

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

CRIMINAL APPEAL NO.1334 OF 2006

The State of Maharashtra
(Through : V.A. Jadhav, PSI
Anti Corruption Bureau, S'durg
Sindhudurg At : Kudal.
Dist :- Sindhudurg.)

... Appellant

Versus

1. Anil Dashrath Patil
Age - About 43 years,
Range Forest Officer,
Dodamarg, Dist - Sindhudurg.

2. Vitthal Nana Gawas
Age- About 62 Years,
R/o. Madhaliwadi, Usap,
Ta. Dodamarg, Dist. Sindhudurg.

... Respondents

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Mr. Y. Y. Dabake, APP for the State - Appellant.
None for Respondents.

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CORAM	:	PRAKASH D. NAIK, J.
JUDGMENT RESERVED ON	:	27th AUGUST, 2021.
JUDGMENT PRONOUNCED ON	:	9th FEBRUARY, 2022.

JUDGMENT :

1. This appeal is preferred by the State of Maharashtra challenging the judgment and order dated 25th July, 2005 passed by the Special Judge, Sindhudurg - Oros in Special Case No. 6 of 2004 acquitting the respondents for the

offences punishable under Sections 7, 7-A r/w Section 12 and Section 13(1)(d) r/w Section 13(2) r/w Section 12 of Prevention of Corruption Act, 1988 (for short “PC Act”).

2. The prosecution case is as follows :-

The complainant is the resident of Village Usap. On 22nd May, 2003, he approached office of Anti Corruption Bureau (for short “ACB”) at Kudal and lodged the complaint alleging that the accused No.1 had demanded bribe. The complainant is dealing in fire-wood and was transporting it in a tempo belonging to his sister. On 21st April, 2003, the accused No.1 – Range Forest Officer seized tempo while it was transporting fire-wood to Goa, on the ground that there was no permit for transporting forest produce. The driver of complainant gave the said information to him. The complainant met accused No.1 and requested for releasing the vehicle. He was informed that the case has been filed in respect of the vehicle and hence it could not be released for 4 days. The complainant again met the accused and at that time the accused No.1 demanded the amount of Rs.20,000/- for releasing the vehicle. The complainant expressed his inability to pay the

amount. Accused No.1 told him that the vehicle would not be released. Thereafter, the complainant met accused No.1 and again requested him to release the vehicle. The accused repeated his demand of Rs.20,000/- for releasing the vehicle. The amount was then negotiated and reduced to Rs.10,000/-. He was called on 19th May, 2003 along with his sister. PW-2 met accused No.2 along with his sister and persons who would be sureties. On payment of fine of Rs.2,100/- and execution of necessary documents the vehicle was released. The accused No.1 demanded the bribe amount of Rs.10,000/- The complainant told him that he could not arrange the amount. He was told to bring the amount on 23rd May, 2003 at 7.30 a.m. He was also told that he should be accompanied by accused No.2. He was threatened that in case the amount is not paid, his vehicle would be again attached and confiscated. Hence, the complainant approached ACB and lodged the complaint. It was decided to lay trap. Panchas were called. Instructions were given to them. Trap was arranged. Complainant and panch witnesses approached accused No.1. The other members of raiding party were waiting at a distance. Accused No.2 came to the office of accused No.1. They went to the residence of accused No.1. The amount

was kept on the table on instructions of accused No.1. It was counted by accused No.1 and given to accused No.2. The complainant gave signal to raiding party. Both the accused were arrested. Amount was recovered. Their hands were examined under ultra violet rays. Traces of anthracene powder were noticed. Investigation proceeded. Charge-sheet was filed.

3. Charge was framed under Sections 7, 7A r/w Section 12 of PC Act, 1988 and Section 13(1)(d) r/w Section 13(2) of PC Act on 16th February, 2005.

4. The prosecution examined four witnesses. PW-1 - Ashfaq Raut is the panch witness. PW-2 Sagar Gawas is the complainant. PW-3 Madhukar Sonkusare is the Deputy Secretary, Forest Department and sanctioning authority. PW-4 Surash Warang is the Investigating Officer.

5. The statements of accused were recorded under Section 313 of Cr.P.C. Apart from explanation in answer to the questions put to them under Section 313 of Cr.P.C., the accused filed written say as part of their explanation under Section 313 of Cr.P.C. and their defence.

6. The learned Special Judge scrutinized the evidence and for the reasons stated in the impugned judgment, both the accused were acquitted vide judgment and order dated 25th July, 2005.

7. PW-1 has acted as panch witness. He was instructed to accompany complainant. He stated that on receipt of the complaint of PW-2, he was summoned by ACB. The grievance of the complainant was explained to him and the other pancha. Pre-trap panchanama was recorded. He had accompanied PW-2 to the residence of accused No.1. The accused No.1 asked PW-2 whether he had brought the article. The complainant replied in affirmative. The accused No.1 told PW-2 that he should call accused No.2. PW-1 and PW-2 proceeded to Bajarpeth and PW-2 gave a call to accused No.2. Thereafter, accused No.2 came by his vehicle and met them. Accused No.2 inquired with PW-2 whether he has brought money. All of them visited the house of accused No.1. PW-1 was asked to wait outside but he could see what was going on inside the house. PW-2 kept the amount on the table of the house of accused No.1. The complainant came out of the house and gave signal to raiding party. Both the accused were apprehended. The amount was recovered from them. From the aforesaid

evidence, it can be seen that PW-1 was asked to wait outside at the time when the amount was kept on the table. He did not hear the conversation between PW-2, accused No.1 and accused No.2. He has not referred to the fact that after the amount was kept on the table, it was picked up by accused No.2 and prior to that accused No.1 had counted the amount. In the cross examination he stated that Suresh Dalvi from Village Bhedashi is a political leader. He is member of Zilla Parishad. He is the owner of saw-mill at Bhedashi. The saw-mill is now in working condition. He had stated to the Police that accused No.2 had told him to go out of the house. This fact is not reflected in his statement.

8. PW-2 Sagar Gawas is the complainant. The complaint is marked as Exh.22. It was lodged on 22nd May, 2003. According to him he purchase and sell fire-wood. He is conducting the said business since January, 2003. He was using tempo belonging to his foster sister for his business. On 21st April, 2003, wood was transported through the tempo and since there was no permit for transporting firewood, the vehicle was intercepted by accused No.1. The driver of the vehicle had informed about it to him. He visited the forest office. The tempo was attached. The accused No.1 refused to release the

tempo. He met the accused on the next day. The accused No.1 was not inclined to release the vehicle. After about 20 days from the date of seizure of vehicle, accused No.1 informed him that he would release the vehicle if he pays Rs.20,000/- to him as bribe. Thereafter, the amount was reduced to Rs.10,000/-. He was called to the office along with his sister. The complainant paid Rs.2,100/- and produced sureties. Receipt of Rs.2,100/- was issued. The tempo was released. He was told to pay the amount within 2 to 3 days and was threatened that, on failure to pay the amount his vehicle would be attached again. Hence, he lodged the complaint. He referred to the arrangement made for trap. Amount of Rs.10,000/- was provided by him for conducting trap. Application of anthracene powder to the currency notes and instructions were given to him and the panch witnesses about the raid. He visited the office and residence of the accused No.1 along with PW-1. The accused No.1 enquired about accused No.2. He along with PW-1 gave call to accused No.2. They again visited the house of accused No.1. PW-1 was asked to wait outside the house of accused No.1. Accused No.2, PW-2 and accused No.1 were in the house. Accused No.1 told him to keep the amount on the newspaper kept on the table. The amount was kept on the table. Accused No.1 counted the said amount and handed over

it to accused No.2 and he was told to pay the amount subsequently. The complainant gave a signal to raiding party. Accused was apprehended. The conversation ensued between PW-2, accused No.1 and accused No.2 in the house of accused No.1 was not heard by PW-1. He was waiting outside. The evidence of PW-2 does not clearly state that the accused No.1 had demanded bribe on the day of incident of trap. The fact that the amount was directed to be kept on the table and it was picked up by accused No.1 and handed it over by accused No.2 is not seen by PW-1. Thus, the version of PW-2 is not corroborated by independent evidence of PW-1. PW-2 was cross examined. He stated that the house of accused No.2 is situated near his house. Accused No.2 is his distant relative. He had knowledge about the steps to be taken for conducting business of firewood and the requirement of permits from forest department. He was not having any personal vehicle. Dattaram Talankar was driver on his tempo from January - 2003. Shubhangi Parab is not related to him. Dattaram Talankar (driver) is brother of Shubhangi Parab. There was no written agreement between him and Shubhangi Parab about hiring of tempo. In his complaint he stated that, Shubhangi parab is his foster sister. He had gone to Pedane Goa for collecting money from his sister. He collected amount from her.

On 22nd May, 2003, he was at ACB office up to 4.30 to 5.00 p.m. Thereafter, he stated that he did not go to Pedne on that day. He was instructed to pay the tainted amount only if the bribe was demanded.

9. The evidence of this witness is full of doubts. There is no evidence to show that he was conducting the business of firewood. According to him, he commenced the business in January - 2003. The incident of confiscation of the vehicle had occurred within short span of time thereafter. It was his first trip. The vehicle belongs to Shubhangi Parab. He claimed that Shubhangi was his sister. Thereafter he claimed that she is his foster sister. He also stated that she is not related to him. Thus, there is nothing to show that he has any link with the seizure of vehicle. The vehicle was already released. Documents were executed for release of vehicle. The requisite fine amount of Rs.2,100/- was paid. Accused No.2 had executed the documents and surety. The owner of the vehicle Ms. Shubhangi Parab had executed the documents. It is difficult to accept that thereafter, the accused demanded the money as bribe. The vehicle was already released and it was handed over to the owner. Thus, the defence of the accused that on account of rivalry with one Dalavi for refusing to him permission to

conduct saw-mill appears to be probable. The accused No.1 was falsely implicated in this case. The examination in chief and the cross examination of this witness wherein he went on changing his version indicate that there is falsity in his evidence and his version is not genuine.

10. PW-3 is the sanctioning authority. The trial Court has held that there is no infirmity in sanction order.

11. PW-4 is the Investigating Officer. He conducted investigation. He referred to events of recording complaint regarding pre-trap panchanama, arrangement of raid and trap panchanama. He completed investigation and filed charge-sheet.

12. The trial Court has assigned reasons for acquittal which are in consonance with the evidence on record. There was no verification of demand. There is no independent evidence to corroborate the version of PW-2 qua demand and acceptance of money. The previous demand before the arrangement of trap is not corroborated by any evidence. On the date of demand and acceptance of money, PW-1 was waiting outside. He did not hear the conversation between accused No.1 and accused No.2. He did not see that the amount was kept on

the table and that it was not picked up by the accused and handed it over to accused No.2. PW-2 has changed his version about his relationship with Shubhangi Parab. There was no permission for transportation of fire-wood. The first demand was made allegedly 20 days after the seizure. PW-1 and PW-2 did not state about demand of bribe by accused before payment of tainted notes by PW-1 to accused No.1. It is not explained as to why the hands of both the accused showed glittering. The prosecution had collected papers of forest case initiated against Shubhangi Parab and driver Talankar which were marked as Exhibit-23 and Exhibit - 58. Name of PW-2 does not appear in the papers of the proceedings. Talankar is the brother of Shubhangi Parab. He is the driver of vehicle. There is nothing on record to show that the vehicle was hired by PW-2 for transporting fire-wood as part of his business. There was no agreement between Shubhangi Parab and PW-2 regarding hiring of vehicle. PW-2 has no license of forest department for cutting trees or transportation. The Tempo was attached for the first time. This shows that the theory of the complainant that he was conducting fire-wood business is false. He has changed his version in the cross examination. He stated that the business had commenced on 2nd April, 2003. The amount was allegedly demanded immediately after that. Fine imposed

on Shubhangi Parab has been paid. The tempo was released on payment of fine. The question which arises for consideration is as to why the public servant would demand the money after releasing the vehicle by complying the procedure. Shubhangi had furnished sureties. This process was executed independently without interference of accused No.1. PW-2 admitted that accused No.2 is his distant relative. He was one of the surety for releasing vehicle. When the tempo was released PW-2 had no reason to meet accused No.1. He could have all the permits and license for conducting business in firewood and in such situation the accused No.1 would have no opportunity to seize his vehicle, hence, the allegations of complainant that the accused No.1 had threatened that the vehicle would be seized again is false. There is no clear case of demand established in evidence. The witnesses have stated that the accused inquired whether the article is brought. Thus, the said incident had occurred when initially PW-1 and PW-2 had visited the house of accused No.1. It is alleged that accused No.1 told them to bring accused No.1. It is relevant to note that accused No.2 is relative of PW-2. He has acted as one of the surety to release the vehicle. The process of release vehicle was executed on their own by Shubhangi Parab and their brother. It is not the case of the prosecution that the vehicle

was released with the aid of accused No.2 at the instance of accused No.1. The trial Court has considered all these aspects and held that the prosecution has failed to establish its case beyond doubt. The defence of accused is probable.

13. There is no reason to take different view of the matter. The trial Court's findings are supported by cogent reasons. Hence, appeal must fail.

14. Hence, I pass the following order :

ORDER

Criminal Appeal No. 1334 of 2006 is dismissed and disposed of accordingly.

(PRAKASH D. NAIK, J.)

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JAMADAR

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