

\$ R-5 & 6.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 18th May, 2017

+ CRL.A. 431/2006

NARENDER KUMAR Appellant

Through: Mr. K.B. Andley, Sr. Adv. with
Mr. M. Shamikh, Mr. Anurag
Andley & Mr. M. L. Yadav,
Adv.

Versus

STATE Respondent

Through: Mr. Tarang Srivastava, APP

+ CRL.A. 451/2006

SURMAN @ SURBHAN Appellant

Through: Mr. K.B. Andley, Sr. Adv. with
Mr. M. Shamikh, Mr. Anurag
Andley & Mr. M. L. Yadav,
Adv.

versus

STATE Respondent

Through: Mr. Tarang Srivastava, APP

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On 4.6.1997 first information report (FIR) No. 24/1997 (Ex.PW-10/C) was registered in anti corruption branch (ACB) of

National Capital Territory of Delhi (NCT of Delhi) on the basis of complaint (Ex.PW-7/A) of Ram Kumar (PW-7) and the action taken thereupon by Inspector Satbir Singh (PW-11) of ACB. On conclusion of investigation into the said FIR, a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) was submitted on 1.7.99 in the court of special judge (Prevention of Corruption Act), Delhi, seeking prosecution of three persons, they being Narender Kumar (accused No.1), Mukesh Kumar Sharma (accused No.2) and Surman (accused No.3), for offences punishable under Sections 7 & 13 of Prevention of Corruption Act, 1988 besides offences under Sections 353, 186, 332, 120B of Indian Penal Code, 1860 (IPC). Upon cognizance being taken on the said report (charge-sheet) by the special judge, and upon they being summoned, the said three accused persons were eventually put on trial on charge framed on 15.2.2003 for offences under Sections 120B IPC, Section 7 of Prevention of Corruption Act, 1988, Section 13 (1) (d) read with 13(2) of Prevention of Corruption Act, 1988 and Section 332 IPC. At the conclusion of the trial, by judgment dated 27.5.2006, accused No.2 Mukesh Kumar Sharma (A-2) was acquitted. The others, accused No.1 Narender (A-1) and accused No.3 Surman @ Surbhan (also named as Surbhan or Suraj Bhan) (A-3), however, were held, guilty and convicted for offences under Section 7 and 13 (2) of Prevention of Corruption Act, 1988 each read with Section 120 B IPC with A-3 also being guilty for offence under Section 332 IPC. By order dated 29.5.2006, the special judge awarded rigorous imprisonment for one year with fine of Rs. 1,000/- and rigorous imprisonment for two years with fine of Rs.

4,000/- each for offences under Section 7 and 13 (2) of Prevention of Corruption Act, 1988 respectively against both convicts. A-3 was also sentenced to rigorous imprisonment for one year with fine of Rs. 1,000/- for offence under Section 332 IPC.

2. Both convicted persons filed these appeals, the appeal of A-1 being CrI.A. 431/2006 and the appeal of A-3 being CrI.A. No. 451/2006, challenging the conviction and the order on sentence. The first appellant, A-1, however, died before his appeal could be heard and adjudicated upon, the death having occurred on 4.9.2016. On the application (CrI.M.A. 18723/2016) of his wife and children, however, invoking Section 394 read with Section 482 Cr.P.C., by order dated 15.3.2017, they were allowed to prosecute the appeal further.

3. The prosecution case, in brief, was that all the three accused persons who were sent up for trial were employees of Municipal Corporation of Delhi (MCD) at the relevant point of time, A-1 working in the capacity of supervisor in Hackney Carriage Department of West Zone of office of Deputy Commissioner, MCD, other two being rickshaw catchers placed at his disposal. PW-7, the first informant (or the complainant), on the other hand, was engaged in the business of running a rickshaw garage, the garage maintaining 120 cycle rickshaws, clearly let out for being plied on hire. His complaint forming the basis of the FIR itself shows he was holding a political position in an entity described as “*Delhi Rickshaw Chalak/Maalik Sangh/Morcha*”. He was well acquainted with the three accused persons on account of his said business.

4. The first informant (PW-7) alleged that the three accused persons had come to his office and had even told him to give Rs. 2,000/- per month or else he would start seizing any rickshaw plied by him in the area, his rickshaws bearing the mark "RK". He stated that A-2 and A-3 had also told him that if he wanted to ply his rickshaw he was bound to pay illegal gratification and that, after some negotiation, it was settled that he would pay Rs. 1600 in the Rajouri Garden office of the accused persons on 5.6.1997, under the threat that if money was not paid by the evening of the said date, the rickshaws would be impounded from the next date in the west zone area.

5. The proceedings recorded in the wake of the above said complaint (Ex.PW-7/A) indicate that Inspector Satbir Singh (PW-11), the trap laying officer (TLO), arranged for the presence of the independent witness Naveen Khurana (PW-8), a clerk in the land and building department of Government of Delhi, the currency notes for the purpose of laying traps having been arranged by the complainant, the same having been subjected to treatment with phenolphthalein powder and appropriate demonstration arranged for the benefit of knowledge of the witnesses and members of the team and after appropriate instructions, the trap party having set out for the office of the accused persons. The further proceedings (Ex.PW-7/G) would show that the complainant and PW-8 (shadow witness) were sent ahead and the complainant had later given the appointed signal, on which the trap party converged on the scene and found A-3 holding currency notes in his hands. It is stated that upon seeing the raiding party, A-3 had thrown the currency notes on the ground and starting

running away while he was pursued by the TLO with others accompanying him and apprehended at a distance of 200 yards, the shadow witness had picked up the money that had been thrown on the ground by A-3.

6. It is alleged that during the investigation the shadow witness stated that when he with the complainant had reached the office, A-1 was not present and they were met only by A-2 and A-3 and when A-2 was asked about A-1, it was told that he was about to come. Soon after, A-1 had reached the office and when the complainant had told that he had come with the money, the latter, in turn, told him that there was no need for hurry and that he was quite busy and the money could come later. But, when the complainant had asked him if money could be handed over to A-3, A-1 had agreed to the said suggestion. It was pursuant to this conversation that the complainant and the shadow witness had gone to A-3 who was standing in the compound at some distance and upon he being accordingly told, after inquiry as to the amount that had been settled, A-3 had received the currency notes with his left hand from the complainant. But, immediately upon noticing the raiding party approaching the scene, A-3 had thrown the currency notes on the ground and started running away to be apprehended after pursuit. It is the case of the prosecution that after he had been apprehended, the wash of both hands of A-3 was taken which confirmed the presence of phenolphthalein powder and the hand washes and the currency notes were seized and A-3 was arrested after personal search. It is stated that during the entire process A-1

and A-2 had slipped away and that they were arrested later in due course.

7. The charge-sheet that was laid in the Court seeking trial also indicated that in his attempt to flee away, A-3 had engaged in grappling with a police official named Head Constable Asad Raza (PW-2) who had consequently sustained an injury in his ring finger. It appears A-3 had also sustained some minor injuries (abrasions). Both PW-2 and A-3 were sent for medical examinations, the medico legal certificates (MLCs) in their respect being part of the reliance. It may be added here itself that the MLCs were not formally proved at the trial.

8. The prosecution examined, in all, eleven witnesses, they being Head Constable Azad Singh (PW-1); Shri Asad Raza (PW-2); Shri R.K. Pandey (PW-3); Shri K.C. Joshi (PW-4); Shri Naresh Kumar (PW-5); HC Sukhdev Singh (PW-6); Shri Ram Kumar (PW-7); Shri Naveen Khurana (PW-8), Inspector O.D. Yadav (PW-9); Inspector Bir Singh (PW-10); and Inspector Satbir Singh (PW-11).

9. After the prosecution evidence had been concluded statements of the three persons facing trial were recorded under Section 313 Cr.P.C. in which they claimed to be innocent and falsely implicated. A-3 noticeably attributed the injuries suffered by him to be the result of assault by the ACB officials. A-1 examined Ashok Kumar (DW-1), another employee, also working in the capacity of rickshaw catcher in his defence, he primarily stating that A-1 was not present in the office at the relevant point of time.

10. As noted above, the prosecution failed to bring home the allegations against A-2 to the satisfaction of the trial court, he consequently having been acquitted by the impugned judgment. Pertinent to add that no appeal against the said judgment of acquittal was preferred. The judgment, therefore, to the extent of acquittal of A-2 has attained finality. This is material inasmuch as A-2 was stated to be a part of criminal conspiracy for which A-1 and A-3 were held guilty and convicted.

11. Having heard the learned counsel on both sides on these appeals filed on behalf of A-1 and A-3, and having gone through the record in entirety, this Court is of the opinion that the prosecution evidence suffers from deficiencies which give rise to doubts as to the veracity of the material witnesses and, consequently, the judgment of conviction against A-1 and A-3 does not deserve to be upheld. The reasons are set out hereinafter.

12. PW-7, the complainant, projected himself as a person engaged in the business of running rickshaw garage, the prime work thereof being to carry out repairs of the rickshaws. Yet he would state that he was managing 120 cycle rickshaws, the evidence showing such large number of cycle rickshaws being plied on hire under the mark "RK", It cannot be ignored that, during the relevant period, the MCD was running Hackney Carriage Department, primarily to enforce the byelaws framed under its statutory jurisdiction to control and regulate the business of cycle rickshaws on the streets and roads of Delhi. For such purposes, the byelaws would require licence (or permission) being taken from the concerned municipal authority.

13. It is clear from the evidence that, as supervisor in the Hackney Carriage Department of MCD, it was the duty and responsibility of A-1 to enforce the byelaws, with the assistance of rickshaw catchers placed at his disposal, including A-2 and A-3, and to impound such cycle rickshaws as were found being plied on hire without licence or in breach of the permission obtained.

14. Noticeably, neither PW-7 would say so, nor has there been any investigation undertaken to the effect that he had proper licence for all the 120 cycle rickshaws which he was maintaining. It is clear from his deposition that he was running a garage for repairing work of the cycle rickshaws only as a cover, his actual business being to let such cycle rickshaws on hire. Since the duties and responsibilities of the three accused were in conflict with the business interests of PW-7, it is clear, he was inimically placed against them. The fact that he was an activist holding the position of an office bearer in an organization propped up to defend the rights of the cycle rickshaw owners, or pliers, puts him in a position where it was his interest to put the three accused persons, municipal officials, in an awkward spot. His evidence, thus, needs to be subjected to very close scrutiny and search made for corroboration from other evidence so as to lend assurance thereto.

15. PW-7 deposed, by and large, along the lines of the prosecution case while testifying at the trial. He added some flavor to his version. To illustrate, while speaking about the exchange in the office at the time of the trap, he attributed to A-3 an inquiry of A-1 as to whether he should take the money which, going by the original version, were

not possible since A-1 and A-3 were shown, by that account, not to be standing close to each other but at some distance, A-3 being present in the compound of the office. He did speak about A-3 having tried to run away, throwing the money on the ground, after initially accepting it, but getting alarmed upon seeing the approaching raiding party. He deposed that A-2 had remained present at the scene throughout. In contrast, the police proceedings recorded vide Ex.PW-7/G and H, which form the basis of the FIR, would not reflect any presence other than that of A-3, he apprehended at the scene of occurrence. The entire narration is silent as to the presence of A-1 and A-2. This cannot be accepted blindly.

16. If one goes by the instructions that were given by the TLO to the complainant, and the shadow witness, after the money had been handed over, the shadow witness was to give a signal by stroking his head with his hand. This signal, obviously, meant for the TLO inviting him to converge and take over the proceedings implies that the TLO, or some other member of the trap party under his instructions, were to be in such vantage position as from where he (and others) could see, if not hear, the exchange between the complainant and the suspect public servants. There is no explanation in the entire evidence, including the police proceedings leading to registration of FIR, as to what was seen as the conduct of A-1 or A-2 during such sequence of events.

17. PW-2 cannot be truthful in his statement about A-2 having remained where he was throughout, inspite of A-3 running away throwing the money on the ground upon seeing the trap party approaching. His version cannot be accepted because the police

proceedings do not say so, and the TLO is on record to depose that after A-3 had been apprehended search was made for A-1 and A-2 who had gone absconding, he instead going to the extent of claiming that A-2 was found on the other side of park, adjacent to the MCD office, after about one hour, and brought to the MCD office to be handed over to Inspector Bir Singh (PW-10), who was accompanying the trap party at the relevant point of time and had taken over the investigation after registration of the FIR.

18. PW-7, during his cross-examination on 1.12.2005, went back from his original version. He refused to identify any of the three persons facing the trial. He stated that in his complaint leading to registration of the FIR, he had mentioned the names on the basis of information given by some other person. He conceded that his cycle rickshaws had been subjected to challans by the municipal officials of West zone. He deposed that he was unable to name or identify the person who had asked him to give money outside but when he had offered the money to the person at that place he did not accept it and rather had thrown it away.

19. The learned trial court declined to go by the version in the cross-examination of PW-7 and instead drew conclusions on the basis of chief-examination recorded earlier. While it is correct that a contradictory statement made in the cross-examination may be rejected and the version appearing in the chief-examination may be preferred and acted upon, if it is shown that the witness has been won over during the interregnum and was intentionally telling a lie, his version in the cross-examination being consequently not truthful. But

for this to be demonstrated, it is incumbent on the prosecution to confront the witness with his previous statement, by subjecting him to cross-examination, with the permission of the Court, to bring out such facts to the fore as can show that the version in the chief-examination supporting the case of the prosecution was truthful. No efforts were made by the prosecution to this effect in these proceedings. Two contradictory versions of the same person having come on record, there is no reason why the Court should speculate and jump to the conclusion that the previous statement was the entire truth, particularly in a scenario where such account does not find any corroboration from the other evidence led at the trial.

20. In above context, reference needs to be made to the statement of PW-8, the shadow witness. This witness categorically stated that, in the MCD office, when complainant had talked with a person offering to give money, the said person had refused to accept it. He stated that the money was actually handed over to another person outside the room but he was not privy to the conversation that had taken place between the recipient and the complainant. He would not identify A-3 as the person who had received the money from the complainant. He contradicted the prosecution case about he having picked up the money from the ground where the same had been statedly thrown before it was seized by the investigation officer. The evidence of PW-8 is of no avail to pin down any of the three persons who were put on trial either as to their identity or as to any act of commission or omission indicating complicity.

21. In above facts and circumstances, in the opinion of this Court, it was not safe to draw conclusions as to the guilt of A-1 or A-3 as concluded by the trial court by the impugned judgment. Doubts that arise must deservedly result in benefit being accorded to the accused persons.

22. In view of the above, the appeals are allowed. A-1 and A-3 are hereby acquitted on the benefit of doubts. The impugned judgment and order on sentence consequently stand set aside. Fine amounts, if paid shall be refunded.

23. This judgment has been passed on file of CrI.A. 431/2006. Copy shall be placed on the file of the other case i.e. CrI.A. No. 451/2006.

R.K.GAUBA, J.

MAY 18, 2017

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