

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1817 of 2000

- Narvadlal Yadav S/o Ramprasad Yadav Veterinary Extension Officer(Now Retd), Berla Distt., Durg.

---- Appellant

Versus

- The State of Madhya Pradesh, Through Special Police Establishment, Lok Ayukt, Officer, Raipur

---- Respondent

For the Appellant : Ms. Pragya Pandey, Advocate.

For the State/Respondent : Smt. Shobha Kashyap, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

23/02/2017

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by Special Sessions Judge, Raipur in Special Criminal Case No.74 of 91 on 29.06.2000, whereby appellant was convicted under Section 161 of IPC and sentencing him with RI for one year and fine of Rs.1000/- and also convicted under Section 5(1)(D) read with Section 2(2) of Prevention of Corruption Act, 1947, sentencing him with RI for one year along with fine of Rs.1000/-, in default of payment of fine to further undergo RI for 3 months for each fine amount with a direction to run the sentences concurrently.

2. The prosecution case in brief is this, that complainant Jethuram PW/1 purchased a pair of bullocks and went to appellant, who was Veterinary Extension Officer at Berla, District-Durg, for the purpose of tagging the bullocks for insurance and getting the insurance certificate. Appellant demanded Rs.270/- for giving the certificate. Jethuram PW/1 paid him Rs.138/- then appellant ask him to bring rest of the money about Rs.132/- on 14.01.1988 and take the certificate. Jethuram PW/1 approached Rajulal Jain PW/2 and on his advice, he prepared a written complaint Ex.P/1 for complaining against the appellant about demand of bribe.

Complainant-Jethuram PW/1 presented a complaint before Superintendent of Police, Lok Ayukt, Raipur on 14.01.1988. After receiving the complaint, Superintendent of Police, Lot Ayukt directed Inspector (retired) C.K. Tiwari PW/8 to do the needful. Inspector (retired)C.K. Tiwari PW/8 summoned the witnesses Rajmani Pandey PW/5 and M.G. Rajput (not examined) in the office of Lok Ayukt at Raipur and in their presence the contents of the complaint were verified; one unnumbered FIR Ex.P/10 was recorded. Jethuram PW/1 produced currency notes of Rs.100/-, Rs.20/-, Rs.10 and Rs.2/-. Numbers of these currency notes were recorded. Phenolphthalein powder was applied on these currency notes and after search of the complainant those notes were kept in the pocket of the shirt of complainant. After that, for the purpose of demonstration, Inspector Rajeshwar Singh prepared a solution of sodium carbonate, a colorless solution in a clean glass, in which Inspector Rajeshwar Singh who had applied phenolphthalein powder on currency notes, dipped his fingers

on which the color of the solution changed to pink. The packets of phenolphthalein powder and coloured solution were preserved and sealed. Complainant was instructed about the manner of giving bribe and giving a signal after the bribe is handed over. After necessary preparation the trap party arrived at Berla at about 4:00 p.m., Jethuram PW/1 entered the house of appellant, he came out after sometime and gave the signal. Thereafter, all the members of the trap party entered the house of the appellant and introduced themselves. The hands of the accused/appellant were dipped into the sodium carbonate solution on which the colour of the sodium changed to pink, which was preserved. Thereafter, the hands of the witness Rajput were also dipped in the colorless solution of sodium carbonate, there was no change in colour. A part of this solution was also preserved and sealed.

Witness M.G. Rajput collected the currency notes kept on the side of the box which were notes of Rs.132/- and matched their numbers with 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 powder thereon. Thereafter, a recovery panchnama of the currency notes were prepared. 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 place three notes were kept was cleaned with a cotton and that cotton was also dipped in the colorless solution of sodium carbonate and the colour changed to pink, this solution was also preserved.

The currency notes recovered from the accused were seized vide seizure memo Ex.P/4. The box on which, appellant was sitting and the notes were kept was also seized vide Ex.P/5 and given back on Supurdnama vide Ex.P/5A. Some papers were seized from Jethuram PW/1 vide Ex.P/6, those blank papers form exhibited Ex.P/2A and Ex.P/2B and one Article-A1 a panchnama Ex.P/11 has prepared of the whole proceeding. Papers of loan case of complainant were seized from Ayudhya Prasad vide Ex.P/8 and Ex.P/12. One unnumbered First Information Report was recorded on the spot vide Ex.16. On the basis of which, later on, a numbered FIR Ex.P/17 was recorded at Special Police Establishment, Bhopal. Further, in the investigation, receipt of purchase of the bullocks was seized. The seized articles were sent for examination to Forensic Science Laboratory, Sagar. The FSL report Ex.P/16 confirmed presence of the phenolphthalein powder on the currency notes and in the solution preserved and sealed after washing of the hands of the appellant, complainant and others concerned. Statements of the witnesses were recorded. On completion of investigation, the appellant was charge-sheeted.

3. The appellant was at first charged under Section 7 and 13(1)(d) read with Section 13(2) of the PC-Act, 1988, later on, charge was amended to Section 161 of IPC and Section 5(1)(d) read with Section 5(2) of PC-Act, 1947, as this Act was prevailing at the time of the incident. Appellant denied the charges and demanded for trial. Prosecution examined as many as 8 witnesses. On being examined under Section 313 of Cr.P.C., appellant denied all the incriminating

circumstances against him in the prosecution evidence, though admitted that at the time of incident, he was posted as Veterinary doctor at Berla. He further admitted that amount was recovered from his possession during the trap procedure. He pleaded innocence and false implication. He stated in defence, that on the first day, complainant Jethuram PW/1 paid him Rs.38/- towards premium of insurance and on the date of incident, he paid the remaining amount Rs.132/-, which was for the premium of insurance, thus, he has received the amount for tagging and for insurance premium. The defence examined 2 witnesses. Considering on the evidence of prosecution and defence and the submission made in this behalf the impugned judgment was passed by the trial Court in which appellant was convicted and sentenced as mentioned in the aforesaid paragraph.

4. The grounds in appeal are these, that trial Court failed to appreciate the evidence on record, that the amount received by the appellant was for the premium of insurance of the bullocks and for tagging. There had been no legally admissible evidence against the appellant which could have been formed the basis of conviction. It was admission in prosecution evidence, that premium of insurance was recovered by veterinary doctors, hence, the conviction and sentence against appellant is bad in law. Prayer has been made for setting aside the impugned judgment.
5. Learned counsel for the appellant submits, that Jethuram PW/1 has admitted in his cross examination that when appellant was caught in the trap, he stated that he has received the money for insurance

premium and for the tag. Further he has stated that he made a complaint, on advise of Rajulal Jain PW/2. Further he has also admitted that appellant had demanded from him the premium of insurance, Rajulal Jain PW/2 is not the witness of demand and neither witness of the trap. Ghaneshwar Pandey PW/3 has stated in his examination-in-chief, that after tagging the bullocks, insurance papers are given by the veterinary doctor. It is also submitted that Inspector (retired) C.K. Tiwari PW/8 has admitted in his cross-examination that Article-A1, in which, it is mentioned that the expenses for Bima etc. was of Rs.169/-, further the version of appellant has been supported by the defence witnesses, which has not been appreciated by the trial Court. In these circumstances, the appellant was entitled for benefit of doubt.

6. Learned counsel for the State has opposed the ground in appeal and the argument submitted in this behalf from the appellant side. It is submitted that prosecution has proved its case beyond reasonable doubt. There is no scope for interference in the impugned judgment.
7. 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 Bima Premium ?
8. The evidence led by the prosecution before the trial Court is perused. Jethuram PW/1 has stated that he purchased a pair of bullock and went to appellant, who was Veterinary Extension Officer at Berla, District-Durg, for the purpose of tagging the bullocks for insurance and getting the insurance certificate. Appellant demanded Rs.270/-

for giving the certificate. Jethuram PW/1 paid him Rs.138/- then appellant ask him to bring remaining money about Rs.132/- for certificate. The accused asked for the bribe money then this witness approached the Lok Ayukt at Raipur. Jethulal PW/1 further stated that he was advised to give an application in the office of Lok Ayukt on which he prepared the written application Ex.P/1 and submitted the same in the office of Lok Ayukt at Raipur. At the same time, some persons were called in the office of the Lok Ayukt and one Inspector of the office was also called. The witness produced four currency notes of Rs.100/-, Rs.20/-, Rs.10 and Rs.2/-, Number of these notes were recorded. Phenolphthalein powder was applied on these currency notes and after search of the complainant those notes were kept in the pocket of the shirt of complainant. The hands of the Inspector were washed in water, on which the colour of water changed to pink. Thereafter, a panchnama was prepared. Further, he stated that he alongwith trap party went to Berla. He went to the residence of the accused and the members of the trap party entered the house of he accused and proceeding of trap was conducted. In cross-examination, this statement remained unrebutted.

In cross examination, Inspector (retired) C.K. Tiwari PW/8 has stated that he inquired and came to know that appellant was to give certificate for tagging, Article A-1 was seized in the investigation which displayed the title as New India Insurance Company. He admitted that on this form, the expenses for insurance Rs.169/- was mentioned. He denied this suggestion that the amount tendered for payment by complainant to appellant Rs.132/- was for the payment of

premium. After admission of appellant, that he has received the amount on the date of incident, there is no need to discuss the evidence on the point of taking the alleged bribe money by the appellant from complainant Jethuram PW/1.

The only point raised in this appeal is that the amount accepted by the appellant was for the purpose of payment of premium. Jethuram PW/1 has stated that after tagging was done, appellant asked him to pay Rs.270/-, he had only Rs.138/- and he went to his neighbor Rajulal Jain PW/2 to borrow some money. On narrating about the need of money, Rajulal Jain PW/2 advised him to make a complaint, hence, he and Rajulal Jain PW/2 went to the office at Raipur, where application was written by Rajulal Jain PW/2 on which thumb impression was affixed by him, Ex.P/1 the complaint was read out to him, he admitted the contents, thereafter the trap was arranged and the appellant was trapped in the incident. In cross-examination, he has stated that when appellant was caught, he told that he has received the money for Bima Premium and for tagging. He denied that the appellant had asked for payment of Rs.170/- only and had not asked to pay Rs.270/-. Further he also admitted that the appellant had asked him to pay the insurance premium.

9. Rajulal Jain PW/2 has stated that Jethuram PW/1 told him about the demand of bribe by the appellant, on which he advised him to make a complaint thereafter, he and Jethuram PW/1 went to the office of Lok Ayukt at Raipur, after intimating the Officer at Lok Ayukt and on their advice, he wrote the complaint application as Jethuram PW/1 was illiterate. That application Ex.P/1 was submitted in the office.

This witness has not stated anything that Jethuram PW/1 had already paid some money to the appellant and he denied knowledge that Jethuram PW/1 had already paid Rs.138/- to appellant and rest of money Rs.132/- was to be paid. He was simply told by Jethuram PW/1 that Veterinary doctor (appellant) was asking for money, thus, the statement of this witness does not specify what kind of money was asked by appellant to be paid to him by the complainant.

10. Ghaneshwar Pandey PW/3, Assistant Development Extension Officer, has stated that Jethuram PW/1 had purchased bullocks on loan, which were to be tagged by Veterinary doctor. In practice veterinary doctors, used to tag and give paper in three copies, First copy to bank, second copy to District Rural Development Authority and third copy to insurance company. He was informed by Jethuram PW/1 that appellant had tagged his bullocks but has not given the papers and asking for Rs.270/- for which, he had already paid Rs.138/- and has to pay remaining Rs.132/-, only after that he will get the papers from the appellant. In cross examination, he has stated that the veterinary doctor, he tags the animals and receives the insurance premium. He further stated that the Veterinary doctor are authorized to receive insurance premium, as per rules.

11. Rajmani Pandey PW/5 is the trap witness, he has stated that on the spot, he saw appellant sitting on a wooden box and the bribe amount was kept by his side. He has not given any statement in examination-in-chief about the statement made by the appellant, at the time of trap, neither any question was put to him in cross-examination as to what was the statement given by the appellant, when he was

apprehended and the money was recovered from his possession.

12. D.K. Desai PW/7 is the Branch Manager of New India Insurance Company, he has stated that Berla Block was within his jurisdiction and the animals purchased on finance were insured by his company. The form of insurance was given to veterinary doctors, who on return used to send them back after the entries were made complete in those forms. It is though stated that veterinary doctors were not authorized by the insurance company to collect insurance premium but then he has stated that in practice veterinary doctors used to collect and send the premium amount. Inspector (retired) C.K. Tirwari PW/8 has not stated anything in his examination-in-chief about the collection of premium by veterinary doctors neither any question was put to him in his cross-examination in this respect.

13. Salikram DW/1 has stated that he was present before appellant on the day when a man came with his bullocks which were tagged by the appellant and appellant asked for the payment of Insurance Premium Rs.170/-. The man told that he has only Rs.38/- which was taken in deposit and he was asked to deposit rest of money in one or two days. This statement cannot be found as connected with the incident because this witness has not identified, the man who offered Rs.38/- as a part payment of the premium on the date in his presence, hence, it was particularly the case of complainant it cannot be held. This witness was not present at the time of trap. Balram Singh Thakur DW/2 has given a similar statement which cannot be regarded as a relevant statement for this case, as he also has not identified the man paying Rs.38/- as complainant in this case.

14. After considering the submission and the statement of witnesses, it is found that it is only the statement of Jethuram PW/1, who has stated that appellant demanded from him Rs.270/- after tagging his bullocks and for giving him the certificate papers, his admissions in cross-examination, that appellant had demanded for payment to premium itself assails his statement in examination-in-chief, because he has made it clear that the whole amount of Rs.270/- was asked for. Out of which how much for premium and how much was asked in the shape of bribe is not explained. It is the case of defence that appellant had demanded only Rs.170/- that was the amount for insurance premium and for tagging. The admission of Jethuram PW/1 in cross-examination, has made his statement, thus, partly reliable and partly unreliable. For considering this statement as basis of conviction some corroboration had been the requirement in this case.

15. The other witnesses examined Rajulal Jain PW/2 has not stated anything regarding the payment of premium and he is neither the witness of demand nor payment PW/3 has stated on the basis of information received from Jethulal PW/1 has also stated that veterinary doctors in practice collect premium of insurance for the agricultural animals. Further the man from insurance company D.K. Desai PW/7 has also stated which supports the defence that in practice veterinary doctors collect the premium for insurance and also in the statement of Inspector (retired) C.K. Tiwari PW/8 it is stated and admitted that article A-1 which is the form of insurance discloses that Rs.169/- was required to be paid for the insurance premium.

16. It is duty of the prosecution to prove its case beyond reasonable doubt. The burden of defence is not equivalent, when a probable theory is put-forth, the burden of defence is discharged on the basis of preponderance of probabilities. This is a case in which the story of prosecution has been assailed on this ground that appellant by prevailing practice asked for payment for premium to the complainant Jethuram PW/1. There being no statement of complainant or the prosecution, that the premium was already paid and there have been the admission of the prosecution witnesses themselves about the prevailing practice has shown the probability in the story of defence. Thus, the story of prosecution stands challenged successfully. This is a case in which two views had been possible, as per the principle in this respect, the view in favour of the accused has to be followed and the accused has to be extended the benefit of doubt.
17. On the basis of this finding this appeal succeeds. Hence, this appeal is allowed and the impugned judgment is set aside.

Sd/-

(Rajendra Chandra Singh Samant)
Judge