

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

CRIMINAL APPEAL NO. 600 OF 2012

Mansaram s/o Damu Ahire	..Appellant
Versus	
The State of Maharashtra	..Respondent

Mr. Satyavrat Joshi a/w. Sumant R. Deshpande a/w. Nilesh Mohite
for Appellant.
Smt. Veera Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd AUGUST 2022

JUDGMENT:

1. The Appellant has challenged the Judgment and order dated 03/05/2012 passed by learned Additional Sessions Judge-2, Niphad, in Special Case No.01 of 2007. By the impugned Judgment and order, the Appellant was convicted for commission of offence punishable U/s.7 of the Prevention of Corruption Act, 1988 (for short 'P. C. Act') and was sentenced to suffer R.I. for one year and to pay a fine of Rs.1000/- and in default of payment of fine to suffer R.I. for two months. The Appellant was also convicted for commission of offence punishable U/s.13(1)(d) r/w. 13(2) of P.C. Act. He was sentenced to suffer R.I. for one year and

to pay a fine of Rs.1000/- and in default of payment of fine to suffer R.I. for two months. Both the sentences were directed to run concurrently.

2. The prosecution case is that the complainant Dattu Gawali was having dispute with his brother's family in respect of two adjoining lands in Gat No.231 belonging to himself and Gat No.230 belonging to his brother at Kolgaon, Taluka Niphad, District Nashik. On 11/05/2006, there was an incident wherein his brother's family had manhandled, abused and beaten him. The complainant, in this case, Dattu Gawali had gone to Lasalgaon police station and lodged the complaint with the present Appellant who was Head Constable attached to Lasalgaon police station. It is his case that, on that day, he had demanded Rs.2000/- for taking action on his complaint and he had actually accepted it. It is further case of the complainant that, on 19/06/2006 when the complainant had gone to Lasalgaon police station, he was kept in lock-up for some time. The Appellant demanded Rs.1000/- for taking his side and not taking action against him. The complainant approached A.C.B., Nashik, gave his complaint, procedure for

laying trap was completed and on 21/06/2006, in the evening, the trap was laid. The complainant and the pancha went to Lasalgaon police station followed by A.C.B. officers. The Appellant accepted two notes of Rs.500/-. He was caught. Post trap panchanama was recorded and the investigation was carried out. The appellant faced the trial before the Sessions Court at Nashik and at the conclusion of the trial, he was convicted and sentenced as mentioned earlier.

3. During trial, the prosecution examined 4 witnesses. PW-1 Dattu Gawali was the complainant, PW-2 Dhananjay Ahire was a pancha witness, PW-3 Dr. Nikhil Gupta was the sanctioning authority and PW-4 Shantaram Awasare, Dy. S.P. was the Investigating officer. The defence of the appellant was of denial. His further contention was that the complainant was under impression that, the Appellant was taking side of his opponents and, therefore, he was falsely implicated by the complainant. At the time of trap, there was no electricity supply and, therefore, everything related to testing of notes and clothes under the Ultraviolet lamp is a falsity. After considering the defence of the

appellant and submissions, learned trial Judge believed the prosecution case, discrepancies in the depositions of the witnesses were brushed aside on the ground that the witnesses were deposing after a gap of almost 6 years and, therefore, they were not expected to depose regarding the minor details. It was also observed that the sanction was properly accorded. All the witnesses were believed. Even the motive for demand of money was believed. Therefore, learned Judge recorded his conclusion.

4. The prosecution case is disclosed by the complainant himself. He is examined as PW-1. In the initial part of his deposition, he has described his dispute with his brother's family and about the incident which had taken place on 11/05/2006. He has deposed that, after he lodged his complaint with the appellant, he demanded Rs.2000/- for taking action on his complaint. He has further deposed that, he then paid the said amount to the appellant. According to PW-1, his nephews again threatened him and, therefore, he met the superior police officer at Niphad and gave a complaint; that particular complaint is produced on record at Exhibit 14. At this stage, it is necessary to mention that, in

Exhibit 14 dated 16/05/2006, PW-1 had made a grievance that, even after giving complaint in writing, the officer of Lasalgaon police station did not make any inquiry and PW-1 had demanded that the offenders should be punished.

5. PW-1 has further deposed that the appellant and one Ugale came to his house. He has not given the date, but they had come at about 11.00a.m. The appellant obtained his signature on one blank paper. He was asked to attend Lasalgaon police station on the next day. They also delivered one notice to him. That notice is produced on record at Exhibit 15.

Exhibit 15 is dated 20/06/2006. It is mentioned in the notice that, there was dispute in respect of Gat No.231 and 232. That dispute was in the nature of civil litigation and, therefore, he should approach the Civil Court. He was also cautioned that, if because of his acts any situation occurred affecting the law and order, he would be held responsible. This notice was issued under the signature of the present appellant.

6. On the next date, PW-1 went to Lasalgaon police station

in the morning. At that time, his nephews and their mother were present. The Appellant took their signatures and allowed them to go. The Appellant then called PW-1 inside the police station and demanded Rs.1000/-. He threatened to put him behind bars. The PW-1 further categorically deposed that the appellant put him in the lockup for half an hour and then again demanded Rs.1000/-. He threatened PW-1 to put him behind bars again. He asked PW-1 to pay Rs.1000/- on the next day. On the next day, the complainant – PW-1 went to Nashik and lodged this complaint with A.C.B. He had brought Rs.1000/- with him. The complaint given by him to A.C.B. is produced on record at Exhibit 16. In that document the dates are mentioned. The complaint was lodged on 21/06/2006. On 19/06/2006, he was served with the notice by the Appellant and one Gangurde in his house. On 20/06/2006, PW-1 had gone to Lasalgaon police station. He was kept in the lock-up for half an hour and demand of Rs.1000/- was made. He was called on 21/06/2006. On that day, PW-1 approached A.C.B. and gave his complaint. PW-1 has further deposed that, after lodging of complaint, the officers called two panchas. They were shown his

report. He was given demonstration of use of anthracene powder. The anthracene powder was applied on two currency notes of Rs.500/-, brought by him. They were kept in the left pocket of his shirt. He was directed not to touch those notes. Then both of them went to Lasalgaon police station. He was instructed to pay amount when demanded by the appellant and that too in presence of pancha. He was asked to give signal after such acceptance by folding his left sleeve. He further deposed that, PW-2 Dhananjay Ahire and other pancha Sandeep Wadaje accompanied him to the police station. The Appellant and Gangurde were present in the police station. The PW-1 then took the Appellant and Gangurde towards a tea stall for having tea. Both panchas were with them. After having tea the Appellant demanded Rs.1000/-. The PW-1 paid the amount. It is his case that, he gave an amount in the right hand of the appellant, who in turn, kept the amount in the right pocket of his pant. PW-1 then gave the pre-arranged signal. The officers came there. They took all of them inside the police station. PW-1's search was taken. Then appellant's search was taken. Thus, PW-1's specific case is that, at that time, Rs.1000/- which was

given to the Appellant were removed. The officers then prepared the documents. PW-1 then went back home. He identified the appellant before the Court.

In the cross-examination, he admitted that, Head Constable Ugale had amicably settled the matter by calling PW-1's nephew. He admitted that, his supplementary statement was recorded on 28/08/2006 and there was contradictory statement which mentioned that, on 11/05/2006 it was not the appellant who had demanded and obtained Rs.2000/- from the complainant, but it was given to police head constable Ugale. That contrary version from his supplementary dated 28/08/2006 is brought on record. He accepted the contradiction. He clarified that, he was kept in the lock-up between around 12.00p.m. to 01.00p.m. on 28/08/2006, in the police station. He deposed that, it was a small lock-up. It was having an iron door with grill. At that time, he himself, the appellant and Gangurde were present in the police station. He admitted that, on 20/06/2006, though his nephews and their mother were present, still the appellant set them at liberty in spite of PW-1's complaint and, therefore, he got angry

with the appellant. He has further deposed in the cross-examination that, on 21/06/2006 he reached A.C.B. office, Nashik at 9.00a.m. He was there till about 4.00p.m. The complaint was given at about 10.00a.m. The panchas came at about 9.00a.m. He has specifically stated that, they reached Lasalgaon police station at about 4.00p.m. This statement is important. He has further deposed that, within half an hour trap was completed. In his further cross-examination, he has admitted certain omissions from his statement given to A.C.B. He has admitted that, he had not disclosed that the appellant demanded Rs.1000/- and then he paid it and then the appellant accepted it with his right hand and kept it in the right pocket of his pant. He had not stated in his statement that at the relevant time, they went to tea stall and the payment was demanded and then he had paid it. He denied the suggestion that, there was load-shedding and there was no electricity supply in the police station at the relevant time. He denied the suggestion that, taking advantage of darkness, he tried to keep that amount in the hands of the appellant and in the said attempt the appellant had not accepted the amount. He denied the suggestion that the

notes had fallen down on the ground in the process.

7. PW-2 Dhananjay Ahire is the main pancha, who had accompanied the complainant – PW-1 when they had gone to pay the amount to the appellant. He has deposed that, he was called to A.C.B. Nashik at about 3.00p.m. PW-2 and other pancha were introduced to the complainant – PW-1. The other pancha was Sandeep Wadaje. They were shown complaint of PW-1. Then demonstration of anthracene powder was given. It was applied to two notes of Rs.500/-. The notes were kept in the left pocket of PW-1's shirt. The PW-1 was directed to give money if demanded. The panchas were instructed to accompany PW-1, at that time. PW-1 was asked to give a signal by folding his right sleeve. Pre-trap panchanama was completed. It is brought on record at Exhibit 18. He has further stated that, they reached Lasalgaon police station at 7.00p.m. The complainant met the appellant and asked him to come with him for tea. Then, PW-1, PW-2, the appellant and one more person went to a tea stall which was near the compound wall of the police station. After taking tea, the person who accompanied the appellant, went away. Then PW-1 removed money by his left

hand from his pocket and gave it to the appellant. PW-1 then gave pre-arranged signal. The A.C.B. officers rushed there. They caught the appellant inside the police station. Before that the appellant had thrown away the money. The other pancha was asked to lift the notes lying on the floor. The appellant's hands were seen under the ultra violet lamp. The glazing was seen on the appellant's hands. The number of notes were tallied with the panchanama. They were seized. The post trap panchanama was drawn. It is brought on record at Exhibit 22.

In the cross-examination, he denied the suggestion that the appellant was arrested at about 4.30 p.m. to 5.00p.m. by A.C.B. on that day. He specifically denied that the Appellant had kept money in the right side pocket of his pant. Prior to keeping the currency notes in the envelope, the PW-1, A.C.B. officers and Wadaje had handles those notes and prior to inspecting the appellant's hands, the pancha's hands, officer's hands and complainant's hands were checked in the light of ultra-violet lamp. It was shown to the appellant that their hands did not show any glazing. He further deposed that the appellant was arrested at

about 7.45p.m. to 8.00p.m. in the evening. On that day, he was in the police station, but he did not see any lock-up.

8. PW-3 Dr. Nikhil Gupta was the Superintendent of police, Rural, Nashik. He had given the sanction to prosecute the appellant. The correspondent and the sanction was produced on record at Exhibit 24 and 25. Nothing much is elicited from his cross-examination and no serious arguments were advanced challenging the sanction or the procedure of according the sanction; or about his competence to grant sanction.

9. PW-4 Shantaram Awasare was the Dy. S. P., A.C.B., Nashik on that day. He has deposed about the procedure from the time when the complainant-PW-1 had approached their office. His evidence is more or less on the same lines as that of PW-2. After describing the pre-trap procedure, he has deposed that at 7.15p.m. they went towards Lasalgaon police station. The complainant and pancha entered the police station and at 7.45p.m. the complainant gave pre-arranged signal. Then these officers entered the Lasalgaon police station. When they tried to approach the

appellant, he immediately threw down the currency notes in his hands. The appellant was caught by his hands. The currency notes were lying on the floor. The pancha No.2 was asked to pickup those notes. The police station incharge Ugale was requested to provide them a room for carrying out further procedure where ultra violet light was used. The appellant's hands were examined under ultra-violet light. On his fingers anthracene powder was noticed. The notes were also showing presence of anthracene powder. The hands and the clothes of the complainant were examined under ultra-violet light. At that time, glazing of anthracene powder was noticed on the right hand of the complainant and on his left pocket of the shirt.

In the cross-examination, he deposed about the fact that the appellant had forwarded the case U/s.107 of Cr.p.c. against the PW-1's opponents on 21/06/2006. Importantly, he admitted that, there was no lock-up at the Lasalgaon police station. In their investigation, it was revealed that, on 20/06/2006, Sarpanch of village Kolgaon by name Dnyaneshwar Ghotekar had accompanied PW-1 to Lasalgaon police station. But

he was not examined during trial. He specifically denied that the notes were found from the right side pant pocket of the appellant. He admitted that, glazing of anthracene powder was not found over shirt and pant of the appellant. He gave evasive answers to the question whether electricity supply was available at the police station on the day of trap or whether it was not available because of load-shedding.

10. After recording of this evidence led by the prosecution, the Appellant's statement U/s.313 of Cr.p.c. was recorded. He gave a written statement and produced a report of the M.S.E.D.C.L. Lasalgaon showing that, on 21/06/2006 the electricity was not available from 4.00p.m. to 6.30p.m. due to load-shedding. In his statement U/s.313 of Cr.p.c. he mentioned that, no work of the complainant was pending with him on that day. He had inquired in the application filed by the complainant and had sent his report to Dy.S.P. The complainant was having knowledge of that. Since stringent action against the PW-1's opponents was not taken, he was annoyed and, therefore, the appellant was falsely implicated.

11. Learned counsel for the Appellant submitted that, the fact that the appellant is falsely implicated is proved by PW-1 himself when he admitted that, he had wrongly implicated the appellant, as far as, demand and acceptance of amount on 11/05/2006 is concerned. He had clarified it and accepted the contradiction in his supplementary statement dated 28/08/2006. There is no corroboration to the events which had taken place on 20/06/2006 when PW-1 was allegedly kept behind bars by the appellant. The person i.e. Sarpanch Ghotekar who had accompanied PW-1 on that day to the police station is not examined and, therefore, adverse inference needs to be drawn. Thus, his demand on 11/05/2006 is proved to be false. The second demand on 20/06/2006 is also not proved. There are important omissions which are accepted in the evidence of PW-1. There are serious discrepancies between the evidence of PW-1 and PW-2 about the actual trap. There are indications that, PW-1 had tried to thrust the currency notes in the hands of the appellant. The notes were found on the floor and not in the pocket of the appellant. The complainant was specifically instructed to pay the amount only on

demand, however, he has deposed that the amount was paid on his own. He has not referred to any demand. According to Shri. Joshi, all these factors go to the root of the matter and the appellant deserves to be acquitted.

12. Learned APP submitted that, right from the beginning the appellant's attitude was of non co-operation towards the complaint of PW-1. For doing work and taking his side the amount was demanded and accepted. The complainant had approached the superior police officer on 16/05/2006 making his grievance that the appellant was not taking any action against his opponents. She submitted that, though the evidence shows that, there was no lock-up, the complainant must have been kept or detained in some other room of the police station. She submitted that, learned trial Judge has rightly ignored the discrepancies in the evidence on the ground that the witnesses were deposing after a gap of 6 years.

13. I have considered these submissions. I have found that there are too many irreconcilable discrepancies in the evidence of the prosecution witnesses. Those important features are as follows:

- i) Most importantly, timing of the trap was very significant. PW-1 was very specific that they had reached Lasalgaon police station at 4' O clock and the procedure of trap was over within half an hour. This is totally contrary to the evidence of PW-2 and PW-4 who have deposed that they had reached Lasalgaon police station for conducting trap after 7.00p.m. on 21/06/2006. This difference in the timing is not small and it cannot be brushed aside lightly.
- ii) It is the prosecution case that the complainant gave money to the appellant using his hands, however, PW-1 has not stated that his hands were examined under ultra-violet lamp after the trap. Evidence of PW-2 shows that, after the trap complainant's hands did not show any glazing of anthracene powder. He has specifically mentioned so in paragraph 6 of his deposition.

iii) There is serious contradiction between the evidence of PW-2 and PW-4 about presence of anthracene powder on the hands of the complainant after the money was paid. PW-2 has deposed that the money was paid by PW-1 with his left hand. Whereas, examination under ultra-violet lamp carried out by PW-4 shows that anthracene powder was present on the complainant's right hand.

iv) Another important contradiction is about acceptance of money by the Appellant. PW-1 has specifically deposed that, he accepted the money with his right hand and kept it in his right pocket of the pant. PW-4 has accepted that, anthracene powder was not noticed on the shirt and pant of the appellant and money was not recovered from the right side pocket of the appellant's pant. PW-1 had given pre-arranged signal only after the money was accepted and there was no occasion

for this discrepancy to creep in between the evidence of PW-1 and PW-4. This is important.

v) There are important omissions from the statement given by PW-1 to A.C.B. officer which are brought out in his cross-examination. Those omissions are brought out in comparison with his statement which was recorded after the trap. In that statement, he has not stated that the appellant demanded money and then he paid it to the appellant. The appellant accepted it with his right hand and kept in right pocket of his pant. He had not disclosed in his statement after trap that, at the relevant time, he had gone to the tea stall and then payment was demanded and he had actually paid the amount. All these omissions are important and cannot be brushed aside at all.

vi) The other significant feature is that, though PW-1 has stated that, he was kept in the lock-up, the

evidence of PW-2 and PW-4 shows that, there was no lock-up at all in the Lasalgaon police station. PW-1 has gone on to describe the lock-up as a room with iron bars and this is proved to be false.

14. Thus, there are too many discrepancies in the evidence led by the prosecution. All these discrepancies lead to the only conclusion that the prosecution case is not true. There was a strong motive for the PW-1 to implicate the appellant. He has admitted that, he was annoyed with the appellant as he was not taking action against PW-1's opponents. Thus, the appellant has proved his defence on the touchstone of preponderance of probabilities. Whereas, the prosecution failed to prove its case against the appellant beyond reasonable doubt. In the light of this discussion, the Appellant deserves to be acquitted.

15. Hence, the following order:

i) The Appeal is allowed.

ii) The Judgment and order dated 03/05/2012 passed by learned Additional Sessions Judge – 2,

Niphad, in Special Case No.01 of 2007 is set aside.

iii) The Appellant is acquitted of all the Charges faced by him in Special Case No. 01 of 2007.

(SARANG V. KOTWAL, J.)