



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 18 OF 2012

The State Of Maharashtra

...APPELLANT
[Orig. Complainant]

VERSUS

1. Subhash Eknath Bhagwat
Age: 49 years, R/o. Room No. 462,
Police Lane, Sarjepura, Ahmednagar.

[Appeal abated against respondent No. 1
vide order dated 03.07.2021]

2. Shaikh Yusuf Lalmohamad
Age: 41 years, R/o. Sanjognagar,
Dargadayra Road, Mukundnagar,
Ahmednagar.

...RESPONDENTS
[Orig. Accused]

.....
Mr. Rajdeep Raut, APP for appellant-State
Mr. N.K. Kakade, Advocate for respondent No. 2
.....

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10th SEPTEMBER 2024

ORAL JUDGMENT :

1. This appeal filed by State under Section 378 (1)(3) of Code of Criminal Procedure, takes exception to the judgment of acquittal dated 31.01.2011 passed by learned Additional Sessions Judge Ahmednagar in Special Case No. 6 of 2006.

2. In short prosecution case is that, Accused No. 1 is a Police Constable and Accused No. 2 is Police Naik, who at the

Bhagyawant Punde

relevant time were serving at Tofkhana Police Station, Ahmednagar. On 30.12.2005 accused No. 1 demanded amount of Rs. 7,000/- as a gratification from complainant (PW1) and said gratification was accepted by Accused No. 2 from the complainant at the instance of Accused No. 1. Both the accused were charged for offences under Section 7, 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

In support of its case, prosecution has examined four witnesses i.e. complainant (PW1), sanctioning authority (PW2), Panch to the pre-trap panchnamas and arrest panchnama of Accused No. 1 (PW3) and investigating officer (PW4). Defence has examined one witness in support of defence. Trial Court acquitted both the accused/respondents. Hence, the present appeal.

3. Heard learned APP for appellant-State and learned advocate for the respondent. Perused the record.

4. Perusal of evidence of complainant (PW1) shows that he has improved his version before the Trial Court. He has failed to identify Accused No. 2 to whom he allegedly handed over the bribe amount. He was declared hostile and was cross examined by learned APP. In cross examination he has stated that "*it is not*

true to say that accused Shaikh is present today in the court and I deliberately deposed falsely that he is not present in the court."

In the cross examination conducted on behalf of accused persons he has admitted that "*it had not so happened that Bhagwat met me and demanded money from me.*" Following admissions from his evidence are brought on record;

"At the time of recording statement, I had not stated that Bhagwat asked me whether the amount is brought. At the time of recording my statement before police, I had not stated that when I was paying amount to Bhagwat at the time he informed to pay the amount one Shaikh policeman standing outside. I had not stated before the police that I came out and paid amount to Shaikh police. I had not stated in the statement before the police that Bhagwat demanded money."

He has further admitted that "*it is true to say that on the date of trap Bhagwat had not demanded money from me. It is true to say that I had no talk with Bhagwat in presence of panchas.*" He further admitted that "*it is true to say that the panch was inside near Bhagwat from all the incidents from payment of the amount and when A.C.B. officers asked the panch to whom amount is given, he informed that he is not aware about it as he was sitting inside.*" He further admitted that

"it is true to say that though Bhagwat had not demanded money (though in the paper book and in the original record in english version there is typing mistake in word 'not', on perusal of Marathi version of deposition it is stated that "भागवतने पैसे मागितले नसतांना")" I informed that the amount is paid with a view to have successful trap." In view of above evidence of PW 1, he does not inspire confidence and he appears to be unreliable witness.

5. PW2's evidence is on the point of sanction.

6. PW3 is the panch witness whose version is inconsistent to the version of PW1. Material discrepancies in the evidence are brought on record by the defence in his cross examination.

7. Investigating officer (PW4) has admitted in his evidence that *"it is true in this case verification panchnama was not carried out."* He has also admitted that *"it is true that there is overwriting of date on letter at Exh.29."*

8. The defence has examined Raju Jadhav (DW1), who is police constable, P.C.B. No. 512, who has deposed that on the date of accident i.e. 30.12.2005 he attended Tofkhana police station at 10 a.m. On that day it was patrolling duty for day time

and he along with police constable Ganesh Kharge and constable Shaikh (Accused No. 2) were on the same duty. They all proceeded for patrolling duty between 11 a.m. to 11.30 a.m. He was on one motorcycle along with Ganesh and constable Shaikh (Accused No. 2) was on another motorcycle. He has also produced on record attendance and duty registers. The evidence of this witness casts serious doubt on the prosecution's case that accused No. 2 has accepted the bribe amount at the instance of accused No. 1. Fact remains that bribe amount was not recovered during the investigation.

9. On careful appreciation of the evidence brought on record by the prosecution, it is clear that the prosecution has failed to prove the demand on the part of accused No. 1, and prosecution has also failed to prove that the amount of bribe was accepted by accused No. 2 at the instance of accused No. 1. The prosecution, therefore, has failed to prove the charge against the accused persons.

10. The Trial Court has properly appreciated the evidence and has assigned proper reasons while acquitting the accused persons. The view taken by the Trial Court is the only view possible in the present case. Prosecution has failed to make out

a case to interfere in the impugned judgment and order of acquittal. Appeal being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]