

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 670 OF 2003

The State of Maharashtra
(Through Shri D.R. Nikmar
P.I. ACB, Ahmednagar)

..APPELLANT

-VERSUS-

Kundlik Sugandhrao Aravade
Age : 33 years, P.C.B. No.699,
Nagar Taluka Police Station,
Ahmednagar, R/o Ahmednagar,
Dist. Ahmednagar.

..RESPONDENT

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APP for appellant/State : Mr. S.J. Salgare
Advocate for Respondent : Mr. Satej S. Jadhav

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CORAM : S.S. SHINDE, J.

Dated: May 09, 2017

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JUDGMENT :-

Heard the learned A.P.P. appearing
for the appellant/State and the learned
counsel appearing for the respondent.

2. This appeal is filed challenging the

judgment and order of acquittal dated 3rd July, 2003 passed by the Special Judge, Ahmednagar in Special Case No. 3 of 1996.

3. The prosecution case, in brief, are as under :-

(A) On 20th July, 1995, the tempo trax bearing No.MH-16/9452 owned and driven by the complainant (PW-1) Arvind Dagadu Sontakke, resident of village Pathardi, Dist. Ahmednagar met with an accident near Mehekari Phata, resulting into damage to said vehicle. In order to claim insurance from the Insurance Company, the complainant required the certified copies of the first information report and the spot panchanama. Therefore, he approached ASI Dange, Incharge of Kaudgaon Police Outpost and who directed him to meet Police Constable Bhalerao and Police Constable Aravade i.e. the present accused, who were attached to the said Police Outpost

and had drawn the spot panchanama. Both these Police Constables asked the complainant to come after 8 days to collect the copies, but when complainant approached them after 8 days, thereafter they asked him to come again after two days, as the signatures of superior officer were yet to be obtained on the copies.

(B) Accordingly, the complainant again came to meet them after two days, however, at that time, they demanded the bribe amount of Rs. 1,000/- for delivering the copies. They further told him to pay this amount to one Shri Gunjal, Builder and collect the copies and driving license from Shri Gunjal only. The request on the part of the complainant to reduce the bribe amount was not adhered to. Hence, on 21st August, 1995, the complainant approached P.I. Shri D.R. Nimkar (PW-4) of Anti Corruption Bureau, who recorded his

complaint and directed to remain present on the next day for laying the trap.

(C) On the next day, however, it was found that both Police Constables Bhalerao and the present accused were on Bandobast at Nagar Taluka Police Station and hence, P.I. Nimkar sent complainant and one of the panch i.e. Prabhakar Darade to Nagar Taluka Police Station for verification of demand. There complainant could meet accused alone, who on repeated request from complainant in presence of panch Darade reduced the bribe amount to Rs.500/- and reiterated his instructions to pay the bribe amount to Gunjal on the next day and collect the papers.

(D) Accordingly, on the next day, in the office of Anti Corruption Bureau in presence of complainant and panch witnesses Prabhakar Darade and Namdeo Bhingardive preparations for trap were made, use of ultra violet lamp

and anthracene powder was demonstrated. The anthracene powder was smeared on currency notes of Rs. 500/- in the denomination of Rs.100/- each. The instructions were given to the complainant and panch Darade about paying of bribe amount on demand only and giving of signal about acceptance of that demand. Pre-trap panchanama was drawn accordingly and the raiding party went to Kaudgaon S.T. Stand in Jeep. The complainant and panch Darade went there along with others. At Police Outpost accused was present and at their gesture Gunjal took complainant and panch Darade to the Ota of temple in the same campus. Shri. Gunjal accepted the bribe amount from complainant and kept it in his shirt pocket. On giving signal, raiding party arrived at the spot, caught hold of the accused and Gunjal and seized currency notes from Gunjal. They were verified under the light of ultra violet lamp and blue glaze

appeared thereon. Their numbers also tallied with the numbers given in the pre-trap panchanama. Accused and Gunjal were then given opportunity to give their say in writing, which opportunity they availed. The detailed post-trap panchanama was carried out at the spot itself and they were brought to Nagar Taluka Police Station.

(E) Thereafter, the F.I.R. bearing C.R. No. 139 of 1995 came to be registered against Police Constable Bhalerao, the present accused and Shri Gunjal. As a part of further investigation, statements of witnesses were recorded. The map of spot was drawn, relevant papers were collected and sent to Headquarters for obtaining sanction. On receipt of sanction order, the charge-sheet is filed in Sessions Court against present accused and Shri Gunjal only. As during the pendency of trial, Shri Gunjal has expired,

hence the case is proceeded against present accused alone.

4. The learned A.P.P. appearing for the appellant/State invites my attention to the evidence of the complainant and submits that, the complainant categorically stated about the demand and acceptance of Rs.500/- by the respondent. It is submitted that, the complainant's version gets corroboration from the version of Shri Darade, who was accompanying him as a panch witness. He submits that, once the demand and acceptance is proved, the Special Court ought to have convicted the respondent.

5. The learned counsel appearing for the respondent submits that, the demand of gratification is sine qua non for prosecution to succeed and the prosecution has failed to prove and establish the demand being a

pre-requisite, hence the proceeding itself are vitiated. The learned counsel appearing for the respondent submits that, the informant in this case is necessarily an accomplice since he is a participant in the crime and therefore, his testimony cannot be relied upon in any circumstances, unless there is a corroboration to the allegations and narration in his testimony. He submits that, the shadow panch in this case i.e. P.W. 2 has no way supported the version of P.W. 1 in respect of the incident of demand and trap. The learned counsel appearing for the respondent submits that, the work of providing the certified copies to the complainant was not with respondent or any of the accused and therefore, the complainant does not inspire confidence in alleging that he had repeatedly approached the accused for getting his work done. That, the respondent was not empowered to provide any certified

copies to any one. PW-1 was aware of this fact and hence respondent had no chance even to mislead the complainant/P.W.1.

6. The learned counsel for respondent submits that, the lapses, irregularities and favoritism in investigation coupled with the duplicity, vagueness and unnatural conduct of the informant P.W.1 goes to show that the case was not prosecuted with clean hands and the respondent was victimized and informant has used law as a tool to satisfy personal vendetta. The learned counsel further submits that, proving of demand to the core in this case assumes utmost importance as presumption under section 20 cannot be invoked, since the tainted money was admittedly not accepted and recovered from the respondent accused. Therefore, the learned counsel appearing for respondent submits that, even if two views are possible the view favouring the accused

has to be upheld. That, possibility of another view by itself does not warrant exercise of discretion by this Court. Therefore, he submits that, the appeal deserves to be dismissed.

7. I have considered the submissions of the learned A.P.P. appearing for the appellant/State and the learned counsel appearing for the respondent. With their able assistance, I have perused the entire notes of evidence and also the judgment of the Special Court so as to find out the findings recorded by the Special Court are in consonance with the evidence brought on record by the prosecution or otherwise. It appears that though main allegation by the complainant Arvind Dagadu Sontakke (PW-1) was against one Mr. Bhalerao, who was working as Police Constable, the trial has not proceeded against him. No reasons are forthcoming from

the prosecution, why the prosecution was given up against said Bhalerao.

8. Upon careful perusal of the evidence of the complainant, his main allegation of demand was against Shri Bhalerao. It appears that, the version of the complainant (PW-1) about the demand of bribe amount is not consistent. If his deposition is carefully perused, he stated in his deposition that, he filed the application on 22nd August, 1995 for getting the certified copies of the first information report and the spot panchanama. However, if the allegations in respect of demand are concerned, those are made against Shri Bhalerao and the respondent-herein even before filing such application for obtaining the copies of the spot panchanama and first information report. It further appears that, neither Bhalerao nor Kundlik Arawade i.e. respondent herein were authorized to issue

such copies of the first information report or the spot panchanama as the case may be. At one stage, the complainant stated that, Bhalerao and respondent herein agreed to accept Rs.500/- and they asked him to bring the said amount. However, at the second breath, the complainant has stated in his evidence that, the respondent herein told him to give such amount to Shri Gunjal. It has come on record that, Gunjal is no more and died before the trial was concluded. In fact, if the thrust of the allegations by the complainant either in the complaint or in his deposition before the Court is taken into consideration, he had serious grievance against Bhalerao, who behaved with him rudely and asked him to come after two days. He has further stated that, he decided to approach the office of the Anti Corruption Bureau because of the Police Constable Bhalerao behaved with him arrogantly. Even during

course of recording of his deposition, the complainant stated that, Bhalerao demanded money to him, and therefore, he decided to approach the office of the Anti Corruption Bureau. Therefore, if it was the grievance of the complainant that, Bhalerao demanded the money and because of him, the complainant was aggrieved, no reasons are brought on record, why the prosecution did not proceed against said Bhalerao. Even in his cross examination, the complainant admitted that, he went to Nagar Police Station being aggrieved by the demand of bribe amount by Bhalerao and his arrogant behaviour. Even in his cross examination, the complainant has stated that, when the Police Constable Bhalerao demanded money, he asked the complainant to give the said money to Shri Gunjal, and when such demand was there by Bhalerao only accused Arwade respondent herein was present.

9. In a trap case, the prosecution is obliged to prove the demand by leading clinching and cogent evidence. The evidence of the complainant should get corroboration from the shadow witnesses. In absence of such corroboration, it is difficult to accept the case of the prosecution that, there was demand. In the present case, it was incumbent for the prosecution to prove demand, which is *sine qua non* for proving the prosecution case, as held by the Supreme Court in the cases of (i) **Panalal Damodar Rathi V/s State of Maharashtra¹**, **State of Maharashtra V/s Dnyaneshwar Laxman Rao Wankhede²** and **C. Sukumaran V/s State of Kerala³** , .

10. Coming to the evidence of Darade, who acted as panch witness, his evidence is silent about the demand of Rs.1,000/- by the accused for giving the documents as alleged

1 AIR 1979 SC 1191

2 2009 AIR SCW 5411

3 2015 All MR (Cri) 1200 (S.C.)

by the complainant. No where he stated anything about the payment of agreed amount or the demand or reduction of the bribe amount from Rs.1,000/- to Rs.500/-. At the most, his evidence only goes to show that, the accused has told complainant to collect the papers from Shri Gunjal. But there is no whisper even for the sake of it in his testimony that, any such talk relating to the payment of bribe amount to the tune of Rs.1,000/- or to Rs.500/- took place in presence of the accused and the complainant. Therefore, his evidence is not helpful to the prosecution, in as much as, he is not saying anything about the demand. Therefore, the very case relating to verification, which is put up by the prosecution loses its credibility and become impossible to accept in view of the evidence of panch witness Shri Darade.

11. Upon careful perusal of the findings recorded by the Special Court, it appears that, there is minute scrutiny of the evidence of the prosecution witnesses brought on record. The Special Court has gone to the root of the evidence of the prosecution witnesses and found that, the evidence of complainant suffers from omissions. The Special Court has done in depth examination of the contents of the complaint, vis-a-vis, the deposition before the Court and found that, the evidence of the complainant suffers from substantial omissions. On the whole, the Special Court found that, the evidence of the prosecution witnesses suffers from contradictions, omissions and exaggerations, and therefore, makes it unworthy to believe the same. In my opinion, the findings recorded by the Special Court are in consonance with the evidence brought on record by the prosecution and there is no

infirmity or perversity in those findings. The view taken by the Special Court is a plausible view. Therefore, once the plausible view is taken by the Special Court, even if for a moment it is assumed that, an another view is possible on the strength of evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal, in view of the settled position of law by catena of decisions of the Supreme Court and various High Courts.

12. In the light of discussion herein above, the inevitable conclusion is that the Appeal filed by the State shall fail. Accordingly the Criminal Appeal stands dismissed.

(S.S. SHINDE, J.)

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