

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL APPEAL No.292 of 2021

JUDGMENT:

This appeal is directed against the Judgment of the learned Special Sessions Judge for Trial of Criminal Cases relating to elected M.Ps. and M.L.As. of the State of Telangana, Hyderabad, in C.C.No.22 of 2021, dated 24.07.2021, whereby the appellant/A-2 was found guilty of the offences punishable under Section 171-E read with Section 171-B of I.P.C. and accordingly convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for one month. However, the appellant/A2 was acquitted for the offence punishable under Section 188 of I.P.C.

2. The case of the prosecution, in brief, is that P.W.1 was appointed as in charge of Flying Squad during Parliamentary Elections of 2019 for Mahaboobabad Parliamentary Constituency. P.W.2 and one N.Srinivasa Rao (L.W.3), who are the police constables of Burgampahad Police Station, were the members in Flying Squad along with P.W.1. On 10.04.2019 at about 6.00 P.M., on receipt of credible information, P.Ws.1 and 2 and L.W.3 went near Ration Shop in S.C. Colony, Burgampahad and found A-1 distributing money to voters. P.W.1 secured the presence of P.W.3 and one Podem Vara Laxmi (L.W.5), who are the Village Revenue Officers of Burgampahad, conducted Ex.P1-panchanama and seized

cash of Rs.9,400/- (M.O.1) by mentioning the currency note numbers. A-1 stated before P.W.1 and the panch witnesses that he was distributing money to voters on the directions of A-2, who was contesting as Member of Parliament from Mahaboobabad Parliamentary constituency. P.W.1 went to the Police Station, Bhurgampahad, on the same day i.e., on 10.04.2019 at 8.00 P.M., lodged Ex.P2 report and handed over Ex.P1-panchanama and cash and also produced A-1 before P.W.4-Sub Inspector of Police, who registered a case in Crime No.90 of 2019 against the appellant/A-2 and A-1 for the offences under Sections 188, 171-B and 171-E of I.P.C., examined and recorded the statements of P.Ws.1 and 2 and L.W.3. P.W.5-Sub Inspector of Police, Bhurgampahad, proceeded to the scene of offence on 11.04.2019, observed the scene of offence and prepared Crime Details Form (Ex.P3) in the presence of P.W.3 and another. After completing investigation, P.W.5 filed charge sheet, which was taken cognizance as C.C.No.22 of 2021.

3. On appearance of both the accused, charges under Sections 188 and 171-E read with Section 171-B of I.P.C., were framed against the accused, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

4. To substantiate its case, the prosecution examined P.Ws.1 to 5 and got marked Exs.P1 to P4 and M.O.1. After closure of evidence, the accused were examined under Section 313 Cr.P.C., with

reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. Neither oral nor documentary evidence was adduced on behalf of the accused.

5. After considering the oral and documentary evidence on record, the learned trial Judge found A-1 and the appellant/A-2 guilty of the offences with which they were charged and accordingly convicted and sentenced as stated supra. Challenging the same, the present appeal is filed by the appellant/A-2.

6. Learned Counsel for the appellant/A-2 would submit that there is no material evidence to connect the appellant to the alleged offences and the case of the prosecution against the appellant was based only on the confession-cum-seizure panchanama of A-1, who allegedly confessed before P.W.1 in the presence of P.W.2 and L.W.3, that he was distributing money to the voters on the directions of the appellant/A-2. He further submits that the confession of A-1 is not admissible and is hit by Section 25 of the Indian Evidence Act, 1872, since it was recorded in the presence of police officials. In support of the said contention, he relied on the judgments of the Apex Court in *Bheru Singh v. State of Rajasthan*¹, *Aghnoo Nagesia v. State of Bihar*² and *State (NCT of Delhi) v. Navjot Sandhu*³. Learned

¹ (1994) 2 SCC 437

² (1966) 1 SCR 134

³ (2005) 11 SCC 600

Counsel further submits that there is no evidence on record to show that P.W.1 was in charge of flying squad. Further, the portion of the confessional statement of A-1 in respect of seizure of Rs.9,400/- from A-1 is not admissible and cannot be taken into consideration, since the same was recorded by P.W.1 who is not the Investigating Officer and who is not authorized or empowered under law to do so. He further submits that there are discrepancies in the evidence of P.Ws.1 and 2 with regard to the presence of voters and seizure of money. It is further submitted that the learned trial Judge ought to have disbelieved the case of prosecution as there is no evidence to show that A-2 instructed A-1 to distribute the money and that the implication of A-2 is based only on assumptions and presumptions and, therefore, the appellant/A-2 is entitled for acquittal.

7. Per contra, the learned Assistant Public Prosecutor would submit that the trial Court has rightly appreciated the prosecution evidence and the material available on record and, therefore, the conviction and sentence imposed against the appellant/A-2 is justified and the Criminal Appeal is liable to be dismissed.

8. The evidence of P.W.1 is that on 10.04.2019 he was in charge of Flying Squad of Pinapaka Mandal under Mahaboobabad Parliamentary Constituency and P.W.2 and one N.Srinivasa Rao (L.W.3), who are the police constables of Burgampahad Police Station, were the members in Flying Squad along with him. On

10.04.2019 at about 6.00 P.M., on receipt of credible information, P.Ws.1 and 2 and L.W.3 went near Ration Shop in S.C. Colony, Burgampahad and found A-1 distributing money to voters. P.W.1 secured the presence of P.W.3 and one Podem Vara Laxmi (L.W.5), who are the Village Revenue Officers of Burgampahad, conducted Ex.P1-panchanama and seized cash of Rs.9,400/- A-1 stated before P.W.1 and the panch witnesses that he was distributing money to voters on the directions of A-2, who was contesting as Member of Parliament of Mahaboobabad Parliamentary constituency. However, in his cross-examination, P.W.1 admitted that he has not handed over the identity card to the Investigating Officer to show that he is in charge of Flying Squad. Therefore, as rightly contended by the learned Counsel for the appellant/A2, there is no documentary evidence to show that P.W.1 was in charge of the Flying Squad and he is authorized or empowered under law to seize the amount from A-1.

9. Further, P.W.1 in his cross-examination stated that by the time they went to the spot, no voters were present and they ran away. However, in the chief-examination, P.W.1 deposed that A-1 was found distributing money to the voters when they went to the spot. But, P.W.2 in his cross-examination deposed that he had seen A-1 distributing money and six persons were found present at the spot. That apart, P.W.1 stated that the amount of Rs.9,400/- was seized

from A-1, whereas P.W.2 deposed that the said amount was recovered from voters. The persons, to whom the money has been distributed, were not examined by the prosecution, for the reasons best known to them. Both P.Ws.1 and 2 have categorically admitted in their cross-examination that they have not filed the voter ID cards of the voters to whom the money was distributed. That apart, P.W.4-Investigating Officer, in his cross-examination admits that in Ex.P-2 report there was no mention about the names of voters, who had taken money. One of the basic ingredient of Section 171-B of I.P.C. is that the gratification to any person in order to induce to exercise his/her Electoral right.

10. Apart from that P.W.4, who is the Investigating Officer, admitted in his cross-examination that he has neither collected nor produced any evidence to show that A-2 instructed A-1 to distribute money to the voters as she was contesting as Member of Parliament and that she has deposited money in the account of A-1. Hence, there is no evidence to show that the appellant/A-2 has instructed A-1 to distribute the money to voters to exercise their electoral right in her favour.

11. Further, the case of the prosecution against the appellant/A-2 was based only on Ex.P1-confession-cum-seizure panchanama of A-1, who allegedly confessed before P.W.1, that he had distributed the money to the voters on the directions of the appellant/A-2. The

contention of the learned Counsel for the appellant/A-2 is that the said confessional statement of A-1 is not admissible in evidence and is hit by Section 25 of the Evidence act, as Ex.P1 was recorded in the presence of P.W.2 and L.W.3, who are the Police Constables of Burgampahad Police Station. In catena of judgments it is well settled by the Apex Court that under *Section 25 of the Indian Evidence Act*, a confession made in the presence of police officer is inadmissible in evidence.

12. As seen from the material available on record, except the confession of co-accused i.e., A-1, there is no evidence with regard to the involvement of the appellant/A-2.

13. Recently, in *Dipakhbhai Jagdishchandra Patel v. State of Gujarat and another*⁴ the Apex Court in paragraph Nos.47 to 50 held as under:

“47. A confession made to a Police Officer is clearly inadmissible. The statement relied on by respondent is dated 11.04.1996 and the appellant was arrested on 11.04.1996. This is pursuant to the FIR registered on 10.04.1996. The statement dated 11.04.1996 is made to a Police Officer. This is clear from the statement as also letter dated 10.08.1996 (Annexure R/6) produced by the respondent. It is clearly during the course of the investigation. Even if it does contain admissions by virtue of Section 162 and as interpreted by this Court in V.C. Shukla and others (supra), such admissions are clearly inadmissible.

⁴ (2019) 16 SCC 547

48. If the statement made by the appellant on 11.04.1996 is inadmissible, then, there will only be the statement of the co-accused available to be considered in deciding whether the charge has to be framed against the appellant or not. It is here that the law laid down by this Court in *Suresh Budharmal Kalani Alias Pappu Kalani (supra)* becomes applicable.

49. We also notice the following statement in judgment rendered by Bench of Seven Judges in *Haricharan Kurmi v. State of Bihar*⁵:

“As a result of the provisions contained in S.30 of Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance

⁵ AIR 1964 SC 1184

in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

50. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the petition filed under Section 482 of the Cr.PC. The Order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged."

14. On close scrutiny of the entire evidence available on record, it is evident that there are number of contradictions and omissions in the evidence of P.Ws.1 and 2 with regard to the alleged distribution of money to the voters, which would fatal to the case of prosecution. None of the persons who said to have received the amount have been examined. There is absolutely no evidence on record to show that the present appellant has given the amount or directed A-1 to

distribute the money to the voters, except the alleged confessional statement of A-1. Therefore, there is absolutely nothing on record pointing out the guilt of the appellant/A-2 for the offence punishable under Section 171-E read with Section 171-B of I.P.C.

15. Accordingly, this Criminal Appeal is allowed. The conviction and sentence imposed against the appellant/A-2 by the learned Special Sessions Judge for Trial of Criminal Cases relating to elected M.Ps. and M.L.As. of the State of Telangana, Hyderabad, for the offences punishable under Section 171-E read with Section 171-B of I.P.C., in C.C.No.22 of 2021, dated 24.07.2021, are hereby set aside and she is acquitted of the said offences. The bail bonds of the appellant/A-2 shall stand cancelled and the sureties are discharged. The fine amount, if any, paid by the appellant/A-2, shall be returned to her.

16. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

09.09.2021
Gsn/gkv

