

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.376 OF 2004**

The State of Maharashtra	)	
(At the instance of Shri Subhash	)	
Dataran Dafle, Police Inspector,	)	
Anti Corruption Bureau, Kudal,	)	
District Sindhudurg)	)	..Appellant

V/s.

Shri Chandrakant Annadrao Madne	)	
Age about 36 years	)	
Police Sub Inspector,	)	
Kankavali Police Station	)	
District Sindhudurg,	)	..Respondent (Ori Accused)

Ms. Anamika Malhotra, APP for State
Mr. Vijay Killedar for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 18th DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 29-11-2003 passed by Learned Special Judge, Sindhudurg-Oros, acquitting respondent (accused) for the offence punishable under Section 7 (Public servant taking gratification other than legal remuneration in respect of an official act), Section 13 (1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act 1988.

2 It is prosecution's case that one Kalidas Kudatarkar, a teacher from Salgaon, committed suicide on 1-12-2000 on the railway track and enquiry

of accidental death was held. The enquiry was conducted by accused, who was serving as police Sub-Inspector at Kankavali. On 10-1-2001, accused lodged an FIR against Rajan Naik (PW-3) and his brother in law Prasad Khanolkar for the offence punishable under section 306, 384 read with 34 of IPC. On the same night, both of them were arrested and on the next day their police custody remand was taken upto 15-1-2001. On 15-1-2001, PW.-3 told his brother Guruprasad (PW-1) in the court premises that accused has falsely implicated him and Prasad Khanolkar and has demanded a sum of Rs.1 lakh for deleting his name from the case. PW.-3 and Prasad Khanolkar remanded in jail at Sawantwadi until 30-1-2001 when they were released on bail pursuant to the order passed by the Hon'ble High Court on condition that they should attend Kudal Police Station for 7 days and thereafter they should remain out of the District till the filing of the charge sheet.

The prosecution has alleged that on 3-2-2001, at 1.00 p.m., accused contacted PW.-3 over telephone at his residence and called him to his office. When PW.-3 went to the office of accused, accused enquired with PW.-3 in the presence of PW.-1 Guruprasad as to whether any arrangement for demand of Rs.1 lakh has been made. It is alleged that accused promised PW.-3 that he would do loose investigation to help PW.-3 in securing acquittal and would also not object PW.-3's presence in the District till filing of the charge sheet. PW.-3 was told to bring amount on 16-2-2003 at Kankavali Police Station. PW.-3 states he would consider the proposal. On

6-2-2001, P.W.-3 met accused at Kankavali police station when accused once again demanded Rs.1 lakh but after negotiation the amount was settled at Rs.25,000/-. On the same day, i.e., 6-2-2001 P.W.-3 left Sindhudurg to comply with the conditions of bail. On 12-3-2001, accused sent a message through police constable Suryaji Naik, who was brother in law of P.W.-3 and P.W.-1 Guruprasad and repeated the demand of Rs.1 lakh. On 19-3-2001, accused again sent a message to P.W.-1 Guruprasad to meet him and P.W.-1 Guruprasad and his brother in law constable Suryaji Naik met accused at his house at Kankavali at 9.45 p.m. Police Constable – Suryaji Naik declined to intervene and accused told P.W.-1 Guruprasad once again to bring bribe amount of Rs.1 lakh. P.W.-1 assured to make arrangement to pay Rs.25,000/- and also told accused that P.W.-3 would pay the balance amount. Accused asked P.W.-1 to meet him on the next date at 10.00 p.m. alongwith the bribe amount at same place and P.W.-1 was directed to come alone. P.W.-1 then contacted P.W.-4, who works for Anti Corruption Branch, Kudal, but P.W.-4 was at Thane city. P.W.-1 reported the matter to P.W.-4, who managed to call two Government servants from Ratnagiri as panchas for the trap and P.W.-1 Guruprasad and panchas were called at Kankavali Railway Station on 20-3-2001 at 8.00 p.m. Then, P.W.-1 attended the place alongwith cash of Rs.20,000/- for the payment of the same as bribe amount. P.W.-1 Guruprasad lodged FIR before P. I. Daphale (P.W.-4). Pretrap formalities were conducted and panchnama was drawn. The raiding party thereafter went to the house of accused to execute the trap at about 10.30

p.m. As per the instructions of accused on previous date, P.W.-1 Guruprasad went alone to the house of accused. P.W.-1 offered bribe of Rs.20,000/- and assured accused that balance will be paid after his brother P.W.-3 returned to Kankavali. Accused asked P.W.-1 Guruprasad to keep the amount on the windowsill. Accused did not count the notes though, P.W.-1 requested him to do so. Thereafter, P.W.-1 came out and gave a signal to the raiding party. Meanwhile the conversation between P.W.-1 and accused was also recorded on the tape. On receiving signal the raiding party raided the house of accused, collected the tainted notes and seized the tape recorder from P.W.-1. Then usual formalities of post trap was completed, FIR was lodged, investigation was commenced and charge sheet was filed.

3 To drive home the case, prosecution led evidence of 5 witnesses namely; Guruprasad Suresh Naik as P.W.-1, Subhash Akaram Patil as P.W.-2, who was panch witness, Rajan Suresh Naik as P.W.-3, P. I. Suresh Dattatray Daphale as P.W.-4 and Krishipal Tarachandra Raghuwanshi as P.W.-5, the sanctioning officer. The stand of accused was of total denial and the defence raised before the Trial Court was on the following points:

1. The charge sheet was submitted against accused after more than 2 years from the date of offence and the prosecution was barred under Section 161 of Bombay Police Act.

2. The investigation by P. I. Dafle was illegal as per Section 17(1)(c) of the Act.

3. The accused was selected by MPSC and was appointed by Director General of Police and so he could not be removed by P.W.-5 Raghuwanshi who was Special I.G.P. Therefore, the sanction accorded by him was without authority. Besides, his evidence shows that the sanction was accorded without application of mind.

4. The entire evidence of prosecution witnesses suffers from inherent improbabilities and material inconsistencies and improvements. There are inconsistencies in amounts demanded and improvements about dates of demands and amount agreed to be paid and improbabilities of typewriter being brought from Thane, typing work being done by sitting on the ground near Kankavali Railway Station, not sending panch with P.W.-1 Guruprasad, the notes found near the window frame near the entrance door of accused, and no anthracene powder found on the hands of accused.

5. The tape recorded voice was totally unclear and P.W.-1 Guruprasad was inside the house of the accused for 15 minutes while the tape is only of 4 minutes and rules for leading tape recorded evidence to ensure that it could not be tampered with were not followed and the voices could

not be identified and therefore, the tape cannot be used in evidence.

4 First three points of defence were rejected by the Trial Court for reasons mentioned in the impugned judgment. Trial Court, however, accepted the other two points.

5 As regards fourth point, P.W.-1 and P.W.-3 have deposed about the demand made by accused. P.W.-3 has stated that on 7-1-2001, 8-1-2001 and 10-1-2001 accused interrogated him and his brother-in-law Prasad Khanolkar and on 10-1-2001 made a demand of Rs.5 lakhs and threatened him that if he would not give the amount he would be arrested. P.W.-3 refused to pay the amount and, therefore, he was arrested and then at 11.00 p.m., accused lodged the FIR against him and Prasad Khanolkar. Then police custody of 4 days was obtained on 11-1-2001. P.W.-3 says that on 15-1-2001 he was remanded to Magisterial custody till 29-1-2001. On that day, P.W.-3 told P.W.-1 that he was falsely implicated and accused was demanding Rs.1 lakh from him as bribe. From 31-1-2001 to 6-2-2001 P.W.-3 attended Kudal police station as per the order of High Court and on 3-2-2001 accused called him over to his office over telephone and in front of the office accused again demanded Rs. 1 lakh. Again on 6-2-2001 at Kankavali Railway Station P.W.-3 was called and accused once again demanded the amount and stated that the demand was for deleting the name of P.W.-3 from the case. P.W.-1 Guruprasad in addition to above demands deposed about the subsequent

demands by accused. PW-1 states that PW-3 told him on 15-1-2001, 3-2-2001 and 6-2-2001 about the demands made by accused. According to PW-1, on 6-2-2001 there were negotiations and bribe amount was fixed by PW-3 with accused at Rs.25,000/-. PW-3, however, states that the amount fixed was Rs.1 lakh and amount of Rs.25,000/- was by way of first installment. This is one contradiction. PW-2 – panch witness from Ratnagiri and PW-4 the Investigating Officer deposed that they came to Kankavali on 20-3-2001 at 8.00 p.m. by Netravati Express. Admittedly Netrawati Express has no halt at Kankavali. The amount of Rs.20,000/- was found on the windowsill of the house of accused. It is settled law that mere recovery of money from accused is not sufficient to hold him guilty. One more point which needs to be seen is that PW-1 had gone alone to the house of accused and no panch witness accompanied him. When there is no independent evidence showing that accused demanded the bribe money from complainant or bribe money was kept on the windowsill of the house of accused on instructions of accused and there were no anthracene marks on the hands of accused, it is difficult to believe the charge of demand and acceptance. I have to also note that PW-3 was from a well to do family and was doing a job of video shooting. Arrest of PW-3 would have really upset him and his family. Accused also obtained police custody of PW-3 from 11-1-2001 to 15-1-2001. PW-3 remained in jail upto 30-1-2001, when he was released on bail. PW-3 was even told to go out of the District till the charge sheet was filed. Even for the death of Kalidas Kudatarkar no relative of

Kalidas has lodged any complaint but a complaint was filed by accused, who was a police officer. There is possibility that PW-3 and PW-1 would have decided to fix accused in an anti corruption case. Why the Trial Court has also stated this is because there were too many lacunae in the evidence. As per the evidence of PW-1 and PW-3 demands were made on 10-1-2001, 13-1-2001, 14-1-2001, 3-2-2001, 6-2-2001, 12-3-2001 and 19-3-2001. As per the FIR and the prosecution's case accused was demanding bribe of Rs.1 lakh but PW-3 has stated that on 10-1-2001 accused demanded Rs.5 lakhs. Subsequent demand is of 6-2-2001 and particularly made by accused at Kankavali police station. When PW-3 was meeting accused at his office at Kudal on 6-2-2001, I wonder why accused would have called him at Kankavali for demanding the bribe. Accused could have taken him to any other place from Kudal for making the demand when there was even a hotel near the office of accused at Kudal.

6 Evidence of PW-1 also is questionable because according to PW-1 on 6-2-2001 the bribe amount was fixed after negotiations at Rs.25,000/-, which means there was no question of accused demanding any bribe of Rs.1 lakh through police constable - Suryaji Naik on 12-3-2001. Prosecution has not examined this material witness Suryaji Naik.

If PW-1 had agreed to pay bribe of Rs.25,000/-, it is not clear why he offered only Rs.20,000/-. Moreover, the evidence of PW-4 indicates that PW-1 Guruprasad informed him over the telephone on 19-3-2001 about the

alleged demand by accused and he told him to bring Rs.20,000/- as bribe amount.

7 Arrival of P.W.-4, Panch- Subhash Patil (P.W.-2) at Kankavali Railway Station by Netravati Express is also suspicious, as Netravati Express had no halt at Kankavali. Therefore, it is not clear how the FIR and pretrap panchnama were typed at railway station. Panchnama and FIR need not be typed. But still the typewriter was allegedly brought from Thane office and the typing work was done on open ground by keeping the typewriter on a suitcase whereas the typist was sitting on the floor.

P.W.-1 has brought tape recorder and has recorded the conversation with accused but in the pretrap panchnama there are no instructions to carry a tape recorder and record the conversation. The tape recorder also has not been seized or sealed as per the requirements. The search officer before he took search of the house of accused does not say he offered his personal search and before raiding party took accused inside his room they did not allow accused to take personal search of members of the raiding party. After accused was taken inside many members of raiding party entered in the room and the light was switched off. Therefore, there was every possibility for the members of the raiding party to plant the notes and the place where the notes were found, was easily accessible to police. I ask myself why would accused tell P.W.-1 to keep the money on the windowsill, he could have told him to keep it on a table or chair or he could have received it in his hand.

8 The Trial Court having played the tape recorder conversation has stated that it could not hear the material words of demand of bribe by accused or acceptance of the same. Even panch witness P.W.-2 has admitted that except the voice of P.W.-1, no other voice was clear and identifiable. The voice of the speaker must be identified by the maker of the record or by others who recognize his voice. First conditions for admissibility of a tape recorder is to identify the voice of the speaker and particularly when accused has denied that it was his voice. Every possibility of tampering with or erasure of a part of a tape recorded statement also should be ruled out. The recorded cassette must be carefully sealed and kept in safe or official custody or should be clearly audible and not lost or distorted by other sounds or disturbances. The Trial Court did not accept the tape recorder in evidence for the reasons mentioned in paragraph 34 of the impugned judgment. One more point which weighed in the mind of the Trial Court, and rightly so, is when P.W.-2 was in the house of accused for 15 minutes and has walked in with the tape recorder in the recording mode, the actual recording was only for 4 minutes. P.W.-1 has also admitted that P.W.-3 was doing dubbing work while providing video shooting cassette to marriage parties. The tape recorder was also not checked by the Investigating Officer to see whether the cassette was blank or not and whether the tape recorder was in working condition or not.

9 There are many other such points raised in the impugned judgment

which, for the sake of brevity, I am not delving into. I would hasten to add that I agree with the conclusions of the Trial Court.

10 The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has formulated the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Section 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

¹(2008)10 SCC 450

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² has held that unless the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat***³ has

²(2014) 5 SCC 730

³1996 SCC (cri) 972

held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

11 I have perused the impugned judgment, considered the evidence and also heard Ms Malhotra, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

12 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

13 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal,

in my view, need not be interfered with.

14 Appeal dismissed.

15 The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date of receiving a copy of this order, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against the accused and will factor in all promotions and increments that the accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

(K.R. SHRIRAM, J.)