

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.799 of 2006

ORDER:

This appeal is preferred, by the appellant, who is A1, aggrieved by the Judgment, dated 22.06.2006, passed in C.C.No.6 of 2001 on the file of the Court of Additional Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad, by virtue of which the trial court convicted the appellant/A1 for the offence punishable under Sections 7 and 13(1)(d)(I)(ii) r/w Section 13(2) of the P.C.Act and sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.2,000/-, in default to undergo Simple Imprisonment for a period of six months.

2. The facts of the case, briefly, are as follows:

A1 worked as Assistant Sub-inspector of Police, Balanagar Police Station from 25.02.2000 to 28.03.2000 and A2 worked as Detective Sub-Inspector of Police in the same police station and they are public servants. The complainant is running a scrap shop at Erragadda, Hyderabad. On 18.03.2000 at about 09:30 PM, A1 took PW1 and his father from their shop to Balanagar Police Station and produced them before A2, who told the complainant that thieves, who were apprehended by them, confessed that they did not purchase any stolen property. A1 and A2 threatened the complainant that he will be implicated in a criminal case if the property is not returned to them. His father was let off on the same day and the complainant was

detained in the Balanagar Police Station till 19.03.2000 evening. A1 insisted PW1 for return of the stolen property i.e., 200 Kgs of Alluminium; 100 Kgs Brass; 300 Kgs copper and an amount of Rs.50,000/- in order to release him without booking any case against him. A1 also handed over a piece of paper to the complainant, containing the details of the property to be returned and the amount to be paid by him and he then released the complainant, saying that A2 noted down the said particulars on the piece of paper. A1 also directed the complainant to get the said material and the amount within two or three days. On 21.03.2000 at about 11:00 AM, A1 went to the shop of the complainant and enquired him about the properties to be returned and the amount of Rs.50,000/- and to pay the amount as bribe. Then A1 threatened him with dire consequences that he will be taken to the police station and will be detained. A1 told him that an amount of Rs.20,000/- is urgently required and directed the complainant to arrange the amount by 22.03.2000 evening and that he would come to the shop and collect the same. The complainant, being unwilling to pay the bribe amount, lodged a complaint with the Deputy Superintendent of Police (DSP), ACB, Hyderabad range, Hyderabad, on which a case was registered in Crime No.1/ACB-HR/2000 and in the evening A1 came to the shop of the complainant and was waiting in the shop. At about 07:05 PM, the complainant met A1 in his shop. A1 demanded and accepted the bribe amount of Rs.20,000/- from the complainant and kept the same in his right side pant pocket. On the signal given by

the complainant, the officials apprehended the accused and seized the amount of Rs.20,000/-. Phenolphthalein test was conducted which turned positive. After due investigation, charge sheet was laid against the accused.

3. The trial court, on appearance of the accused before it, framed charges for the same offences and after recording the plea of not guilty, it conducted the trial of the case and examined PWs.1 to 10 and marked Exs.P1 to P14 and MOs.1 to 8 on behalf of the prosecution. The incriminating circumstances in the evidence of the prosecution witnesses were put to the accused, when they were examined under Section 313 Cr.P.C., and they denied the truth of the evidence. On behalf of the accused, Dws.1 and 2 were examined, but no documents were marked.

4. The lower court, after evaluating the evidence and the material on record, passed the impugned judgment, acquitting A2 for the charges framed against him and convicted A1, as aforementioned. Aggrieved by the same, this appeal is preferred by A1 on the ground that the court below erred in coming to a conclusion that the appellant demanded and accepted an amount of Rs.20,000/- as bribe from the complainant for not booking any criminal case against them. the court below should have seen that the appellant was not the investigating officer in Crime NO.29 of 2000 of Balanagar Police station and he never demanded any amount from PW1. The court below failed to see that when the appellant went to the

shop of PW1 to receive the case properties as per the instructions of the CI of Police, the complainant thrust the tainted amount into the pocket of A1 and when he resisted that with his hands, the raid party rushed to the offence and conducted phenolphthalein test to his hands. The court below failed to see that the appellant got examined Dws.1 and 2 to prove his defence and it failed to give any importance to their evidence. The court below ought to have seen that Ex.P9 sanction order was issued mechanically without application of mind and, as such, it is not valid under law. The court below failed to see that the complainant, who is the suspected stolen property receiver, implicated the appellant in a false case as he became an obstacle in his way. The court below should have seen that even though the appellant gave a spontaneous explanation at the time of drafting post trap proceedings, it was not properly mentioned in the said post trap proceedings. The court below failed to see that the evidence of PW1 is inconsistent with his earlier statements and as such no reliance can be placed on his evidence.

5. Heard the counsel for the appellant and the Public Prosecutor appearing for the State.

6. The counsel for the appellant points out an improbability in the case of the prosecution, which is with regard to the accused going to the shop of the complainant. Except pointing out the above improbability, no tenable argument is made, which would discredit the evidence of the prosecution witnesses.

The other contention that is made is that the complainant was an accused in some cases earlier and that hence, his testimony has to be scrutinised with circumspection.

7. Based on the above argument, the points that arise for consideration are:

- 1) Whether the demand made by the accused is proved by the prosecution.
- 2) Whether the judgment of the trial court is sustainable.
- 3) To what result

POINT Nos.1 and 2:-

8. PW1, who is a scrap vendor, was called by the accused, who is the Assistant Sub-Inspector of Police Balanagar Police Station on 18.03.2000 at about 09:30 PM, along with his father and they were taken to the police station in his jeep. They were taken to the detective sub-inspector, who is A2 in this case. A2 stated to them that they apprehended two thieves, who disclosed that they sold stolen property of 500 Kgs of Aluminium, 200 Kgs of Bross and 300 JKgs., of copper to them. Stating so, the detective sub-inspector asked them to bring such stolen property and hand over to them. He replied to the said Sub-Inspector that he runs a small retail shop of purchasing scrap and that he has not purchased the above said items from any thieves and that he was not in the habit of purchasing stolen goods. To that, A2 remarked that he will not heed to his direction and expressed that he would keep him in the lock up till next day evening and leave his father. In the evening,

A1 came to him and asked them to bring said items, along with the amount of Rs.50,000/- and that he would bring the above articles and if he pays the said amount, he will be left without registering the case. He also handed over a chit to him stated to have been written by A2. Having no other go, he agreed for the said suggestion and said demand. A1 gave him two or three days time to accede to their demand. On 21.03.200 at 11:00 AM, A1 came to his shop and enquired about the said items and the bribe amount. He replied to them that the day before all the shops were closed and hence, by the next day evening, he would adjust and handover the above three items, but he refused to pay the bribe amount. He further deposed that A1 and the constable stated him that it is not possible for them to accept it and asked him to come to the police station. PW1 requested them not to do so, to which A1 asked him to pay urgently Rs.20,000/- as it is urgently required by them and that it has to be given on the next day. He also told him that he will come to the shop and take the amount. He left with a warning that if he does not have money he will be taken into the lock up, and implicated in a case. After that A1 left, as PW1 was not willing to pay the amount. He approached the officials, who prepared the trap proceedings, and kept Rs.20,000/- in the pocket of the complainant after applying some white powder. At about 06:00 PM, PW1 left DSP's office on his motor cycle whereas the DSP and his party and the mediators followed him in a jeep. They reached near J.K.Point Erragadda Chowrasta at about 07:00 PM and parked the jeep.

PW1 slowly proceeded on the motor cycle to his shop and the DSP and his party followed him on foot. When he went and stopped his motor cycle at his shop DSP and his party went and stood at the shops in front of his shop. When he went into his shop after parking his motor cycle, he saw A1 sitting on a chair and a constable by name Pochaiah sitting on another chair at the counter. His brother in law, who worked in the shop was also present. PW1 went and sat on a stool placed in front of the chair of A1, A1 asked him as to where he has gone and he questioned about the demanded amount. PW1 replied to him that he went to bring that money and hence the delay. He handed over the tainted currency notes from his shirt pocket, to A1. A1 received the amount, counted and kept in his right pant pocket. A1 asked about the balance of Rs.30,000/- of the bribe amount. He replied to him with that great difficulty he could secure this amount and that he would adjust the balance amount in two or three days time. Saying so, PW1 got up and gave prearranged signal to the trap party, who came into the shop of PW1. After receiving the said signal, they enquired with him as to what happened. He narrated the incident that took place between him and A1. He was asked to go out of the shop. On the next day he was called to the ACB Office and his statement was recorded.

9. This being the chief examination of PW1, the cross-examination does not elicit any material fact. It was elicited that the DSP produced him before the CI and CI also stated to him that if he purchased the stolen goods, they have to be produced. It was elicited that in ExP2 slip, the words mentioned are "50

cash” but not specifically Rs.50,000/-. He admitted that he did not mention about the said chit in his statement given to the police and to the Magistrate. He also admitted that he mentioned about A2 meeting him on 18.03.2000, but no mention was there about his meeting on the subsequent dates.

10. PW2, who is the father of PW1, corroborates the evidence of PW1 on all the facts, to which he was a witness. His cross-examination also does not succeed in eliciting any fact, which would discredit his evidence. Though it was elicited that he has not registered his shop with sales tax or income tax department or with the Municipality, the fact that he had a shop can be believed, as the very case of the prosecution rests on the fact that he purchased stolen property and kept in his shop and it is not the case of the accused that he did not have such shop.

11. PW3, who is the Record Assistant in the Central design Organisation, acted as a mediator for the trap proceedings. He deposed that he went to the ACB office on the request of the DSP and he introduced him to the complainant. The complainant explained to him all the contents of his complaint. He corroborated the evidence of PW1 with regard to the proceedings that took place with regard to the trap. After preparing the pre-trap proceedings, they all went to the shop of PW1. He saw PW1 going and sitting in front of a person sitting on a wooden stool and immediately PW1 gave pre arranged signal to them. They went inside and DSP disclosed his identity and introduced all of them to A1. Sodium carbonate powder

solution was prepared and A1 was asked to dip his both hand fingers in the solution on which the solution turned into pink colour. Then the DSP asked A1 to produce the amount, which he produced from his right side pant pocket. The pant was also seized after providing a lungi for A1. In the cross-examination he admitted that his office is very near to the ACB office, but he is aware that frequently ACB officials call the officials, who work in their office. He admitted that he acted as a mediator for the first time in this case. His cross-examination also does not help the accused as no material facts were elicited, which would belie his evidence. One admission that is made by him is that there are spelling mistakes in the words 'seized' and 'wad' which were written by him. The same may not have any effect on the evidence of PW3.

12. PW4, who is the Police constable in Balangar Police station from the year 1997 to 2003. He knows A1 and A2. he spoke about the incident that took place on 18.03.2000. according to his evidence, on that day at about 07:00 pm, A1 and himself went in a jeep and observed an auto rickshaw with the load of Aluminium wire bundles. They stopped the said auto rickshaw. A1 telephoned the matter to A2 and informed about it. Immediately, A2 came along with K.Bhupal constable, to that place. After their arrival they all went to their police station along with the said auto rickshaw and the three persons were with that auto along with the said aluminium wire. On the same day, at about 09:00 PM, in their jeep, they went along with A1 in the same jeep to Erragadda scrap shop and there, they found

PWs.1 and 2 and they were brought to the police station. PW2 was sent away and PW1 was detained in the police station till next evening. A1 returned to the police station on 22.03.2000 at 05:00 PM. From the police station, A1 took him along with him on his scooter and both of them went to the scrap shop of PWs.1 and 2. PW2 alone was present and accused spoke to him. At about 07:00 PM, PW1 came to the shop and A1 and PW1 had a talk. At that juncture, four or five persons rushed to the spot. Thinking that they are ACB people, he left that place. PW5 is a constable in Balanagar Police station. He corroborated the evidence of PW1 with regard to their detecting an auto going with a scrap and apprehending the persons going in the said auto and he accompanying A1 to the scrap shop and A1 speaking to the father of PW1 i.e., PW2 on 22.03.2000. According to his evidence, he was at the police station on duty. A2 took an application from him, in which he got written that on 22.03.2000 they found an auto rickshaw with three suspects and aluminium wire bundles, but the incident took place on 18.03.2000.

13. The evidence of PWs.4 and 5 lends strong support to the evidence of PWs.1 and 2, as they are the constables, who are subordinate to A1. Their evidence would clinchingly prove that A1 went to the scrap shop of PW1 to demand the amount. There is no other reason for A1 to go to the shop of PW1. If it is only for demanding the return of the stolen property, he could have called him to the police station as was done earlier. The contention of the appellant's counsel that the circumstances

would disprove the case of the prosecution, loses all its merit, in the light of the evidence of PWs.4 and 5. There need not be any more evidence than the evidence of PWs.4 and 5, which supports the evidence of PWs.1 and 2. The fact spoken to by PW5 that while the incident occurred on 18.03.2000, he was asked to make an application stating that they got the information about the auto on 22.03.2000, would itself show the dishonesty of A1 and would reflect the state of things in their police station. The evidence of PW3 supports the evidence of PW1 with regard to the amount being given to A1 and about the post trap proceedings.

14. The evidence of Pws.6 to 10 would only support the above evidence and their evidence does not bring out any inconsistency in the prosecution case. PW6, who is the detective Sub-Inspector of Kukatpally Police Station, received the information about the theft of aluminium bundles. His evidence proves the genesis of the case, which is the theft of Aluminium bundles. PW7 was examined to identify the signature of Sri Bharat Chandra, who was the Principal Secretary to the Government who issued G.O.Ms.No.399, which is with regard to the sanction to prosecute the accused. PW8, who is the Inspector of Police, Balanagar Police Station, corroborates the facts relating to the theft of Aluminium bundles and registration of case. PW9 is the Additional Deputy Commissioner of Police, Special Branch, Hyderabad, who earlier worked as DSP, ACB, Hydeabad range. He deposed that he received the complaint from PW1, registered

the case, took up investigation, conducted trap proceedings and submitted detailed report.

15. On behalf of the accused, Dws.1 and 2 were examined. DW1 is a witness doing real estate business, who knows the accused. According to his evidence, about five years back one day he went to the medical shop at Erragadda Premanagar area to purchase medicines in an auto belonging to one Das. While he was coming out from the medical shop, he found the accused standing near a scrap shop. He went and met him there. One Das was also with him at that time. While he was talking with the accused, the owner of the scrap shop came there on a motor cycle and stopped the vehicle near the shop. The person, who came there on a motor cycle, kept a wad of currency notes in the pant pocket of the accused. When A1 put his hand in his pocket to pick up the amount, four or five persons came there and caught hold of the hands of the Accused. DW2 is the Das, referred to by DW1. He corroborated the evidence of DW1. It is obvious that DWs.1 and 2 are speaking falsehood as there is ample evidence coming from independent witnesses, who are not in any way motivated to speak against the accused, supporting the version of PW1 that the accused went inside the shop of PW1 and received the amount.

16. Though the evidence of DWs.1 and 2 would not help the accused, it will help the prosecution to the extent of proving that A1 went to the shop of PW1, thereby, watering down the

contention of the counsel for the appellant that it is improbable that A1 would go to the shop of PW1.

17. Hence, in view of the above discussion, it can be unhesitatingly concluded that there was a demand made by A1 for bribe of Rs.50,000/- and that he received Rs.20,000/- towards the said bribe, thereby proving the prosecution case. However, this court, by considering the longevity of the case, is inclined to reduce the sentence of imprisonment imposed by the trial from two years rigorous imprisonment to one year rigorous imprisonment. The rest of the judgment of the trial court is left uninterfered.

Accordingly, points 1 and 2 are answered.

POINT No.3:

18. The criminal appeal is partly allowed confirming the conviction imposed by the trial court. However, the sentence of imprisonment, imposed by the trial court, is reduced from two years rigorous imprisonment to one year rigorous imprisonment. The rest of the judgment of the trial court is left uninterfered with.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

T. RAJANI, J

September 27, 2018
LMV