

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 606 OF 1997

Bhaskar Khashaba Yewle.

Age: 35 yrs., residing at
2-7, Shroff Building,
D.P. Wadi, Ghodapdev Road,
Mumbai 400 033.

..Appellant.

v/s.

The State of Maharashtra
(Anti Corruption Bureau)

..Respondent.

Mr. Girish Kulkarni, advocate for appellant.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 9, 2019.

JUDGMENT :

1 The appellants herein impugns the Judgment and Order dated 29th April, 1997 passed by Special Judge, Greater Bombay in Special Case No. 75 of 1990 thereby convicting the appellant for the offence punishable under section 7 of the Prevention of Corruption Act, 1988 and he is sentenced to suffer R.I. for 6 months and to pay fine of Rs. 1000/- I.d. to suffer further R.I. for two months. The appellant is also convicted for offence punishable under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I.

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for one year and to pay fine of Rs. 2,000/- I.d. to suffer R.I. for 3 months.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) The appellant herein was working as Bill Collector in the office of Tahasildar Encroachment. One Mr. Hariprasad Sharma who was resident of Krishna Society had applied for “No Objection Certificate” in order to acquire electric connection at his premises at Room No. 7, Panchashil Chawl. He was into the business of fabrication and required a commercial meter for electricity.

(ii) It is admitted position that he was seeking connection of an electric meter in an unauthorised construction and therefore, he had to approach the office of Collector for seeking “No Objection Certificate”. One of the duties assigned to the appellant was to carry out survey of the said unauthorised construction which fell within his jurisdiction and make a report to the superior who would be issuing “No Objection Certificate”.

(iii) On 19th March, 1990 when the complainant approached the appellant/accused, there was a demand of Rs. 1200/- for giving favourable “No Objection Certificate”, even without conducting survey, because the certificate would be issued only

on the basis of the report of the appellant. The complainant had succeeded in negotiating with the amount and it was settled at Rs. 500/-, which was to be paid on 9th April, 1990.

(iv) The complainant was not willing to pay the said amount towards gratification and hence, he had approached the office of Anti Corruption Bureau and narrated the facts. His statement was recorded on 6th April, 1990. Since there was an allegation of demand of illegal gratification, Crime No. 10 of 1990 was registered by police inspector Mr. Bhavsar.

(v) The police inspector then summoned two independent persons from rationing office to act as panchas. They were called on 9th April, 1990. The complainant had produced 4 notes of Rs. 100/- denominations and 2 notes of Rs. 50/- denominations. The pre-trap panchanama was conducted and after giving due instructions, raiding party had been to the office of the appellant.

(vi) The complainant as directed by the police had entered into the office alongwith panch Mr. Ramchandra Randive (P.W.2). The complainant had then enquired with the accused/appellant as to whether the “No Objection Certificate” is ready. He had received the answer in affirmative. The complainant had informed the accused that he had brought the money as was directed, accused/appellant demanded money and then the complainant handed over the tainted currency notes of

Rs. 500/- to the accused. The accused/appellant had accepted it, placed it in his identity card and then, the said identity card was placed in the left side shirt pocket.

(vii) After the amount was accepted, the complainant (P.W.1) Mr. Sharma had given pre-determined signal. The members of the raiding party had then entered in the office. The constable had caught hold of the accused. However, upon seeing the members of the raiding party, the accused/appellant had crumpled the notes and tried to swallow the same. However, he could not succeed since the raiding party was present.

(viii) After finding the traces of anthracene powder under the ultra violet lamp, the statements of the witnesses were recorded and the accused was taken into custody. The Collector of Mumbai Mr. Suresh Salvi had accorded sanction for prosecution on 9/11/1990. At the trial, the prosecution examined as many as 6 witnesses to bring home the guilt of the accused/appellant.

3 The case rests upon the evidence of P.W. 1 Mr. Hariprasad Sharma who happens to be the complainant, P.W. 2 Mr. Ramchandra Randive who had acted as a shadow witness, P.W. 4 Ramesh Govekar, who was party to the raiding party and had acted as a panch for the post trap panchanama, P.W. 5

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Mr. Deepak Bhavsar who was attached to anti corruption bureau and had worked as Investigating Officer.

4 P.W. 1 Hariprasad Sharma has deposed before the Court that he was the occupant of the hut, where he wanted commercial electricity connection. He was guided by one electrician Bhagwandas to obtain NOC from the Collector to provide electricity to the holder of the property. Accordingly, he had filed an application on 1st March, 1990 in the office of Collector at Chembur. He was informed that he would require certificate from Shri Yewale who was the then Bill Collector. He was acquainted with Mr. Yewale even prior to 4th March, 1990 and after ensuring that his application has reached the office of Mr. Yewale, he had approached him on 19th March, 1990. On that day Mr. Yewale had demanded Rs. 1200/- which was further negotiated to Rs. 500/-. He had again approached him on 23rd March, 1990 and Mr. Yewale had reiterated his demand. It was agreed that the money would be paid on 9th April, 1990. He had approached the office of ACB and set the law into motion. He has categorically stated that after accepting the amount, the accused/appellant had crumpled the money in his hand and had tried to swallow the same. However, the police were present and the said attempt had failed. The witness has stood the test of cross-examination and

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has in fact, admitted that at the time of making an application for supply of electricity, he had not started his business and it is denied that he had started business in the year 1986. In fact, he had obtained gumasta licence from the Corporation for starting said business. He was occupying the said premises since 1980. It is admitted that it is an unauthorised construction. It is admitted that it was not mentioned in the application at Exh. 10 that he was seeking connection in an unauthorised construction. As on today, the Court is only concerned with the act committed by the accused/appellant and not as to whether he was seeking electricity connection in an unauthorised construction. He has further admitted in the cross-examination that he had seen the accused keeping the tainted currency notes in his identity card and thereafter, the Identity card was placed in the shirt pocket of the accused/appellant. It was only then that he had given pre-determined signal. The defence has failed to shatter his testimony.

5 P.W. 2 Ramchandra Randive was acting as a shadow witness and the whole case rests upon his evidence as he could have been the only person to depose as to whether a demand was made, it was accepted and thereafter, conduct of the accused. He has proved the pre-trap panchanama. He has deposed before the Court that on the day of the incident i.e. on

9/4/1993, after entering the room the accused and the complainant had exchanged salutation. Mr. Sharma had informed the accused/appellant that he had brought money, which was demanded. The accused after hearing the same, demanded it. The complainant had obliged. And then, gave pre-determined signal. The trap amount was removed from the pocket of the accused by a constable. The constable had handed over the said amount to PI Bhavsar. P.W. 2 had suddenly recollected that the accused had attempted to swallow money when he was caught by the raiding party. But thereafter, he could not remember the events as they had occurred. The prosecutor had prayed for declaring the witness hostile as he had resiled from his earlier statement. In the cross-examination by the prosecutor, the witness has stated that the accused had demanded the agreed amount of Rs. 500/- and Rs. 100 in addition to be paid later. That the accused / appellant had denied the request of the complainant to count the money as he trusted him. He then admitted that the police did not catch hold of the accused on his neck nor they had removed money from the shirt pocket of the accused but the tainted notes remained in the hands of the accused. He has further added that traces of anthracine powder were found on the right hand of the accused when his hands were exposed to ultra violet lamp. It is also admitted that when the face of the accused was

exposed under the lamp, the raiding party could notice bluish glow on his chin near mustache near lower lips, cheeks. Bluish glow was also seen on the inner portion of his mouth. That tainted notes had touched face of the accused when he had attempted to eat those notes. Similarly, glow was also seen on the trouser of the accused.

6 In the present case, it is pertinent to note that thereafter, the defence Counsel had cross-examined the witness. In the said cross-examination, it is admitted that it was first time for P.W. 2 to act as panch and therefore, whatever he had witnessed, had deep impression on him and could depose correctly on the basis of his memory. It is admitted in the said cross-examination as follows :

“It did happen that I narrated to the police at the time of recording of my statement that the accused was trying to eat money. This particular action of the accused was noticed by me and it was fresh in mind. I have stated it to the police but did not remember at the time of recording of my statement. He has then added that it is true that when the police apprehended accused, thereafter, he attempted to eat money. That by seeing two police men, Shri Yeole took out identity card with its contents, crumpled notes and tried to insert the same in his mouth. But I did not tell this to police.

He has further taken somersault by saying that he did not realise this fact that particular statement is mentioned in his statement by the police though he read statement.

7 P.W.3 Mr. Zakeria Patel is colleague of the accused working in the same office.

8 P.W. 4 Ramesh Govekar was also a member of the raiding party and has witnessed subsequent conduct of the accused of swallowing the money. The witness had actually seen the accused attempting to thrust the notes in his mouth. On instructions from the Investigating Officer he had opened fists of the accused and seized the tainted notes. He handed over notes and the identity card to Mr. Bhavsar. The tainted notes were crumpled. He has signed the post-trap panchanama. His evidence has not been shaken in the cross-examination.

9 P.W. 5 Mr. Deepak Bhavsar was officiating as DYSP, ACB. He had taken cognizance of the report filed by P.W. 1. He had called for two panchas who are public servants. The pre-trap panchanama was prepared. A trap was laid. He had been to the office of the accused alongwith raiding party. He had seized the tainted currency notes, prepared the post-trap panchanama and thereafter, he was again cross-examined by the defence. In the said cross-examination, he has categorically

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stated that upon being accosted by the raiding party, the accused had crumpled the tainted currency notes and had attempted to swallow them. That in fact, he had heard the conversation between the complainant and the accused prior to passing over the tainted currency notes to the accused which clearly indicated that the accused had demanded gratification and the same was given to him upon demand. Learned Counsel for the defence submits that the prosecution witness No. 2 is not reliable witness, since he has taken a summer-salt at every stage I.e at the time of recording examination-in-chief, cross-examination by the prosecution as well as cross-examination by the defence.

10 It is settled legal position that the evidence of a hostile witness cannot be rejected merely because he has been declared hostile and that the evidence of such a person does not get effaced from the record. The relevant portion of the evidence of a hostile witness can still be relied upon provided that the same stands corroborated by other material and further corroborated by independent witness. In the present case, the fact that the accused had placed the tainted currency notes in the identity card after accepting, is proved by the fact that traces of anthracine powder were seen on his fingers, identity card and pocket. The fact that he had attempted to swallow the notes, is

corroborated by the presence of traces of anthracene powder on his mouth on the inner side of lip and on the cheeks.

11 Implicit reliance can be placed upon the Judgment of the Apex Court in the case of Rabindra Kumar Dey v/s. State of Orissa reported in 1977 AIR 170. The Apex Court has held as follows :

“It is also clearly well settled that the mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness so as to exclude his evidence from consideration altogether.”

In the case of Mrunal Das v/s. State of Tripura (2011) 9 SCC 479, it is held that -

“It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness.

However, the Court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be

attached to it. The Court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution.

The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.”

12 Needless to say that post trap panchanama proved by P.W. 4 alongwith the evidence of P.W. 1, 2 and 3 is more than sufficient to hold that the prosecution has proved the guilt of the accused beyond reasonable doubt. Hence, the appeal deserves to be dismissed. Hence, following order is passed :

ORDER

- (i) The appeal is dismissed.
- (ii) The appellant shall surrender before the Special Judge at Greater Bombay before 8th November, 2019 to undergo the sentence imposed upon him. In the eventuality, he fails to

surrender, the learned Special Judge shall issue non-bailable warrant and take the appellant in custody.

(iii) Writ be issued forthwith.

13 The appeal is disposed off accordingly.

[SMT. SADHANA S. JADHAV, J.]