

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.961 OF 2002

The State of Maharashtra	)....Appellant (Org.Complainant)
V/s.	
1) Vijay Dnyandeo Chaugule	)
Age 34 years	)
T/o. Anjangaon (Kheluba),	)
Tal.Madha, Dist. Solapur	)
2) Madhukar Buwajiram Sonawane	)
Age 35 years	)
R/o. Rukmini Niwas, Madha)	
Tal.Madha, Dist. Solapur	)....Respondents (Org.Accused Nos.1 & 2)

Ms.J.S.Lohokare APP for Appellant/State.
Mr.V.N.Tayade for respondent no.2.
(Respondent no.1 died).

CORAM : K.R.SHRIRAM,J
DATE : 14.1.2020

ORAL JUDGMENT :-

1. At the outset, I have to mention that accused no.1 having expired as recorded in the order dated 21.11.2017, the appeal as against accused no.1 has abated.

2. This is an appeal challenging an order and judgment dated

31.1.2002 passed by Special Judge, Solapur, acquitting the two respondents of offences punishable under Section 7 (*Offence relating to public servant being bribed*), section 13(1)(d) read with section 13(2) and section 12 (*Punishment for abetment of offences*) of the Prevention of Corruption Act, 1988 (the said Act).

3. The facts in brief are as under :-

Accused no.1 was working as Supervisor, Livestock and accused no.2 was working as Live Stock Development officer in Zilla Parishad, Veterinary hospital, Madha, Dist. Solapur. Both the accused were Veterinary doctors. The original complainant who is (PW 2) one Nagnath Uddhav Kadam had purchased one Jersey cow in the year 1998 and had insured the same for Rs.4,000/-. On 2.11.1991 the said cow fell ill and therefore, he approached accused no.2 Dr.Sonawane for medical assistance. Dr.Sonawane, accused no.2, visited village Upalai, Tal.Madha on 2.11.1991 and injected cow with saline and other medicines. Dr.Sonawane demanded Rs.350/- from complainant and told complainant that he would visit again after two days. Dr.Sonawane, however, did not turn up. The said cow expired on 4.11.1991. Complainant therefore, contacted one Mr.Sudhir Kulkarni, LIC agent who advised him to approach the Doctor for post mortem examination of the cow. Accused nos.1 & 2 came to the village and

performed post mortem. At that time, accused no.1 demanded Rs.500/- for issuance of certificate regarding death of cow. However, the transaction was settled between the parties for Rs.400/-. It is prosecution's case that amount was arrived at on the basis of Rs.100/- per Rs.1000/- as the insurance value of the cow was Rs.4000/-. It is also prosecution's case that accused insisted that unless the amount was paid, the post mortem certificate will not be issued to complainant.

3. On 9.11.1991 the claim form from LIC was not received by complainant despite information given to the insurance company's office by telegram. Therefore, on 11.11.1991 complainant visited the house of accused no.1 who demanded Rs.400/- for issuing death certificate of cow which was ultimately settled for Rs.300/-. Rs.200/- was to go to accused no.2 and Rs.100/- was to be retained by accused no.1.

4. It is prosecution's case that on 12.11.1991 complainant visited the office of the Anti Corruption Bureau (ACB) at Solapur, where Investigating officer Mohammed Unnus Ismail Shaikh (PW-3) recorded his complaint and completed the formalities. A pre trap panchanama was made on 12.11.1991 and the raiding party visited

the office of accused no.2 at the said veterinary hospital at Madha. Accused no.2 demanded and accepted the marked Rs.300/- from complainant in the presence of panch witnesses, one of whom is Rajendra Veerbhadppa Dhang (PW-1) and accused no.2 was caught red handed while accepting the bribe on 12.11.1991. The complaint was lodged by Mohammed Unnus Ismail Shaikh (PW-3) and after due investigation, charge-sheet was sent to the Special Court, Solapur.

5. The accused pleaded not guilty and claimed to be tried.

6. I have to note that admittedly accused no.1 had not accepted any money and the whole case hinges on the amount taken by accused no.2. Accused no.2 in his statement recorded under Section 313 of Cr.P.C., has admitted that he had gone to the place of complaint on 2.11.1991 and injected the cow with medicines and saline, that he demanded Rs.350/- towards charges for the medicines, that when complainant visited on 12.11.1991 he asked complainant as to whether he has brought the medicine charges which was Rs.350/- and he accepted Rs.300/- from complainant. Therefore, in his explanation accused no.2 has stated that he accepted the amount of Rs.300/- which was the fees or charges payable for the medicines and injection administered to the cow on 2.11.1991. Accused denied that

they ever made any demand for illegal gratification or bribe.

7. To drive home the charge, prosecution led evidence of 3 witnesses viz. Rajendra Veerbadppa Dhangre Dhangre (PW 1), who was the panch witness; Nagnath Uddhav Kadam (PW-2) as the complainant; and Mohammad Unnus Ismail Shaikh, (PW-3) as the Investigating officer.

8. On going through the evidence on record, it is not in dispute that accused no.1 was working as Supervisor in veterinary hospital, Zilla Parishad, Madha while accused no.2 was admittedly working as Live Stock Development officer at Veterinary hospital at Madha. It is also not in dispute that the cow was ill and accused no.2 had examined the cow on 2.11.1991 and also treated the cow. The death of the cow on 4.11.1991 has not been disputed. It is also not disputed that the panch and complainant visited the office of accused no.2 who accepted an amount of Rs.300/- and the raiding party had recovered this trap amount from accused no.2 and post trap panchanama was drawn.

9. Therefore, the issues that come up for consideration are :
(a) Whether the accused made the demand as alleged; and (b)

whether accused accepted any illegal gratification for himself and/or on behalf of accused no.1. Therefore, the prosecution has to prove all these beyond reasonable doubt. As far as the accused are concerned, they are only required to establish their defence on the basis of preponderance of probability. The Apex Court in ***Punjabrao Vs. State of Maharashtra***¹ has in paragraph-3 observed as under :-

“3.....It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability.....”

10. Having perused the evidence, I find too many gaps, loopholes, contradictions and omissions. The entire case of the prosecution is, the amount was demanded by accused no.1 but was paid over to accused no.2 for the issuance of death certificate after conducting post mortem. It is the prosecution's case that initial demand was for Rs.500/-, which was brought down to Rs.400/-, and again brought down to Rs.300/- by accused no.1. Accused no.2 does not figure anywhere at all except admittedly on 2.11.1991 accused no.2 asked for Rs.350/- as charges for the medicines and saline that

1 2004 Supreme Court Cases (Cri.) 1130

was administered to the cow. PW-1 says that he went with PW-2 when PW-2 questioned accused no.2 about his certificate and if it was sent to the insurance company. PW-1 also says that accused no.2 stated the certificate was ready but questioned whether PW-2 brought the "fees". PW-1 also says complainant that he has brought the "fees" and thereafter removed cash from his pocket and thereafter gave to Dr.Sonawane. In cross-examination, PW-1 admits that he was aware there was no post mortem of deceased cow. If there was no post mortem of deceased cow done, how could any of the accused have issued any death certificate based on the post mortem conducted. PW-1 also says that as per the instructions of PW-3 Investigating officer, PW-1 and PW-2 were supposed to meet accused no.1 and inquire about the certificate to be sent to insurance company. He admits that complainant did not meet accused no.1 and he also admits that complainant did not ask accused no.2 if certificate was sent to insurance company. Therefore, the evidence of PW-1 is unreliable.

11. PW-2 who is the complainant admits in his examination in chief that Dr.Sonawane i.e., accused no.2 went to his village on 2.11.1991 and injected the cow and demanded Rs.350/-. Then he says one Sudhir Kulkarni who was the insurance agent informed him that he would bring the doctor for post mortem examination and

accordingly post mortem of the cow was performed. He says both the accused have come for post mortem of the cow. In the cross-examination PW-2 admits that accused no.2 had used his own saline and other medicines which were administered to the cow because at that time at 7.00 a.m. the only medical shop in their area was closed. He also admits that accused no.2 told him that he has to pay Rs.350/- being the charges for the medicines and injections which accused no.2 had given and administered to the cow. PW-2 also says that on that date he did not pay the amount to accused no.2. As regards the post mortem, PW-2 goes on to say "it is true that there was no post mortem conducted of my cow". If no post mortem was conducted admittedly, and it is so stated by the complainant, where was the question of the accused demanding any money for issuance of death certificate following the post mortem. PW-2 seems to be lying. PW-2 also says in the complaint there is no mention about demand by Dr.Sonawane of Rs.500/-. PW-2 also says that the insurance agent Sudhir Kulkarni has advised him that one Dr.Malde who is at village Modhimb would do post mortem and he met Dr.Malde on 4.11.1991 at 4.00 p.m. and requested him to conduct post mortem of his cow.

PW-2 says in his examination-in-chief that on 11.11.1991 he went to the house of accused no.1 at village Anjangaon and asked

accused no.1 about LIC form and at that time accused no.1 demanded Rs.400/- for the post mortem certificate. In the cross-examination, PW-2 admits that the LIC form is normally received at the residence of the owner of the cow from LIC and it is true that accused no.1 was not to receive any insurance form. PW-2 also admits that it is true that there was no reason for him to ask accused no.1 regarding the insurance form. He also admits "It is true that accused had demanded and accepted amount of fees and not by way of bribe". When these answers in cross-examination were not as per the lines expected by prosecution, Prosecutor has requested the court to grant leave to put leading question to PW-2. In the cross examination by APP, PW-2 sang the same song as in his examination in chief but once again in re cross-examination, admitted that until and unless post mortem is conducted, death certificate is not issued. As noted earlier, in his cross-examination, PW-2 has admitted and so also PW-1 has admitted in his cross-examination that no post mortem of the cow was conducted by the accused.

12. In the circumstances, evidence of PW-1 and PW-2 are absolutely not reliable and I would add that both these witnesses have been only making false statements in Court for reasons best known to them.

13. When we consider the evidence of both these witnesses, I am inclined to accept the explanation offered by accused no.2 that he accepted the amount of Rs.300/- thinking that it is the fees that was being paid for the injection, saline and medicines administered to the deceased cow on 2.11.1991.

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

15. 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, cannot be interfered with.

16. Appeal dismissed.

(K.R.SHRIRAM,J)