



Crl.A.No.667 of 2014

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

Crl.A.No.667 of 2014

P.Sadhasivam (died)

1. S.Savithri
2. P.S.Santhosh
3. P.S.Salini

...Appellants

(Appellants 1 to 3 are legal heirs of the deceased appellant and are impleaded as per order of this Court dated 20.12.2017 in Crl.M.P.16244 of 2017 in Crl.A.No.667/2014)

Vs.

State represented by
The Inspector of Police,
Vigilance and Anti Corruption,
Salem.
Crime No.11/AC/2000

... Respondent

The Criminal Appeal is filed under Section 374(2) of Cr.P.C. 1973 against the judgment dated 16.12.2014 passed in Spl.C.C.No.5 of 2014 by the learned Special Judge, Special Court for Trial of Cases under the



CrI.A.No.667 of 2014

Prevention of Corruption Act, Salem.

WEB COPY

For Appellants : Mr.Ashok Kumar, Senior Counsel for
Mr.A.Sasidharan

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

The criminal appeal has been filed to set aside the judgment of conviction passed against the deceased appellant in Spl.C.C.No.5 of 2014 by the learned Special Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Salem.

2 The respondent police registered a case in Cr.No.11/AC/2000 for the offence under Section 7 and 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, against the deceased appellant. After investigation, they laid a charge sheet before the learned Special Judge, Special Court for trial of Cases under the Prevention of Corruption Act for the above said offences. The learned Special Judge, had taken cognizance of the charge sheet in



Crl.A.No.667 of 2014

Spl.C.C.No.5 of 2014 and after completing formalities framed the charges against the deceased appellant.

3 In order to substantiate the charges, on the side of the prosecution, as many as 19 witnesses were examined as P.Ws.1 to 19 and marked 37 documents as Exs.P1 to 37, besides 5 material objects were exhibited as M.Os.1 to 5. On completion of examination of prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was let in and two documents were marked as Exs.D1 and D2.

4 After completing trial and hearing of arguments advanced on either side, the learned Special Judge found the deceased appellant guilty for the offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5000/-, in default, to undergo



Crl.A.No.667 of 2014

simple imprisonment for a further period of six months for the offence under Section 7 of the Prevention of Corruption Act. Further the accused is also sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for further period of six months for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and ordered both the sentences to run concurrently.

5 Aggrieved against the said judgment of conviction and sentence, the accused has preferred the present appeal. During pendency of the appeal, the appellant/accused died and even though the charges against the deceased appellant got abated, his legal heirs got impleaded themselves as appellants in this matter to proceed further to remove stigma on the deceased appellant.

6 The learned Senior Counsel appearing for the appellant would submit that it is alleged by the prosecution that the deceased appellant demanded a sum of Rs.5000/- as illegal gratification from the defacto



Crl.A.No.667 of 2014

complainant for effecting patta transfer and for indicating the well, which is in dispute, is in the exclusive possession of the defacto complainant. It is also alleged that the deceased appellant received the bribe amount given by the defcto complainant, which was wrapped in the newspaper. From the statement of the defacto complainant P.W.2 itself it is clear that the deceased appellant did not handle the money with his hand and therefore acceptance of money has not been proved by the prosecution in the manner known to law.

6.1 Further P.W.3 brother of P.W.2, who is said to have accompanied P.W.2 while giving bribe to the deceased appellant, in fact, has not witnessed the acceptance of bribe by the deceased appellant, since as per the evidence of P.Ws.2 and 3, the deceased appellant has sent P.W.3 out for taking some xerox. Therefore, P.W.3 could not have seen the alleged acceptance of bribe by the deceased appellant.

6.2 As far as prior demand is concerned, it is alleged that to issue some revenue records in favour of P.W.2, the deceased appellant demanded



Crl.A.No.667 of 2014

Rs.5000/- from P.W.2, but the fact remains that the deceased appellant issued certificate stating that the well, which is in dispute is common for the co-sharers including P.W.2. If at all the deceased appellant demanded bribe as alleged by the prosecution, he would have issued certificate in favour of P.W.2, but the deceased appellant issued the certificate as stated above. Since the deceased appellant has not issued any certificate in favour of P.W.2 showing that the well is in the exclusive possession of P.W.2 alone, false case has been foisted against the deceased appellant.

6.3 The learned Senior Counsel would further submit that the other ingredients of acceptance and recovery of bribe by the deceased appellant is concerned, even as per the prosecution story, the deceased appellant did not handle the money, P.W.2 wrapped the money in the newspaper and kept in the table, but, the newspaper has not sent for chemical analysis to prove the acceptance of bribe by the deceased appellant. Further, soon after receiving money as alleged by the prosecution, when the deceased appellant was questioned, he replied that he did not receive any money, which is contemporary statement, which clearly proves that the deceased appellant



Crl.A.No.667 of 2014

did not receive any money from P.W.2 as alleged by the prosecution. The trial Court failed to consider these aspects and erroneously convicted the deceased appellant, which warrants interference of this Court.

7 The learned Additional Public Prosecutor appearing for the respondent would submit that P.W.1 is the sanctioning authority. P.W.2, who is the defacto complainant has approached the accused for getting some revenue records to enable him to get electricity service for the well under the subsidy scheme, for which, the deceased appellant demanded Rs.5000/-. On 29.12.2000 P.W.2 and P.W.3 met the deceased appellant at his house and informed the receipt of notice Ex.P6 from TNEB to avail the scheme and requested to furnish the revenue documents and expressed his inability to pay the amount. The deceased appellant finally reduced his demand to Rs.3500/- and instructed them to meet him on the next day. Thereafter on the same day, P.W.3 met P.W.19 and made oral complaint, which was reduced into writing Ex.P7. Subsequently P.W.18 took the case for further proceedings and conducted pre trap proceedings and on 30.12.2000 P.W.18 along with P.W.2 to P.W.4 and the other trap raiding officials went to the



Crl.A.No.667 of 2014

house of the deceased appellant. The deceased appellant on seeing P.W.2, demanded money and P.W.2 gave M.O.1 series currency notes, which were smeared with phenolphthalein powder.

7.1 P.W.2 the defacto complainant has clearly spoken about the prior demand and purpose for which he approached the deceased appellant. P.W.3 and P.W.4 have spoken about the pre trap proceedings. Prosecution has proved the basic ingredients of Section 7 of Prevention of Corruption Act viz. prior demand, acceptance and recovery of bribe through the evidence of prosecution witnesses. The learned trial Judge has rightly and carefully analysed the evidence of prosecution witnesses and heard the arguments of both sides and convicted the deceased appellant and imposed sentence, which does not call for any interference.

8 Heard the learned Senior Counsel for the appellants and the learned Additional Public Prosecutor appearing for respondent and perused the materials available on record.



Crl.A.No.667 of 2014

WEB COPY

9 Case of the prosecution is that P.W2, who is the resident of Thumbalpatty Village, on 04.12.2000 had approached the deceased appellant, who was serving as the Village Administrative Officer of Noolathukobai Group village during the relevant period, for issuing some revenue records to get electricity service for the well under the subsidy scheme, for which, the deceased appellant demanded Rs.5000/- and subsequently reduced to Rs.3600/-. Again on 15.12.2000, when P.W.2 approached the deceased appellant, he reiterated the same demand and refused to furnish the revenue documents as requested by P.W.2. Thereafter on 29.12.2000, after receipt of notice from TNEB for the subsidy electricity service, P.W.2 along with P.W.3 approached the deceased appellant and informing the notice requested him to furnish the revenue documents, but, the deceased appellant demanded Rs.3,500/- and instructed P.W.2 to come on the next day. Thereafter P.W.2 on the same day at about 3.00 p.m. approached the Deputy Superintendent of Police, Vigilance and Anti Corruption, Salem, and made oral complaint, which was reduced into



Crl.A.No.667 of 2014

writing and marked as Ex.P7. Thereafter P.W.18, who was the Inspector of Police, Vigilance & Anti Corruption, took the case for further proceedings.

10 After completing pre-trap proceedings, on 30.12.2000 P.W.18 along with P.W.2 to P.W.4 and other trap raiding officers proceeded to the house of the deceased appellant/accused. P.W.2 to 4 entered into the house of the accused and at that time the deceased appellant/accused was in a telephonic conversation and on seeing P.W.2 he called him. P.W.2 and P.W.3 entered the Varanda of the house of the deceased appellant and on seeing P.W.4, who is official witness, waiting outside, the deceased appellant/accused enquired about him, for which P.W.2 replied that he is his uncle and the deceased appellant/accused asked him to come inside.

11 The deceased appellant enquired P.W.2 as to why he did not come the day before and whether he brought money as demanded by him. P.W.2 replied that he had gone to Namakkal and hence he could not come and also took the money M.O.1 series currency notes, which were smeared by Phenolphthalein powder from his shirt pocket and tendered the same to



Crl.A.No.667 of 2014

the deceased appellant. The deceased appellant, without receiving the money, went inside and after short while came back with documents and sent P.W.3 outside for taking some xerox copies. The deceased appellant/accused instructed P.W.2 to keep the money in the newspaper informing that after shaving, without taking bath he will not touch the money and the accused received the newspaper and folded the same along with money and enquired P.W.2 as to how much money was there and P.W.2 replied Rs.3,500/- was there as demanded and the deceased appellant went inside along with the money and returned after 15 minutes. At that time P.W.3 came back and the deceased appellant/accused again sent him out for taking another xerox copies. Thereafter the deceased appellant/accused gave some revenue documents such as Ex.P10 Certificate in respect of the Well, Ex.P11 No due Certificate, Ex.P12 copy FMB in respect of the Well, Ex.P13 Chitta and Ex.P14 Adangal to P.W.2. Thereafter P.W.2 came out and showed the pre arranged signal to P.W.18 and immediately P.W.18 along with other trap raiding officers and P.W.2 to P.W.4 went into the house of the accused. P.W.2 identified the deceased appellant/accused and informed P.W.18 that the appellant/accused just now



Crl.A.No.667 of 2014

received Rs.3500/-. Thereafter phenolphthalein test was conducted, wherein, both the hands of the accused were dipped in Sodium Carbonate solution in two tumblers, which showed positive. Thereafter money was recovered with the help of P.W.4 and after completing formalities, P.W.18 arrested the deceased appellant/accused.

12 Since it is a case based on the trap proceedings, the Court has to see as to whether prior demand, acceptance of bribe and recovery, which are the ingredients of Section 7 of Prevention of Corruption Act are proved by the prosecution beyond all reasonable doubts.

13 With regard to prior demand, P.W.2 categorically deposed that in order to get electricity service with subsidy, on 04.12.2000, he approached the deceased appellant/accused for getting some revenue records, for which the deceased appellant/accused demanded Rs.5,000/- and subsequently reduced the same to Rs.3,600/-. Again on 15.12.2000, he approached the deceased appellant, who reiterated the same demand and refused to furnish the revenue documents without money. Further P.W.2



Crl.A.No.667 of 2014

clearly deposed that on 29.12.2000 after receipt of notice from TNEB for the subsidy electricity service, he along with P.W.3 approached the deceased appellant and informed about the notice, but, the accused demanded Rs.3,500/- and told P.W.2 to come on next day and on the same day at about 3.00 p.m. he approached the Deputy Superintendent of Police, Vigilance and Anti Corruption and made complaint against the deceased appellant/accused. Therefore from the evidence of P.W.2 and P.W.3, prosecution has proved the prior demand by the deceased appellant/accused.

14 Coming to the acceptance and recovery of bribe, P.W.2 has clearly deposed that on 30.12.2000 when P.W.2 met the deceased appellant, he demanded money and when P.W.2 gave the bribe, the deceased appellant instructed P.W.2 to wrap the money with the newspaper and after receiving the folded newspaper along with money he went inside and returned with the revenue documents. P.W.4 the official shadow witness also clearly deposed that the accused received the money in the newspaper and after receiving money, the deceased appellant gave the revenue documents as requested by P.W.2. Thereafter, on seeing the pre arranged signal shown by



Crl.A.No.667 of 2014

P.W.2, P.W.18 the trap laying office along with the team went inside and recovered the money. Further Phenolphthalein test also shown positive and hence from the evidence of P.W.s 2 to 4, prosecution has proved the acceptance and recovery of bribe amount.

15 This Court, being an appellate Court, as a final Court of fact finding in this case and it has to independently re-appreciate the entire evidence and give independent finding. Accordingly, this Court also thoroughly gone into the entire materials and re-appreciated the entire evidence on record.

16 It is the main contentions of the learned Senior Counsel appearing for the deceased appellant that since P.W.2 is the co-sharer of the well, the deceased appellant could not have issued the revenue documents in favour of P.W.2 alone and the deceased appellant did not handle the money and lastly the newspaper, in which it is alleged that the deceased appellant received the money was not subjected to chemical analysis. P.W.2, who is a defacto complainant has clearly deposed about the official position of the



Crl.A.No.667 of 2014

respondent and purpose for which he approached him and regarding initial demand and subsequent reduction of earlier demand.

17 It is to be noted that P.W.7, who is one of the co-sharers has clearly deposed that after receipt of notice P.W.2 met him and revealed the matter and P.W.7 instructed P.W.2 to proceed further and he also undertook to bear half of the expenses, which clearly proved the fact that P.W.2 did not attempt to get any revenue documents in his favour alone behind the back of the other co-sharers. In such circumstances, the defence taken by the deceased appellant is not acceptable.

18 Further, since the newspaper, in which the deceased appellant alleged to have received the bribe was not subjected to chemical analysis, the evidence of P.Ws.2 to 4 cannot be simply thrown away, which are cogent and consistent and inspires confidence of this Court. This Court from the evidence of P.Ws.2 to 4 and P.W.7 comes to the conclusion that prosecution has proved its case beyond all reasonable doubts and the trial Court has also rightly appreciated the evidence of the prosecution witnesses and convicted



Crl.A.No.667 of 2014

the deceased appellant, in which this Court does not find any perversity and there is no merit in the appeal.

19 In the result, the criminal appeal stands dismissed.

25.01.2023

Index : Yes/No

Speaking Order/Non Speaking

cgi

To

1. The Inspector of Police,
Vigilance and Anti Corruption, Salem.
2. The Special Judge, Special Court for Trial of Cases under the
Prevention of Corruption Act, Salem.
3. The Public Prosecutor, High Court of Madras.



WEB COPY



Crl.A.No.667 of 2014

P.VELMURUGAN, J.,

cgi

Crl.A.No.667 of 2014

25.01.2023