BAIL SLIP

K.Ramadoss S/o.Kandhasamy, aged about 59 years and K.Subramanian S/o.Koozhaiyan, aged about 65 years were released on bail vide order dated 23.05.2013 made in MP(MD).1 of 2013 in CRL.A (MD).145 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.(MD)No.145 of 2013

1.K.Ramadoss
2.K.Subramanian ... Appellants / Accused

-Vs-

The Deputy Superintendent of Police,
Vigilance and Anticorruption Wing,
Tiruchirapalli.
(Crime No.9 of 2007 ... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records pertaining to the judgment dated 30.04.2013 made in S.C.No.7 of 2011 by the learned Special Court for trial of cases under Prevention of Corruption Act, Tiruchirapalli and set aside the same.

For Appellants : Mr.T.Mohan
for R.Diwakaran
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor.

JUDGMENT

The convicted accused persons are the appellants herein. They have filed this Criminal Appeal to set aside the judgment made in Special Case No.7 of 2011 by the Special Court, Trichirappalli, dated 30.04.2013, in which the first appellant was convicted and sentenced to undergo one year rigorous imprisonment and imposed to pay a fine of Rs.1000/- in default to undergo simple imprisonment for one month for the offence under Section 7 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act') and sentenced to undergo two years rigorous imprisonment and imposed to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months for the offence under Section 13(2) r/w 13(1)(d) of the Act and the second appellant was convicted for the offence under Section 12 of the Act, to undergo six months rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo one month simple imprisonment. The above sentences were ordered to run concurrently.

2.The brief facts leading to this case are as follows:-

(i)The first accused was working as Village Administrative Officer, Poolanchery in charge for Serugudy, Musiri Taluk, Trichy District from 01.12.2006 to 26.06.2007 and the second accused was serving as Village Assistant of Serugudy, Musiri Taluk, Trichy District from 01.04.2005 to 26.06.2007. The defacto complainant Rajendran along with his younger sister Sakunthala purchased 4.90 acres of dry land along with a bore-well, 5 H.P. Motor and service connection No.296 from one Nalini and Ponnarasammal of Musiri and wanted to get the service connection transferred to his name as it was remaining in the name of the said Nalini and for that he required a certificate from the Village Administrative Officer of Serugudy. On 22.06.2007 at 10.00 hrs at the office of the Village Administrative Officer, Serugudy, the defacto complainant met the first accused and requested him to issue the said certificate, the first accused demanded a sum of Rs.500/- as gratification for himself from the defacto complainant for doing his official act of issuing the said certificate for transferring the service connection in the name of the defacto complainant.

(ii)Since the defacto complainant was not willing to give bribe amount, on 25.06.2007 at about 3.00 p.m., he went to the vigilance office and made oral information under Ex.P.3 with P.W.10, Govnindasamy, the then Inspector of Police, Vigilance and Anticorruption Wing, Tiruchirapalli, who received the same and registered the First Information Report under Ex.P.16 and issued a copy of the same to P.W.3, after obtaining the signature in it.

(iii)Thereafter, P.W.10 arranged for a trap and also made a request over phone and on his request P.W.4 S.Loganathan, Junior Assistant, Office of THADCO, Trichy and another official witness P.Parthasarathy, Junior Assistant of the Deputy Commissioner of Labour, Trichy came to the vigilance office on the next day and they were introduced to P.W.3 and they perused the First Information Report and verified the genuineness of the complaint with P.W.3. Then, P.W.10 demonstrated the sodium carbonate and phenolphthalein test to the said witnesses and to P.W.3 and explained its significance, for which, P.W.3 produced the bribe amount of Rs.500/-, containing five 100 rupee currency notes M.O.1 series and prepared entrustment mahazar under Ex.P.4 for the above said procedure and the numbers of the currency notes were entered therein. Then, the said amount of Rs.500/- was handed over to P.W.3 through the Constable. Then P.W.10 instructed P.W.3 to go and meet the accused and instructed P.W.4 shadow witness to accompany with him and to watch over the occurrence and P.W.3 was also instructed to give pre-arranged signal, after acceptance of bribe amount by the accused.

(iv)Thereafter, they left the said office in a Government Vehicle at 10.00 a.m., and reached Serugudy at 11.30 a.m., and stopped the vehicle before the said office and P.W.3 and P.W.4 were alighted and they were asked to meet the accused after reminding the earlier instructions. After 15 minutes, P.W.3 and P.W.4 reached the office of the Village Administrative Office, Serugudy by walk. Though the office opened, nobody was available there and hence, P.W.3 and P.W.4 came out and standing outside the office. They enquired a person, who was standing there and came to know that the Village Administrative Officer and the Menial went out and they waited there for about ¾ hours and at 12.30 hrs, the accused came and entered into the office. P.W.3 and P.W.4 followed them. After the first accused sat in his seat, he noticed P.W.3 and said as instructed P.W.3 came on Tuesday and as to whether he brought the sum of Rs.500/- and for which P.W.3 said he brought the sum of Rs.500/- and at that time, the first accused while searching some files enquired the second accused by saying where is the name transfer certificate of Rajendran and for which, the second accused searched the same from the other file and handed over to the first accused. After receiving the same, he turned the pages and filled the particulars on his hand and handed over the application with P.W.3 and thereafter, he asked the money. Soon after, P.W.3 handed over the phenolphthalein coated amount of Rs.500/- with the first accused, instead of receiving the same, he showed the second accused and directed P.W.3 to hand over the said money with him. Accordingly, the said money was handed over to him by P.W.3. He received the same by saying normally they are receiving a sum of Rs.1000/- for the said certificate but the Village Administrative Officer at the initial stage demanded a sum of Rs.500/- only. He received the same through his right hand and kept the same in his left side shirt pocket. P.W.3 and P.W.4 came out of the said office with pre-arranged signal. P.W.10 came to them, ascertained the happenings and after that P.W.3 and P.W.4, P.W.10, the raiding party and the other official witnesses entered into the office of the Village Administrative Office, Serugudy. P.W.3 identified the accused. P.W.10 introduced himself and also introduced the witnesses with the accused and the accused are perplexed. Thereafter, P.W.3 came out from the said office as requested by P.W.10.

(v)Thereafter, sodium carbonate liquid were prepared as per the direction of P.W.10 and while the right hand of the second accused was dipped in it, it changes in pink color and the same was collected in a bottle under M.O.2 with a seal of V & AC after marking as 'R'. Thereafter, M.O.1 series were recovered from the second accused by P.W.10 and the numbers thereon were compared and found tallied with the numbers noted in Ex.P.4 the entrustment mahazar. Thereafter, the shirt worn by the second accused M.O.4 was recovered and the pocket portion of the same was dipped in a separately prepared sodium carbonate liquid and it changes its color and the same was collected in a bottle M.O.3 under the seal of V & AC. Thereafter, P.W.10 recovered Ex.P.5 and Ex.P.6 copy of the sale deed Ex.P.26, copy of the patta passbook Ex.P.21. Thereafter, P.W.10 arrested the accused. For the said procedure and recovery at the office of the accused, P.W.10 prepared Ex.P.13 seizure mahazar and also prepared observation mahazar-Ex.P.9 and rough sketch-Ex.P.17. Thereafter, P.W.10 conducted house search at the house of the first accused and prepared search list under

Ex.P.10. He sent the advance intimation under Ex.P.18 for the said house search. He sent the case properties under Form 95 in Ex.P.19 and also sent the alteration report under Ex.P.20.

(vi)Then P.W.11 took up the case for further investigation and examined the witnesses and filed final report as against the accused persons.

3.After receipt of the final report, the trial Court framed charges against the first accused for the offences under Sections 7 and 13(2) r/w 13(1)(d) of the Act and against the second accused for the offence under Section 12 of the Act.

4.To prove the charges, on the side of the prosecution, 11 witnesses were examined as P.W.1 to 11 and 26 exhibits were marked as Exs.P.1 to P.26 along with 4 material objects as M.O.1 to M.O.4. On the side of the accused persons, one Nithiyanantham was examined as D.W.1 and marked one document as Ex.D.1.

5.At the time of questioning under Section 313 Cr.P.C., the first accused denied the allegation against him and in fact the first accused refused to sign the unfilled application under Ex.P.5 and Ex.P.6 and after his refusal, when P.W.3 came out from the office and when the second accused was distributing the applications form in relation to the farmer protection scheme in the Verandah of the said office, P.W.3 foisted the tainted money with him by saying that the first accused asked him to give the money with him and innocently, the second accused received the same and the complaint lodged against him is false. He did not aware of the amount given to the second accused.

6.The trial Court after appreciating the evidence let in by the prosecution, has found the accused guilty for the aforesaid charges and sentenced them as stated supra. Aggrieved against the same, the accused persons have approached this Court by way of filing this Criminal Appeal.

7.The learned counsel for the appellants submitted that the prosecution itself admitted that there is no admission from the second accused and the second accused has known P.W.3 only on 26.06.2007, when the second accused distributed form and while getting signature, he received the money, as if the money belongs to the first accused. He further referred the evidence of P.W.2, Tahsildar, who granted sanction in favour of the second accused and clearly deposed about the records maintained on 26.06.2007 and that the accused persons accompanied with P.W.2 for inspection. However, the prosecution did not take any steps to establish the case and no documents were available to implicate the second accused.

8.He further submitted that P.W.3 has no cordial relationship with the neighbouring land owner and in view of the dispute, the first accused refused to sign in the said ownership certificate. Accordingly, the prosecution has not proved the case beyond reasonable doubt and he prays for acquittal.

9.The learned counsel for the appellants relied on the judgment reported in ***2015 12 SCC 348 (D. Velayutham vas. State Represented by Inspector of Police, Salem Town, Chennai).***

15.Accused 1's counsel before the Trial Court denied both Accused 1's presence, as also participation, in any meeting in the office with PW2 on the morning of 04.06.1996, stating that Accused 1 could not have been present at the alleged preliminary meeting where the bribe demand surfaced, as Accused 1 had been summoned to the Head Office that very morning. The Trial Court correctly negated this claim, finding that Accused 1 had not himself stated anything to this effect under Section 313, Cr.P.C., nor led any evidence by examining any of the officials from the head office. The testimonies of DW2 and DW3, stating the absence of Accused 1 in the office at the relevant time, D. Velayutham vs State Rep.By Inspector Of Police on 10 March, 2015 were disbelieved, keeping in view their subordination, and therefore likely tutelage as witnesses, being beholden to Accused 1 and his status as superior. The attendance register of the office also marked the presence of Accused 1 on 04.06.96, and whilst it has been accepted that Accused 1 was not present at the time of receipt (in support whereof he examined the doctor attending to his wife), Accused 1 does not have any similar external alibis to uphold his claim of having been summoned to the head office at the hour of the bribe demand. It is, in our view, positively settled that Accused 1 was present in the office that forenoon. Beyond this point, the conviction of Accused 1 will depend upon a convincing commixture of circumstances and testimonies of the Complainant and Accused 2, which, as we have already declared, we find firmly substantiated.

16.M.O. Shamsudhin, bearing some degree of factual resemblance to this case qua the trapping of one accused and evasion by other, is analogically assistive for the present determination. In that case, the senior accused, A-1, had been requested to issue a patta in favour of the complainant. A- 2, A-1's junior officer, was given the trap money in A-1's office and on his behalf by the complainant, who was accompanied by a trap witness. On exiting the office of A-1, A-2 was at once apprehended. Although A-1 had not been entrapped per se, he was found to be conclusively incriminated by the circumstances and evidence of the complainant. The Court held: "In the instant case, PW1 has no axe to grind against A-1. It is not in dispute that he had to get a patta issued A-1 and *he categorically stated that A-1 had made the demand.A-2 was his assistant and the tainted money was recovered from A-2 while he was just going out of the office of A-1. Unless A-1 has demanded the money and has also directed him to hand over the same to A-2, there was no reason at all as to why PW1 should hand over the money to A-2. PW1 has consistently stated that A-1 demanded the bribe and that A- 2 received the amount as stated by him. Therefore it cannot be said that there is no corroboration regarding the demand. This is a case where each of the accused tried to throw the blame on the other but taking the overall circumstances into consideration in the light of evidence of PWs 3 and 4 along with the evidence of PWs 1 and 2 both Courts below have consistently held that the evidence of these witnesses establishes the guilt of the accused and we see no reason to come to a different conclusion".*

17.Analogously applying the facts of this case to the present fact set, we find the conviction of Accused 1 perfectly sustainable. It is an argument a fortiori supportive of Accused 1's conviction herein, since in Shamsudhin, A-2's receipt in A-1's office on behalf of A-1 could conceivably have been repudiated by A-1 on the ground that he himself could have taken receipt of the bribe amount in his own office, being physically present there at the time of payment, and need not have relied on his junior officer to take receipt thereof on his behalf. Contrarily, in the case before us, Accused 1's absence from the office at the time of the trap strengthens, rather than weakens, the claim that his junior officer, Accused 2, was receiving part of the bribe amount as a custodian on his behalf."

10.Per contra, the learned Additional Public Prosecutor, submitted that the issue involved in this case is in very narrow campus and there is no issue with regard to P.W.3 owned land in a particular village and has made application before the Village Administrative Officer for ownership transfer certificate and the said application is marked as Ex.P.5. Even on the perusal of the application discloses that the first accused on 26.06.2007 after receiving bribe had handed over transfer certificate. Further the evidence of P.W.3, the defacto complainant, P.W.4-shadow witness clearly corroborated each other and the same was confirmed by the trap laying officer and therefore, the prosecution has clearly proved the case against the first accused. Insofar as the second accused is concerned, since the second accused is working along with the first accused and he has also demanded amount, after he received Rs.500/- for another person. The said portion of the evidence is clearly corroborated through the evidences of P.W.3, 4 and 10. Ultimately, the prosecution has clearly proved the case beyond reasonable doubt before the Sessions Court.

11.In the light of the above submission, it has to be analysed that whether the prosecution proved the case in all prospects, whether the first accused demanded money from P.W.3 and the same is accepted through the second accused, whether the second accused obtained bribe amount on behalf of A-1 knowing that it is a illegal gratification and whether the evidence of D.W.1 and D1 document are sufficient to rebut the presumption of the prosecution's case.

12.The crucial witnesses in this case are P.W.3 to P.W.5 and P.W.10. It is well settled that the evidence of trap witness must be tested in the same way as that of any other interested witnesses. The Court has to take into account the corroboration of the evidence of independent witness before convicting the accused person and the Court has to look for independent corroboration. The evidence of complainant cannot be said to be contrary unless it should be corroborated with material particulars or otherwise cannot be acted upon. Further, it is well settled that mere recovery alone will not prove the acceptance of bribe.

13.In the present case, P.W.3 / defacto complainant and P.W.5 sister of the defacto complainant purchased four acres and 90 cents in that village through Ex.P.7 sale deed. After purchase, on 09.02.2005, P.W.3 transferred the patta jointly in his name as well as his sister's name P.W.5 and after getting joint patta, again he approached the Electricity Board for transfer of electricity connection on 21.06.2007 and secured the application from the Electricity Board, thereafter, he obtained signature from P.W.5 in the transfer application, thereafter, he approached the Village Administrative Officer / first accused on 22.06.2007 and produced application, sale deed, copy of the patta and requested him for transfer the certificate. After perusal of the said application, the first accused said that certificate will not be issued at free of cost and demanded a sum of Rs.500/- for which, the defacto complainant enquired that it is fee or bribe and the first accused confirmed that there is no fee, however, the defacto complainant has given a sum of Rs.500/- separately to the first accused and further, the first accused informed that he is not available for next two days and directed to meet him by Monday or Tuesday. Thereafter, P.W.3 made a complaint before the trap laying officer and after completing the pre-trap proceedings, P.W.3 and P.W.4 went to the office of the first accused. On seeing P.W.3, the first accused / Village Administrative Officer enquired whether he brought a sum of Rs.500/- as demanded by him and immediately, he said yes. Thereafter, the first accused asked the name certificate from the second accused and the second accused handed over the name transfer records to the first accused and thereafter, he signed in the certificate and handed over to P.W.3. Thereafter, he demanded the bribe amount of Rs.500/- and immediately, P.W.3 handed over the phenolphthalein coated amount to the first accused. However, the first accused directed P.W.3 to hand over the money to the second accused. While receiving the money, the second accused informed that usually, the first accused collects a sum of Rs.1000/-, however, in this case, he collected only a sum of Rs.500/-.

14.The evidence of P.W.4 clearly corroborated with the evidence of P.W.3. On cumulative reading of the evidence of P.W.3 and P.W.4, it is seen that the second demand and the acceptance of the illegal gratification by the second accused on behalf of the first accused is well established and there is no contra evidence available to disprove the aforesaid evidence.

15.The learned counsel appearing for the appellants mainly, relied upon the evidence of P.W.5, who is the sister of P.W.3 and joint owner of the property and she deposed that there was some dispute in between the neighboring land owner and confirmed that she made a complaint against neighboring land owner. The application form is marked as Ex.P.5, in which her signature is found in the joint ownership consent letter and the application also contained signature of Village Administrative Officer / first accused dated 26.06.2007. The sale deed containing the signature of P.W.5 and the first accused Village Administrative Officer including the previous owner marked as Ex.P.7 and the same was recovered from P.W.3 defacto complainant.

16.After perusal of the above evidence as well as the documents, this Court has no hesitation to arrive at a conclusion that the prosecution has clearly established the demand and acceptance of the bribe amount before the trial Court beyond reasonable doubts. Further, the second accused in his defence stated that he did not demand any amount from P.W.3 and he is a Junior Level Officer, he simply accompanied with the first accused and as per his directions, he received the amount. When there is no demand, mere possession of the amount will not constitute an offence. However, on perusal of the evidence of P.W.3 and P.W.4 shadow witness, they clearly deposed that the second accused received phenolphthalein coated money from P.W.3 as per the directions of the first accused, knowing very well that it is gratification for name transfer and further, P.W.3 and P.W.4 deposed that the second accused specifically in his interaction with P.W.3 and P.W.4 shadow witness clearly said that the first accused used to collect a sum of Rs.1000/- and in this case, he collected only a sum of Rs.500/- and hence, the said evidence clearly indicated the involvement of the second accused in the aforesaid transaction and the prosecution has clearly established that the second accused knowing very well that it is gratification accepted the gratification on behalf of the first accused.

17.On perusal of the entire evidence available on record, I do not find any error in the judgment passed by the trial Court and the prosecution has clearly proved its case beyond reasonable doubt against the accused. Therefore, this Court is inclined to confirm the judgment made in Special Case No.07 of 2011 by the Special

Court, Trichirappalli, dated 30.04.2013. However, insofar as the first appellant is concerned, considering the age of the first appellant and age related ailments as submitted by their counsel, during the course of arguments, this Court while confirming the conviction, reduces the sentence imposed on the first appellant from two years to minimum sentence of one year for the offence under Section 7 and from two years to minimum sentence of one year for the offence under Section 13(2) r/w 13(1)d) of the Act. Both the sentences are ordered to run concurrently. The period of incarceration already undergone by the appellant shall be given set off under Section 428 Cr.P.C. The trial Court is directed to take immediate steps for securing the accused / appellant and commit them to prison to undergo the remaining period of sentence modified by this Court. The bail bond, if any, executed by the appellant / accused stands cancelled.

18.In the result, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

ta

To

1.The Special Judge,Vigilance and Anticorruption Court,
Trichirappalli.

2.The Judge/Special court for trial of cases
under prevention of coruption Act, Trichy.

3.The Deputy Superintendent of Police,
Vigilance and Anticorruption Wing, Tiruchirapalli.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

5.The District Collector, Trichy.

6.The Director General of Police, Mylapore, Chennai.

7. The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

8. The Superintendent of Police, Trichy.

CRL.A.(MD)No.145 of 2013

01.03.2019

nsn(CO)

TR (23.05.2019) 9P 10C