

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.275 of 2015

The State, represented by
The Public Prosecutor,
High Court, Madras,
(V & A.C., Vellore - Crime No.3/2005)

... Appellant

Vs.

Manoharan

... Respondent

Criminal Appeal filed under Section 378 Cr.P.C., against the judgment of acquittal of the respondent/accused passed in Special Case No.1 of 2006, dated 09.06.2014 on the file of the Special-cum-Chief Judicial Magistrate's Court, Vellore.

For appellant : Mr.P.Govindarajan, Addl.P.P.

For respondent : Mr.S.Haroon-AL-Rasheed for
M/s.T.S.Gopalan & Co.

JUDGMENT

This Criminal Appeal is filed against the judgment of acquittal of the respondent/accused in Special Case No.1 of 2006, dated 09.06.2014 on the file of the Special-cum-Chief Judicial Magistrate's Court, Vellore. The respondent/accused has been acquitted under Section 248(1) Cr.P.C. in respect of the charges framed against him for the alleged offences under Sections 7 and 13(2) read with Section 13(1)(d)(ii) of the Prevention of Corruption Act.

2. Before going into the details of the evidence, the brief case of the prosecution is stated hereunder:

The respondent/accused was working as Junior Engineer in the Tamil Nadu Electricity Board, Tharapadavedu, Katpadi, Vellore District. The de-facto complainant (who was examined as P.W.2 before the trial Court) initially approached the respondent/accused on 25.05.2005 seeking electricity service connection for his shopping complex, by submitting an application with fees of Rs.50/-, for which, receipt was also

issued. Subsequently, again on 27.05.2015, the de-facto complainant approached the accused for the same request, for which, the respondent/accused demanded an illegal gratification of Rs.500/-. Hence, the de-facto complainant lodged a complaint before the Inspector of Police (who was examined as P.W.15), Vigilance and Anti-Corruption, Vellore. P.W.15 registered a case in Crime No.3 of 2005 on 31.05.2005 at 06.30 hours for the offence under Section 7 of the Prevention of Corruption Act. As the de-facto complainant agreed to co-operate for arranging a trap as against the respondent/accused, the Inspector of Police, Vigilance and Anti-Corruption Wing, Vellore arranged for a trap, after observing the required formalities. In the said trap, it was elicited that the respondent/accused demanded and accepted Rs.500/- as bribe from the de-facto complainant at about 10.30 a.m. in the presence of official witness, namely Mr.C.Karthikeyan, Deputy Inspector of Local Audit Department, Vellore and Mr.S.R.Balaji, Agriculture Officer, Office of the Joint Director of Agriculture, Vellore. Thereafter, the respondent/accused was arrested at about 12.30 hours on the same day. After completion of the detailed investigation and based on the materials available on record, the investigating officer laid the charge-sheet against the respondent/accused for the offences under Sections 7 and 13(2) read with Section 13(1)(d) (ii) of the Prevention of Corruption Act. The charge-sheet/final report was taken on file by the trial Court in Special Case No.1 of 2006 (Crime No.3 of 2005).

3. In order to prove their case, during the course of trial, the prosecution has examined 16 witnesses, marked 21 documents and exhibited 7 material objects.

4. When the respondent/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He did not examine any witness, but marked only one exhibit.

5. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, the trial Court acquitted the respondent/accused of the above said charges levelled against him. Challenging the said judgment of acquittal, the State has filed this appeal.

6. Learned Additional Public Prosecutor appearing for the appellant/State submitted that P.W.2/de-facto complainant approached the respondent/accused, who was working as Junior Engineer, seeking electricity service connection for his shopping complex, for which, the accused demanded an illegal gratification of Rs.500/-, which resulted in filing of the complaint/Ex.P-2 by P.W.2/de-facto complainant before P.W.15 the then Inspector of Police, which was registered in Crime No.3 of 2005 at about 06.30 hours. As the de-facto complainant agreed for co-operating in laying the trap, the trap was laid on

31.05.2005, and at that time, the respondent/accused demanded Rs.500/- as bribe at about 10.30 a.m. in the presence of the official witnesses, which resulted in arresting the respondent/accused on the same day.

7. Learned Additional Public Prosecutor appearing for the appellant/State further contended that P.W.2 (de-facto complainant), in his chief examination has categorically stated about the demand and acceptance of bribe in the trap laid on 31.05.2005 in the presence of the official witnesses, namely Karthikeyan and Balaji. Learned Additional Public Prosecutor further stated that though in chief-examination, P.W.2 supported the case of the prosecution, at the time of cross-examination, he gave a different version by stating that the sum of Rs.500/- given by him to the respondent/accused, was received by the accused towards re-payment of the outstanding loan amount. In this regard, learned Additional Public Prosecutor further submitted that the contradictory statement given by P.W.2 in the cross-examination was probably due to delay of four years in cross-examining him. Learned Additional Public Prosecutor also submitted that P.W.2 and the wife of the respondent/accused were class-mates and hence, there is every possibility of gaining over him by the defence after lapse of four years from the date of chief examination. Learned Additional Public Prosecutor also invited the attention of this Court to the judgment reported in 2015 (2) SCC (Cri) 226 = 2015 (3) SCC 220 = MANU/SC/0068/2015 (Vinod Kumar Vs. State of Punjab) and submitted that the dictum laid down in that judgment clearly shows that if cross-examination has taken place after a long time, there is every possibility to pressurise the witness and to gain over him by adopting all kinds of tactics. Even in this case, P.W.2 was cross-examined after a lapse of four years, and therefore, there is every possibility of gaining over him by the defence, which cannot be simply brushed aside. Hence, considering these aspects, the trial Court ought to have relied upon only the chief-examination of P.W.2 as well as the evidence of P.Ws.3 and 4 and P.W.15 investigating officer, all of whom have categorically stated about the trap laid and the demand and acceptance of bribe by the respondent/accused. Therefore, the trial Court ought to have convicted the accused for the alleged offences stated supra.

8. The trial Court, by strongly relying on the contra version of P.W.2 in the cross-examination and by not considering the evidence of P.Ws.3 and 4 in proper perspective, erroneously acquitted the respondent/accused of the charges levelled against him and therefore, the learned Additional Public Prosecutor prayed that by setting aside the order of acquittal, the respondent may be convicted of the charges levelled against him.

9. Countering the above submissions, learned counsel for the respondent/accused submitted that even P.Ws.3 and 4 have stated in cross-examination that while the respondent/accused was examined by P.W.15 investigating officer during the course of investigation, the respondent/accused explained to P.W.15 investigating officer that he had received back only the outstanding loan amount from P.W.2 on 31.05.2005. P.W.15 investigating officer has also stated in his cross-examination that while he was examining the respondent/accused during the course of investigation, the accused stated that he had received back only an outstanding loan amount from P.W.2. Therefore, as though it is not for the first time coming in the evidence of P.W.2 that the amount of Rs.500/- was handed over to the accused as the outstanding loan amount. In fact, the admission made by P.W.2 in his cross-examination is only in consonance with the statement made by the respondent/accused to P.W.15/investigating officer during the course of investigation in the presence of P.Ws.3 and 4. Therefore, the evidence of P.W.15 investigating officer and the evidence of P.Ws.3 and 4 would go to show that the amount of Rs.500/- received by the respondent/accused, is only an outstanding loan amount. Further, learned counsel for the respondent/accused submitted that there are several contradictions in the evidence of P.W.2 with regard to the date of lodging and registering the complaint/FIR. In cross-examination, P.W.2 stated that he complained to E.B. authorities on 22.05.2005 and to the Vigilance Police on 27.05.2005. But, from Ex.P-2 complaint, it is seen that the complaint is dated 31.05.2005, which was registered by the Police on 31.05.2005 itself.

10. Learned counsel for the respondent/accused also stated that since there is contradiction in the evidence of P.W.2 with regard to payment/receipt of loan amount of Rs.500/- and also in his cross-examination with regard to the date of lodging / registering the FIR/complaint, it could safely be inferred that the prosecution has not properly established their case as projected by them. Hence, for the above reasons, learned counsel prayed for dismissal of the appeal.

11. Keeping the above submissions made by learned counsel on either side in mind and perusing the materials available on record, I find that though P.W.2 has supported the case of the prosecution in his chief-examination, he has contradicted his own statement in cross-examination and stated that he has paid the sum of Rs.500/- to the appellant/accused only towards the outstanding loan amount. It is the submission of the learned Additional Public Prosecutor that P.W.2 was cross-examined after four years from the date of his chief examination. P.W.2/de-facto complainant and the wife of the respondent/accused were class-mates and hence, there is possibility of gaining over him by the respondent/accused. In this regard, learned Additional

Public Prosecutor relied on the decision of the Supreme Court reported in 2015 (2) SCC (Cri) 226 (cited supra) and submitted that since there was long delay in cross-examining the de-facto complainant/P.W.2, by rejecting the contradictory statement made by P.W.2 in his cross-examination and based on his chief-examination as well as based on the evidence of P.Ws.3 and 4 and P.W.15 (investigating officer), the respondent/accused may be convicted for the offences alleged against him and thus, he prayed for setting aside the impugned judgment of acquittal.

12. It is the reply of the learned counsel for the respondent/accused that as though it is not for the first time in the cross-examination of P.W.2 that it has been stated that the sum of Rs.500/- handed over to the respondent/accused was only the outstanding loan amount payable by P.W.2 to the respondent/accused. In fact, when the respondent/accused was examined by P.W.15 investigating officer, he has explained to the investigating officer that he received back only the outstanding loan amount of Rs.500/- from P.W.2, which was payable by him. P.Ws.3 and 4 and P.W.15 investigating officer have categorically stated in their evidence that when the accused was examined by P.W.15 investigating officer, he has stated that he has received back only the outstanding loan amount from P.W.2. Therefore, according to the learned counsel for the respondent/accused, there is no tangible evidence to prove the demand and acceptance of the bribe alleged to have been received by the respondent/accused.

13. Irrespective of the submissions made by the learned counsel on either side, this Court is of the opinion that there is no doubt that the submission of the learned counsel for the respondent/accused is a formidable argument. As contended by the learned Additional Public Prosecutor, there was a delay of four years in cross-examining P.W.2. At the same time, I am of the opinion that irrespective of the delay in cross-examining P.W.2, the other evidence adduced on the side of the prosecution does not inspire confidence in the mind of this Court, thereby warranting this Court to interfere with the impugned judgment of acquittal at this distant point of time. In fact, there is contradiction in the case of the prosecution with regard to the date of lodging of the complaint. It is contended by the learned counsel for the respondent/accused that from Ex.P-2 complaint, it is seen that the date of complaint and registering of complaint was on 31.05.2005. But, in the evidence of P.W.2, during his cross-examination, P.W.2 stated that he gave complaint to E.B. authorities on 22.05.2005 and to the Vigilance Police on 27.05.2005. This is much earlier to the handing over of the sum of Rs.500/- by P.W.2 to the respondent/accused as the alleged illegal gratification on 31.05.2005.

14. Moreover, in the decision of the Supreme Court reported in 2003 (12) SCC 606 (Ramanand Yadav Vs. Prabhu Nath Jha), relied on by the learned Additional Public Prosecutor, the Apex Court has dealt with various decisions on the subject and held that though there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based, generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and further that the judgment of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. The Apex Court further held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. In the case on hand, the view which is in favour of the respondent/accused has to be adopted for acquitting him, i.e. the contra statements in P.W.2's evidence comes in favour of the respondent/accused.

15. Thus, taking into consideration the various contradictions in the evidence of the prosecution witnesses as discussed above, with regard to the payment of outstanding loan amount by P.W.2, the trial Court has rightly come to the conclusion that the prosecution has miserably failed to prove the demand and acceptance of bribe amount of Rs.500/-. As contended by the learned counsel for the respondent/accused and as observed above, since the evidence of the prosecution witnesses are not inspiring the confidence of this Court, absolutely, I do not find any compelling circumstances warranting interference by this Court in the impugned judgment of acquittal passed by this Court at this distant point of time. Hence, I find no infirmity or illegality in the impugned judgment of acquittal passed by the trial Court. The Criminal Appeal is accordingly dismissed, confirming the impugned judgment of acquittal passed by the trial Court.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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Copy to

1. The Special Judge-cum-Chief Judicial Magistrate,
Vellore.
2. The Inspector of Police,
Vigilance and Anti-Corruption,
Vellore (Crime No.3 of 2005).
3. The Public Prosecutor, High Court, Madras.

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