

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 106 OF 2008

Narayan Yadavrao Jadhav

Age : 62 years, Occupation : Retired

Assistant Superintendent in the office of

Taluka Agriculture Officer, Ashti,

Taluka Ashti, Dist. Beed.

.. Appellant

Through L.Rs.

- 1) Shantabai Narayan Shamdire Jadhav,
Age : 56 years, Occupation : Household,
Resident of Murshadpur Taluka, Ashti,
District Beed. Wife.
- 2) Deepak Narayan Shamdire (Jadhav),
Age : 42 years, Occupation : Advocate,
Resident of Shivajinagar, Pune. Son.
- 3) Santosh Narayan Shamdire Jadhav,
Age : 40 years, Occupation : Government Service,
Resident of Murshadpur, Taluka Ashti,
Dist. Beed.
- 4) Sow. Vandana Manohar Jadhav,
Age : 38 years, Occupation : Household,
Resident of Dattanagar, Murshadpur,
Taluka Ashti, District Beed.

Vs.

The State of Maharashtra
through Gautam Digambar Deshmukh,
Police Inspector, Anti Corruption Bureau,
Beed.

.. Respondent

.....
Ms A. N. Ansari, Advocate for the appellant
Mr Rajendra Dasalkar, APP for respondent/State
.....

CORAM : M.T. JOSHI, J.
DATE : 19/01/2016

ORAL JUDGMENT:

. Heard both the sides.

2. The original appellant was convicted by the learned Special Judge-cum-Additional Sessions Judge, Beed in Special Case No. 15 of 2001 on 29th February, 2008 for the offences punishable under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs. 200, on each of the counts, in default of which, to undergo rigorous imprisonment for one month on both counts. Aggrieved by the said decision, he has preferred the present appeal.

. During the pendency of appeal, the appellant has died and, therefore, the appeal is continued by his present legal representatives.

3. The prosecution case, in short, is as under:

PW-2 Namdeo Anantrao Tekale was working as Agricultural Assistant at Ashti in the year 2000. It was his field duty and the office of the Taluka Agricultural Officer was at Ashti where all the administrative works were being done. As he was ill for a period between 01.01.2000 to 31.03.2000, he was on leave. His medical bill of Rs. 19,816/- was pending in the office. The said bill was sanctioned. On 4th October, 2000, he received a message that, as his medical bill is sanctioned, he should take away the amount.

. During that period, the deceased-appellant was working as Assistant Superintendent in the said office. He used to disburse the amount. On 4th October, 2000 when the complainant approached the deceased-appellant, at that time he made a demand of Rs. 500/- for payment of the amount. At that time, the complainant pretended that the deceased-appellant should first give him an amount of Rs. 19,816/- and later on, his demand for Rs. 500/- would be fulfilled as the complainant wanted no direct deduction towards the bribe be made from the bill payment. The deceased-appellant said that, the amount of Rs. 500/- should be paid to him on the next day and

said that only by keeping faith on the complainant, he was paying the amount. He also told that, on the next day by evening the bribe amount should be paid else his future work of passing of bills would not be done. Accordingly, on 5th October, 2000 the complainant went to Anti Corruption Bureau, Beed and filed his complaint at Exh. 24.

4. PW-4 the then Police Inspector of Anti Corruption Bureau, Beed - Mr Gautam Digambar Deshmukh conducted the investigation. He collected two panch witnesses from the Government Department including PW3 - Syed Minhajul Abedin S/o Jainul Abedin, who was then serving in Government Polytechnic at Beed. Then Mr Deshmukh gave demonstration to the panchas and the complainant as regards application of Anthracene Powder. Five currency notes each of denomination of Rs. 100/- were taken from the complainant for handing over as bribe to the deceased-appellant. The anthracene powder was applied to these currency notes and same was kept in the pocket of complainant. The complainant as well as the shadow panch witness PW-3 were directed to remain together and the trap was laid at the office.

5. When the complainant and the shadow panch witness went to the office, the complainant made inquiry with one of the colleagues about the deceased-appellant. At that time it was told that, he went outside and will be back within 10-15 minutes. Thereafter, at about 5.00 p.m. deceased-appellant returned to the office. After the preliminary talk was over, the deceased-appellant made an inquiry as to whether the amount is brought. When the complainant answered in affirmative, the deceased-appellant directed him to pay the same.

. Accordingly, the complainant produced the decoy money and the same was accepted by the deceased-appellant. He counted the said amount and put in the left side chest pocket. The complainant also told deceased-appellant that he had paid him Rs. 500/- and, therefore, for any future work the deceased-appellant should not create any obstruction. Upon that, the deceased-appellant said that it would be alright and there would be no obstruction in future payment of bills. Thereupon the complainant gave the predetermined signal. Upon that, the raiding party including the

Investigating Officer arrived at the spot. The deceased-appellant was caught while accepting the decoy money.

. Thereafter next of the exercise of examination of the hands of the deceased-appellant and complainant under ultra violet rays was undertaken. Investigating Officer thereafter completed all the formalities and recorded the statement of the relevant witnesses, sent a request to the appointing authority of the deceased-appellant for grant of sanction to prosecute the deceased-appellant. Accordingly PW-1 Dr. Dattatraya Shrirang Vyawahare, Divisional Joint Director of Agriculture, Aurangabd had accorded the sanction to prosecute he deceased-appellant vide Exh. 21/C and, thereupon, the charge-sheet came to be filed.

6. Before the learned Special Judge, Beed four witnesses as detailed above were examined. The defence of the deceased-appellant was that, he belonged to VJNT category. Though he himself and the complainant were recruited at one point of time as the deceased-appellant was from reserved category, he was granted two promotions. Further, the complainant's sons were having Hotel, Permit rooms, Beer Bars at Ashti i.e. the area

where the complainant was on his duty. One of his son was the President of Taluka Shivsena and, therefore, by misusing the position, the complaint was filed. All these facts were admitted by the complainant.

. On the day of trap, the complainant had handed over the amount of Rs. 500/- to the deceased-appellant. When the deceased-appellant made a query to the complainant as to why he was giving money, he told that it was only for the purpose of keeping the money with him and thus he was falsely implicated in the trap case. The learned Special Judge, however, found that the prosecution case is proved beyond the reasonable doubt and, therefore, the conviction and the sentences as detailed supra were recorded.

7. Smt. Ansari, the learned counsel for the deceased-appellant submits that, as per the prosecution case itself, the amount under the bill was already paid and according to the prosecution, the amount was agreed to be paid by the complainant so that his future work of payment of bill would have no obstruction. However, during the trial, this very consideration for obtaining the bribe is absent. She further took me through the

evidence on record to show that, there were vital contradictions between the oral evidence of the witnesses. She further points towards the admission of the complainant which would show that there was an element of animus in the mind of the complainant against the deceased-appellant and that he was an influential person in the locality. In the circumstances, she submits that the learned Special Judge ought to have extended reasonable benefit of doubt to the appellant in the present case.

8. On the other hand, learned APP submitted before me that the shadow panch witness i.e. PW-3 Syed had fully supported the prosecution case. Minor contradictions in the oral evidence of the witnesses would not shatter entire evidence on record. He, therefore, submits that no interference in the impugned order is warranted.

9. On the basis of this material, following points arise for my determination:

I) Whether the prosecution has proved that, during the period from 4th October, 2000 to 5th October,

2000 at Ashti, Dist. Beed, deceased-appellant being a public servant had made a demand of Rs.500/- and obtained the same as a gratification other than the legal remuneration from the complainant for payment of amount under the bill and for not creating any hindrance for the future bills?

II) Whether the prosecution has further proved that the deceased-appellant being a public servant obtained pecuniary advantage by a corrupt and illegal means by using his position as a public servant?

. My findings to the above points are negative. The appeal is, therefore, allowed and deceased-appellant is acquitted of all the offences for the reasons to follow.

REASONS

10. The complainant in his cross-examination has admitted that, he was knowing the deceased-appellant for a period of 10-15 years. The deceased-appellant was in fact junior to him in service, however, he got two more promotions as he belonged to VJNT category. He further admitted that, his one son Sanjay owned Permit Room at Ashti while another son Deepak is running a Hotel at

Nagar-Ashti Highway, his third son Raju owned a Hotel-cum-Beer Bar at Ashti and his youngest son namely, Sanjay was President of Taluka Shivsena in the year 2000-2001. Though all these facts cannot be said to be relevant, so far as present episode is concerned, it would however assume the importance for the major lacunae, which are found during trial.

11. It was a prosecution case as well as it was a charge that, that an amount of Rs. 500/- was demanded for past payment of the medical bill and also for future smooth transactions as and when the bill would be passed. The complainant failed to depose regarding his future promises or future official work in his examination-in-chief. The learned Special Judge, therefore, at the end of the deposition of the complainant put a question to him. The question as well as the answer as is under:

"Q. Why you agreed to pay Rs. 500/- as bribe to To: accused when he had already paid your amount Court. of the bill on 4.10.2000?"

Ans. Accused was not ready to pay the amount of the bill to me and he paid the amount to me only

when I promised to pay the bribe amount on next day."

12. It would thus be seen that, despite the complainant was given a reminder, failed to repeat the allegations that the amount was demanded also for future work.

13. While the complainant deposed that, when they reached the office, after sometime, the deceased-appellant came from outside. At that time he himself asked the deceased-appellant to enter into his office and then he would pay the amount in office. Therefore, according to him, the deceased-appellant went inside his office. Thereupon he himself and shadow panch witness entered into office and thereafter the amount was paid. Prosecution case, however, is not that the complainant has given any direction to the deceased-appellant to enter into his office and thereafter the amount will be paid.

14. These improvements were put to him during cross-examination and he deposed that, he did not remember whether he stated the said incident to the Investigating Officer.

15. The shadow panch witness also did not depose that any directions were given by the complainant to first enter into the office and thereafter he would pay the bribe amount to him in the office. Further, while complainant deposed that the deceased-appellant has counted the amount, the panch witness did not depose about the same. While it is the defence that, deceased-appellant immediately told the Investigating Officer that the complainant handed over the amount to the deceased-appellant and even he questioned the complainant as to for what purpose he is giving the amount and the complainant told him that he would tell him later on. When the above defence case was put to the complainant, he deposed that he did not know as to whether accused deceased-appellant made any such statement to the Investigating Officer.

. Further, as to what dialogue took place at the time of trap is also not clear from the facts, as highlighted supra. In the background of the factual relations between the parties, therefore, in my view, the learned Special Judge ought to have extended

reasonable benefit of doubt to the deceased-appellant in the case. In the result, the following order.

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The order of the learned Special Judge dt. 29th February, 2008, whereby the appellant was convicted in Special Case No. 15 of 2001 for the offence punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, is hereby set aside.
- (iii) Instead the deceased-appellant is acquitted of all the offences.

[M.T. JOSHI]
JUDGE

sgp