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HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Justice Rajendra Chandra Singh Samant

Criminal Appeal No. 140 of 2000

Siya Ram Kurre (Dead) through LRs

---- Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh)

---- Respondent

CAV JUDGMENT

Post for 09 /01/2017

Sd/-
Rajendra Chandra Singh Samant
Judge

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 140 of 2000

Judgment Reserved on 29.11.2016

Judgment Delivered on 09 .01.2017

Siya Ram Kurre (Dead) through LRs—

1. Smt. Banshi Kurre w/o late Shri Siya Ram Kurre aged about 45 years, House wife, R/o village Nawapara
2. Ku. Shanti Vijaya Kurre D/o Siya Ram Kurre aged about 25 years, student, r/o village Nawapara

Both R/o village Nawapara, Tahsil & P.S. Kasdole, District Baloda Bazar, Chhattisgarh.

---- **Appellants**

versus

State of Madhya Pradesh (now Chhattisgarh).

---- **Respondent**

For the Appellants : Shri Yashwant Tiwari, Advocate.
For the Respondent/ State: Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 5.1.2000, passed by the Learned Special Judge and Additional Sessions Judge, Raipur in Special Case No. 2 of 1995, whereby and whereunder the learned Special Judge and Additional Sessions Judge has convicted the accused under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC-Act, 1988') and sentenced to undergo RI for one year and to pay fine of Rs.1,000/- with default stipulation.

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2. The case of the prosecution, in brief, is that on 9.4.1992, complainant – Tubelal Dewan (PW-1) presented a written complaint (Ex. P/1) before Superintendent of Police, Special Police Establishment, Lok Ayukt, Raipur complaining, that about 22 acres of land situated in Village Barula was jointly recorded in the name of his mother and mother's sisters. There had been a settled partition among all the sisters of complainant's mother, but in the revenue record the land remained recorded jointly. An application dated 26.3.1992, was jointly presented for partition of the land between the joint holders, for which the accused demanded Rs.2,500/- as bribe from the complainant. At the relevant time, the accused had been posted as Patwari, is a public servant in Village Barula. The accused agreed to take Rs.1,000/- as bribe and called the complainant to pay the bribe money on 9.4.1992 between 11:00 am and 12:00 am at his residence at Barula.

Complainant – Tubelal Dewan (PW-1) presented a complaint before SP, Lok Ayukt, Raipur. After receiving the complaint, Superintendent of Police, Lok Ayukt directed Inspector, M.L. Mishra (PW-18) to do the needful. Inspector, M.L. Mishra, (PW-18) summoned the witnesses Peter Minj (PW-8) and S.M. Jaffar (PW-17) in the office of Lok Ayukt at Raipur at about 7:30 am and in their presence Tubelal (PW-1) produced five notes of Rs.100/- and ten notes of Rs.50/-. Numbers of these currency notes were recorded. Phenolphthalein powder was applied on these currency notes and after search of the complainant the currency notes were kept in the left pocket of his kurta. After that, for the purpose of demonstration, Constable, Pothiram (PW-11) prepared a solution of sodium carbonate, a colourless solution in a clean glass in which Narsingh (PW-4), Peon who had applied phenolphthalein powder on currency notes, dipped his fingers, on which the

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colour of the solution changed to pink. A panchanama of this proceeding was recorded vide Ex.P/2. The coloured solution of sodium carbonate and phenolphthalein was preserved and sealed.

The complainant and the members of the trap party proceeded to Barula between 9:00 to 9:15 pm and arrived at about 12:00 am. The complainant was sent towards the house of the accused alongwith shadow witness Peter Minj (PW-8) and all the members of the trap party were asked to wait outside. After sometime, Peter Minj (PW-8) informed, that the accused had received the bribe from the complainant, then all the members of the trap party entered the house of the complainant and found the accused sitting on a chair. A table was kept in front of the accused on which the currency notes were kept. The complainant told that he gave the bribe money after being demanded by the accused and the accused after receiving the money counted the notes and kept the same on the table. The members of the trap party enquired about the money from the accused. He admitted about receiving the currency notes.

S.M. Jaffar (PW-17) collected the currency notes and matched their numbers with the numbers already noted. On matching the numbers, it was found that the currency notes recovered from the accused were the same which were kept in the pocket of the complainant after applying phenolphthalein power thereon. Thereafter, a recovery panchanama of the currency notes was prepared vide Ex. P/11. The hands of the accused and the complainant were washed in the solution of sodium carbonate, on which the colour of the solution changed to pink which was preserved and sealed. The mutation register and some other documents were seized from the accused vide Ex. P/7. A panchanama of the proceedings was recorded on the spot vide Ex. P/5. A clean solution of sodium carbonate was prepared in which all the members of the trap party washed their hands, on which the colour of the solution remained unchanged. A part of this solution was preserved and sealed. The recovered notes were dipped into the remaining part of the solution, on which the colour of the solution changed to pink which was also preserved. Thereafter, the hands of the complainant were also dipped into the sodium carbonate solution on which the colour of the solution changed to pink which was preserved in a bottle. Solution of sodium carbonate was also poured on the table on which the currency notes were kept on which the colour of the solution changed in to dirty colour which was separately preserved and sealed.

The currency notes recovered from the accused, the preserved plain solution and the coloured solutions preserved in bottles were seized vide Ex. P/6. One unnumbered First Information Report was recorded on the spot vide Ex. P/11. On the basis of which, later on, a numbered FIR (Ex. P/12) was recorded at Special Police, Lok Ayukt Office at Raipur. The seized articles were sent for examination to Forensic Science Laboratory. FSL report (Ex.P/9) confirmed presence of the phenolphthalein powder on the currency notes and in the solutions preserved and sealed after washing of the hands of the appellant, complainant and others concerned. A formal sanction (Ex. P/13) for prosecution of the appellant was obtained. Statements of the witnesses were recorded. On completion of the investigation, the appellant was charge-sheeted.

3. The appellant was charged under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC-Act, 1988. The prosecution examined as many as 18 witnesses. The defence examined 2 witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating circumstances against him, the appellant pleaded innocence and stated that he never demanded any bribe from the complainant. He took a defence that the complainant had come to him to deposit the arrears of the land revenue and this was the amount kept on the table. On coming of the complainant to him, he referred to the revenue records and informed him that Rs.702.03 was to be paid by him as arrears of the land revenue, on which the complainant said that the amount is kept on the table which he should count. On his saying so, the accused counted the currency notes. Thereafter, he was falsely implicated. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed, by which the accused has been convicted and sentenced as mentioned above.

4. The grounds of the appeal are that the finding of conviction against the accused is erroneous. The testimony of the witnesses of the prosecution are not reliable as they are full of contradictions and omissions. The demand of bribe from the complainant was not proved by the prosecution. The trial court has failed to appreciate the defence of the accused. For these reasons, the accused deserves to be acquitted of the charges and the appeal deserves to be allowed.

5. Learned counsel for the accused/appellant submits that a Patwari is not empowered under the Land Revenue Code to order for partition of land. Looking to the prompt action taken by the Lok Ayukt established at Raipur, it

is apparent that the complainant was tutored and the trap was preplanned to falsely implicate the accused. The accused has sufficiently proved that the amount tendered by the complainant was in fact for payment of arrears of land revenue. The currency notes, alleged to be bribe money, were not seized from the accused. Admittedly, those currency notes were found lying on the table. The statement of S.M. Jaffar (PW-17) does not support the prosecution case and as per the statement of Tubelal (PW-1) a complaint (Ex. P/1) was filed after the procedure of trap was completed. Statement of witnesses Agam Ram Verma (PW-6) and M.L. Mishra (PW-18) are full of discrepancies. Trap witness Peter Minj (PW-8), has stated almost a new story which is not in conformity with the case of the prosecution. After the submission made by the accused in defence, that the notes recovered were tendered for payment of arrears of land revenue, it was the burden of the prosecution to prove it otherwise. For these reasons, the accused/appellant is entitled to be acquitted of the charges framed against him.

6. The question arising for determination in this appeal is, whether the accused succeeded to prove that the amount tendered by the complainant was not bribe, but was payment of arrears of land revenue?

7. The evidence led by the prosecution before the trial court is perused. Tubelal (PW-1) has stated that one application was filed for separation of joint account on the basis of partition and possession of the land. This witness and other related persons approached the accused for the purpose of partition of the joint account. The accused demanded bribe of Rs.2,500/-, but later, he agreed to receive only Rs.1,000/-. After which the accused visited the spot to demarcate the land. He intimated this witness and others

that the work will be done in 4 to 5 days. This witness approached the accused after 4 to 5 days. The accused asked for the bribe money then this witness approached the Lok Ayukt at Raipur. Tubelal (PW-1) further stated that he was advised to give an application in the office of the Lok Ayukt on which he wrote the application Ex. P/1 and submitted the same in the office of the Lok Ayukt at Raipur. At the same time, some persons were called in the office of the Lok Ayukt and Narsingh (PW-4), Peon of office was also called. This witness produced five currency notes of Rs.100/- and ten notes of Rs.50/- on which Narsingh applied some powder thereon and kept the same in the pocket of this witness. The hands of Narsingh were washed in water, on which the colour of water changed to pink. Thereafter, a panchanama was prepared vide Ex. P/2. Further, he stated that he alongwith trap party went to Village Barula. He went to the residence of the accused who was found sitting on a chair kept with a table. On being asked, he took out the currency notes of Rs.1,000/- already smeared with phenolphthalein powder from his pocket and gave them to the accused, who counted the same and kept on the table before him. The accused then went inside his house, came back and thereafter again counted the currency notes kept on the table. At the same time, members of the trap party entered the house of the accused and proceedings of trap was conducted. In cross-examination, this statement remained unrebutted.

8. Peter Minj (PW-8) was the witness of the trap proceedings. He has stated about his being summoned. He has stated that in his presence the complainant verified that the accused was demanding bribe of Rs.1,000/-. Thereafter, a demonstration was carried out in which the currency notes produced by the complainant were smeared with phenolphthalein powder

and were kept in the right pocket of kurta of the complainant. After completion of the procedure of demonstration and instructions, preliminary panchnama was recorded. Thereafter, the complainant went to the house of the accused. This witness accompanied complainant Tubelal (PW-1) and saw him giving the bribe money to the accused. Thereafter, Tubelal (PW-1) came out and gave the signal to the trap party. The trap party arrived on the spot and found the money kept on the table in front of the accused. The trap procedure was conducted. Hands of the accused and the complainant were washed in a solution. Later on, all the articles were preserved, sealed and seized in his presence. In cross-examination, his statement has remained unrebutted. This witness was confronted with the document Ex. P/2. The contradictions and omissions in his evidence brought to the notice of the court are of no consequence.

9. Other witness of the trap, S.M. Jaffar (PW-17) has stated in similar fashion as stated by Peter Minj (PW-8). In cross-examination, his statement has also remained unrebutted. Inspector M.L. Mishra (PW-18) conducted all the proceedings and has given his statement before the court accordingly which has remained unrebutted in his cross-examination.

10. Sub-Divisional Officer Anil Tuteja (PW-2) has stated that the accused was appointed in the service of Patwari in 1984 (Ex. P/4), which is not under challenge. Bunda Bai (PW-3) has stated that she and her sisters had applied for partition of the land. Complainant Tubelal is son of her sister. Narsingh (PW-4), Peon posted in the office of Lok Ayukt at Raipur applied phenolphthalein powder on the currency notes produced by Tubelal (PW-1), which remained unchallenged. Revenue Inspector Rambhushan Byohar

(PW-5) has stated about the procedure that under Section 178 of the Land Revenue Code an application for partition is submitted either to Patwari or to Revenue Inspector or to Tehsildar and thereafter procedure for demarcation of land was conducted. In cross-examination, he has admitted that power to order for partition is vested with Tehsildar only. A Patwari is not empowered in this respect.

11. Assistant Settlement Officer Arun Kumar Verma (PW-9) has stated about the procedure of partition and that application for partition is submitted before the Assistant Settlement Officer directly and it can also be presented to the Revenue Inspector when the Assistant Settlement Officer is on leave/tour, which is not questioned.

12. Agam Ram Verma (PW-6), who was a member of the trap party has supported the case of the prosecution. Constable Pothiram (PW-11) has also supported the prosecution case. The statements of these witnesses have remained unrebutted.

13. Retired Superintendent of Police Prem Singh (PW-7) has stated that Tubelal (PW-1) had submitted an application to him. This witness by making an endorsement on the application of Tubelal (PW-1) handed over the same to M.L. Mishra (PW-18) to do the needful.

14. Constable Ramji Bhoi (PW-12) had deposited the seized articles for FSL examination vide Ex. P/9. Revenue Inspector Santosh Kumar Kesharwani (PW-13) prepared the spot map (Ex. P/4). Vinod Kumar Tidke (PW-14) recorded the numbered FIR (Ex. P/12). Ren Singh (PW-15) has

stated that the accused had demanded Rs.5,000/- for partition. Out of which, Rs.1,000/- was given by Tubelal (PW-1) to the accused. In cross-examination, he admitted that he does not know about the taking of money. A.K. Singh (PW-16) has proved the sanction for prosecution (Ex. P/4), which is not under challenge.

15. The ground raised in this appeal that the statements of the witnesses are full of contradictions and omissions has no substance. After considering and appreciating the evidence of all the witnesses available on record, it is clearly established that complainant Tubelal (PW-1) approached the Lok Ayukt office at Raipur, gave a written complaint (Ex. P/1) complaining that the accused was demanding Rs.1,000/- as bribe for taking action on the application for partition made by complainant Tubelal (PW-1). Thereafter, the witnesses were summoned and in their presence the complainant produced the currency notes for bribe on which phenolphthalein powder was applied, a demonstration was given in front of the complainant and the witnesses. About the demonstration conducted for the trap, a preliminary panchanama was recorded. All the members of the trap party alongwith the complainant proceeded to village Barula where the complainant went to the house of the accused, where the accused received the bribe money from the complainant which was witnessed by Peter Minj (PW-8). The trap was conducted. Hands of the accused, the complainant and others who had touched the bribe money were washed. The FSL report (Ex. P/9) has confirmed the presence of phenolphthalein powder on the currency notes and the solution in which the hands of the accused, the complainant and others who had touched the bribe money, were washed. The FSL report is a scientific as well as strong circumstantial evidence against the accused.

Hence, the ground raised in this appeal against the credibility of the prosecution evidence is without substance.

16. Now the only ground left for consideration in this appeal is whether the amount tendered by Tubelal (PW-1) to the accused was intended for payment of the arrears of land revenue. Tubelal (PW-1) in his cross-examination has admitted that at the time of incident, arrears of land revenue amounting to Rs.700/- only was to be paid and it was told by the accused that unless the arrears are paid, the partition could not be effected. It is denied that when the complainant tendered the amount of Rs.1,000/- to the accused, it was said by the accused that he will look into the records to see the actual due of land revenue. Tubelal (PW-1) has stated on his own that the land revenue had already been paid and he has denied that the land revenue of Rs.702/- was not paid till date.

17. Witness of trap, Peter Minj (PW-8) has stated in his cross-examination that he had no knowledge that the accused at the time of trap said, that he had to take amount for deposition of the land revenue nor he remembers that the accused said that the complainant had given the amount for payment of the land revenue. This statement does not support the accused. Ren Singh (PW-15) though stated in his cross-examination, that the accused said that the partition shall be carried only on payment of the land revenue yet this witness was not present during the trap proceedings. S.M. Jaffar (PW-17) was not questioned regarding the conversation made between the accused and the complainant at the time of trap proceedings. Inspector, M.L. Mishra (PW-18) has denied in his cross-examination that the complainant tendered the amount before the accused for payment of arrears

of land revenue and that the accused was falsely implicated.

18. Lal Singh (DW-1) has stated that Tubelal (PW-1) had approached the accused for partition of land, on which the accused told that the arrears of land revenue of Rs.702/- was to be paid and the complainant was pressurizing the accused to record excess land in her khatha, to which the accused had refused. After 2-3 days, this witness came to know that complainant Tubelal (PW-1) had got trapped the accused. Having heard this, this witness had gone to the accused and asked about the incident, on which the accused had told him that Tubelal (PW-1) had come to him to deposit the land revenue but he got him trapped. Kumari Bai (DW-2) has stated in similar fashion and said that the complainant has falsely implicated the accused.

19. After appreciating the statements of these witnesses in examination-in-chief and in cross-examination, it is amply clear that there had not been any witness of the conversation regarding demand of bribe and nor had there been witnesses of the trap proceedings. As per the prosecution, the defence of the accused that the amount tendered by Tubelal (PW-1) to him, was for payment of land revenue has been categorically denied by all the witnesses. Further, Tubelal (PW-1) also made a statement that the arrears of the land revenue had already been paid before the date of incident. After which, it was burden of the defence to establish that on the date of incident it was the arrears of the land revenue of the concerned land that was paid to the accused. In this respect, no evidence has been led and no document has been produced by the defence. Hence, the ground taken by the accused that the currency notes tendered to him by the complainant were

towards payment of arrears of land revenue is totally baseless and false and, therefore, there is no error in rejection of this ground by the trial Court.

20. It is true that the burden of defence is not equivalent to that of the prosecution for proving the case beyond reasonable doubt. Even then the burden has to be discharged by producing evidence to establish the preponderance of probability. It is a rule of prudence that a plain statement made is not accepted as it is, unless some support is found from the circumstances present at that time. It has never been proved by the defence or accepted by the prosecution that on the date of incident the arrears of land revenue for the concerned land was due to be paid. Hence, the defence on this point was rightly rejected by the trial court.

21. In the result, I find no substance in this appeal, which is accordingly dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi