with the accused would have definitely restrained him from setting up any false case against the accused. The very fact that PW9 Major D.K.Tyagi also supported the case of the prosecution indicates that there was no concoction or fabrication in the case launched as against the accused.

21. The evidence of PW3 and PW4 establishes that both the hands of the accused and his left side pocket which were dipped in the sodium carbonate solution separately prepared turned pinkish in colour. Thus, the prosecution has established that the accused had taken physical possession of the bribe money and handled the same.

22. It was submitted by learned counsel appearing for the accused that the accused was taking lunch at the time when the trap team descended on his house as per the case of the prosecution. Therefore, there was no possibility for the hands of the accused to turn pink in colour, it was submitted.

23. In my view, it may be a case where the accused had started

taking his lunch with the aid of spoon. But the fact remains that both hands when dipped in sodium carbonate solution turned pink in colour. Further, the prosecution has established that the accused having demanded the bribe of ₹10,000/- received a sum of ₹5000/- by renewing his demand from PW3 and kept concealed the same in the house of PW9. Under such circumstances, the deposition of PW7 that accused was found taking lunch before his hands were put to test does not, in any way, shake the edifice of the case built by the prosecution.

24. In view of the above facts and circumstances, I find that the prosecution has established beyond reasonable doubt the charges framed as against the accused. But considering the totality of facts and circumstances of this case, I am of the considered view that the quantum of sentence imposed on the accused is on the higher side. The accused had suffered the agony of the pendency of this case for the past 19 years. Therefore, in the special facts and circumstances of this case, I have proposed to show some leniency in the quantum of sentence.

25. In the light of the above discussion, the judgement of conviction recorded by the trial Court as against the accused-appellant under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 stands confirmed. But the accused-appellant is sentenced to undergo 1 year R.I. and to pay a fine of ₹5000/- and in default, to undergo a further period of 1 month R.I. under Section 7 of the Act and also sentenced to undergo 1 year R.I. and to pay a fine of ₹5000/- and in default, to undergo a further period of 1 month R.I. under Section 13(2) of the Act. Both the sentences shall run

concurrently.

26. The accused-appellant D.K.Sharda is on bail. His bail bond stands cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Ambala who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Ambala shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

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

October 30, 2015
Gulati

(M. JEYAPPAUL)
JUDGE