



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 302 OF 2006

Balasaheb s/o Bapurao Holkar
Age: 45 years, Occu.: Service (Surveyor),
T.I.L.R. Udgir, District Latur,
R/o. At Chilka, Post. Taluka Ahmedpur,
District Latur.

....Appellant
(Original Accused)

Versus

The State of Maharashtra
Through Suryakant s/o Balbhim Patil
Age: 41 years, Occu.: Police Inspector,
A.C.B., Latur.

.....Respondent
(Original Complainant)

.....
Advocate for Appellant : Mr.Amit A. Mukhedkar
APP for Respondent : Mr.S.M.Ganachari
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 08 APRIL, 2024
PRONOUNCED ON : 17 APRIL, 2024**

JUDGMENT :-

1. Conviction recorded under Sections 7, 13(1)(d) read with 13 (2) of the Prevention of Corruption Act (PC Act) vide judgment and order dated 01-04-2006 passed by the learned Special Judge (ACB), Latur in Special Case (ACB) No.11 of 2003 is taken exception to by appellant by filing instant appeal.

FACTS LEADING TO THE TRIAL

2. Accused Balasaheb Holkar, who was working as Cadastral Surveyor in T.I.L.R., Latur, was approached by PW1 Narsing, complainant for carrying out measurement of land purchased by his sister-in-law Namely Chayabai, for fixing boundaries. It is the case of prosecution that accused demanded Rs.2,000/-. On negotiations, figure was brought down to Rs.1,700/-. PW1 Narsing, Complainant paid Rs.100/-, but thereafter, approached Anti Corruption Bureau (ACB) authorities and lodged report exh.32, which culminated into planning and laying trap and finally apprehending accused after making demand and accepting the bribe amount.

Consequently, after being chargesheeted for above Sections, accused was made to face trial before Special Judge (ACB), Latur and tried vide Special Case (ACB) No.11 of 2003. Learned Special Judge, on appreciating oral and documentary evidence, accepted case of prosecution as proved and handed down conviction, which is precisely assailed herein.

SUBMISSIONS

On behalf of appellant :

3. Attacking the prosecution case on the ground of false

implication, the learned Counsel pointed out that prosecution has miserably failed to prove its case beyond reasonable doubt. His primary criticism is that owner of the land, who tendered application namely Chayabai, sister-in-law of PW1 complainant, has not stepped in the witness box. He further submitted that evidence of complainant itself shows that accused had refused to accept money on several occasions. He pointed out that apparently PW1 Narsing has not specified and given details exactly on which date he approached complainant and where and when there was conversation for negotiations. He pointed out that even in substantive evidence, complainant speaks of talking with his brother 2-4 months after the alleged meeting with appellant. He pointed out that during telephonic conversation, complainant himself admitted that accused declined to accept the amount. That with such evidence, it is his submission that there is no demand at all. Further he pointed out that delayed complaint creates doubt and that it is a false and fabricated story.

4. It is his further submission that DW1 Balasaheb Bapurao Holkar has candidly admitted that required procedure of carrying out measurement was duly done on 16-05-2003 and complied.

Thus, he submitted that when there was not work pending and measurement was already done and the purpose of complainant was already served, where is question of demanding illegal gratification. However, according to him, all such crucial aspects are not considered and appreciated by learned trial Judge.

5. It is his further submission that evidence of PW1 Narsing, complainant, PW4 Sachin, shadow pancha is not inspiring confidence. Several attempts are made to pay bribe and the same is emerging from prosecution evidence. That apart, testimonies of PW1 Narsing, complainant and PW4 Sachin, shadow pancha are full of material omissions and contradictions.

He further pointed out that not only there is no demand but even there was attempt to thrust money deliberately. That even seizure of tainted currency is from the floor and it is his submission that there is no acceptance. Thus, learned Counsel conclude that prosecution has miserably failed to establish demand as well as acceptance. Therefore, it is his submission that prosecution having failed to establish its case beyond reasonable doubt, it was a fit case for granting benefit of doubt. However, according to him, there is improper appreciation of evidence as well as law and so he prays to

allow the appeal by setting aside the impugned judgment. In support of his case he relied on following decisions :

- (a) *State of Maharashtra v. Ramlal Shriram Gajbhiye* [2017 DGLS (Bom.) 256].
- (b) *Bhimrao Savala Gaikwad v. State of Maharashtra*, 2016 DGLS (Bom.) 766.
- (c) *Dattatraya Rajaram Thaokar v. State of Maharashtra* [2017 DGLS (Bom.) 641].
- (d) *Vyankat Baburao Kailwad v. State of Maharashtra* [2016 DGLS (Bom.) 208].
- (e) Judgment of this Court dated 06-06-2022 in Criminal Appeal No.48 of 2002 [*Shri Raghunath Kasinath Mokal (since deceased through its legal heirs) Smt.Vandana and others v. The State of Maharashtra*].

On behalf of State :

6. In answer to above, learned APP pointed out that accused had demanded Rs.2,000/- for measuring the land. It is pointed out that after negotiations, accused agreed to accept Rs.1,700/- and he also accepted Rs.100/- paid by complainant. However, demand of remaining amount was made for fixing boundaries. Learned APP pointed out that mere measurement is done, but unless boundaries are fixed, said exercise is incomplete. That accused did not deliberately fix boundaries with sole intention of receiving bribe.

That there was complaint by PW1 Narsing. That PW4 Sachin, shadow pancha, independent authority was summoned and they both were instructed by the Investigating Officer. Accordingly, verification was done and thereafter trap was planned. That both complainant and shadow pancha witnesses are consistent and lending support to each other. That there is demand as well as acceptance. That there are traces of anthracene powder on the right hand and right side pant pocket of accused on immediate arrest. That there is proper citation. That evidence of prosecution is full proof and so supporting the conviction, learned APP prays to dismiss the appeal for want of merits.

GIST OF THE PROSECUTION EVIDENCE IN TRIAL COURT

7. **PW1** Narsing Dattu Bhore at exh.31 deposed that wife of his brother Udhav purchased land from Haribhau and his brother Bharat, but they were doubtful about the area and so application for measurement was filed with T.I.L.R., Latur and his brother deposited necessary charges. According to him, accused visited the land, measured it but did not fix boundaries for four days. Therefore, when he was approached, he was asked to pay amount of Rs.2,000/- and on being questioned about the charges, accused replied that it was

his private fees. Accused asked him to contact on phone after arrangement of amount was made and on negotiation, accused agreed to receive Rs.1,700/-. Therefore, Rs.100/- was paid by assuring to pay remaining balance and thereafter, PW1 Narsing complainant and his brother approached ACB and filed complaint exh.32. ACB authorities summoned pancha, apprised him about complaint and thereafter, both complainant and pancha were explained the procedure of trap. Accordingly, when he and shadow pancha approached accused in his office, accused questioned about pancha witness. When complainant was about to pay amount, accused asked him to stop and they went out to take tea. Near a sweet mart shop at Shivaji Chowk, accused asked whether amount was brought and when complainant held it before accused, accused accepted it and predetermined signal was given by complainant, which was followed by apprehension of accused.

8. **PW2** Suresh Neminath Ramdhare, a Surveyor working in T.I.L.R., Latur office explained the procedure of measurement and fixing boundaries, duties of Surveyor and drawing of map. He deposed about receipt of application in the name of Chayabai on 08-04-2003 for measuring land and fixing boundaries.

9. **PW3** Narayan Dharma Sable, Sanctioning Authority deposed at exh.56 about receipt of papers from ACB, studying it, applying mind and according sanction.

10. **PW4** Sachin Vishwanath Jawalekar, shadow pancha deposed about being called at ACB office on 20-08-2003, 22-08-2003, meeting complaint, hearing his grievance, verifying complaint exh.32 and ACB authorities explaining both him and complainant procedure and giving necessary instructions. According to him, he accompanied complainant to the office of accused. According to him, when accused asked whether he has done the work, and when complainant attempted to remove money, accused asked him not to handover amount there and took them outside the office i.e. toward Shivaji Chowk. There accused asked to pay Rs.1,600/- brought by him, it was handed over by complainant and accepted by accused followed by giving signal and raiding party apprehending accused.

11. **PW5** Murlidhar Lalu Apte is also an official of T.I.L.R., Latur, who on instructions, drew map and issued the same exh.71.

12. **PW6** Suryakant Balbhim Patil is the Investigating Officer

ANALYSIS

13. The fundamental grounds of challenge are **firstly**, original complainant Chayabai being not examined, **secondly**, work of measurement was already done by accused, **thirdly** demand not proved cogently and **fourthly**, acceptance not proved cogently.

14. This Court has scrupulously and meticulously gone through the testimonies of crucial witnesses i.e. PW1 Narsing and PW4 Sachin i.e. complainant and shadow pancha. The primary objection raised by learned Counsel for the appellant is that here application for measurement was by one Chayabai and her husband i.e. brother of PW1 Narsing had paid measurement charges, but none of them are examined and therefore, case of prosecution cannot be straightaway accepted.

This Court finds no force in the above submission. Though,, application is on behalf of Chayabai, apparently PW1 Narsing, complainant is her brother-in-law and his brother works at other station. Therefore, there is nothing unusual in tendering application on behalf of Chayabai. Entire transaction, demand as well as

acceptance is with complainant and therefore, mere failure to examine Chayabai or her husband Udhav will not water-down the evidence of complainant.

Having put the primary objection to rest, this Court proceeds to re-appreciate the evidence of firstly PW1 Narsing, complainant and thereafter, PW4 Sachin, shadow pancha.

15. Record shows that on application of measurement, date fixed for measurement was 16-05-2003. **PW1** Narsing, complainant deposed at exh.31 that accused appellant did complete the measurement, but he did not fixed boundaries, which are essential to earmark the area. According to complainant, when asked to that extent, accused informed that boundaries will be fixed after four days. When he was approached after four days, at that time, appellant asked him to pay amount of Rs.2,000/- and being asked as to what the said amount demanded was for, appellant told that "it was his fees". Finally, on negotiation with PW1 Narsing, figure was brought down to Rs.1,700/- and according to complainant, accused appellant accepted Rs.100/- for preparing documents. It is to be noted that there is no dispute that brother of complainant had paid required fees of Rs.1,000/- and this is not disputed by appellant.

Therefore, the above amount or Rs.100/- is apparently towards advance of the bribe. Exh.32 complaint has been lodged and PW1 Narsing in para 5 has narrated the sequence of the events that took place when he was accompanied by PW4 Sachin, shadow pancha i.e. carrying tainted currency of Rs.1,600/-, which was balance meant to be paid towards bribe. It does emanates from testimony of PW1 Narsing that appellant had treaded cautiously finding shadow pancha PW4 Jawalekar continuously accompanying complainant. He has refused to accept the money in Office and seems to have taken complainant outside for tea and on the way, he has attempted to make shadow pancha wait . Precautions seems to have been taken as he seems to have entertained suspicion about shadow pancha, but finally seems to have believed the statement of complainant that shadow pancha, his brother to be mentally ill and finally demanded and even accepted the tainted currency.

On visiting cross-examination of **PW1** Narsing, above aspects are not rendered doubtful. Nothing adverse has been brought in cross of complainant. Omissions are brought in para 8 about accused asking complainant to meet him after four days, initially demanding Rs.2,000/- and negotiating and bringing the figure to Rs.1,700/- and developing contact on phone to accept the amount. In the

considered opinion of this Court, the above omissions are not material because already Rs.100/- out of Rs.1,700/- is already accepted and for fixing boundaries, Rs.1,600/- is accepted. His right hand on examination revealed traces of anthracene powder confirming acceptance. Resultantly, here there is both demand as well as acceptance of illegal bribe for completing the process of measurement by fixing boundaries.

16. On sifting evidence of **PW4** Sachin, an independent witness, he is found to be lending complete support to the testimony of prosecution as well as complainant. He deposed about being called in ACB office, introduced to complainant, hearing his narrative of demand, verifying the complaint, endorsing it, being party to the demonstrations, instructions given by ACB authorities and accompanying accused, who was equipped with tainted currency to be paid on demand. In para 3 of his substantive evidence, he has narrated about accompanying complainant for visiting office of T.I.L.R. at 10:35 p.m., personal meeting and greeting between complainant and accused. He has specifically reiterated about his own details being questioned by accused with complainant. That accused refused to accept money in Office and made both this

witness and complainant for going out for tea. He also like PW1 Narsing deposed that accused repeatedly asked complainant to make this witness wait at a place and not to accompany them, complainant informing about his mental illness to accused, thereafter, accused not objecting and finally, in his presence, accused putting up demand and even accepting it. He also like complainant stated that accused accepted the money with his right hand and thereafter, signal being given by complainant and raiding party completing the remaining job, and right hand of accused revealing traces of anthracene powder. Therefore, this witness is party to both demand as well as acceptance.

To sum up, evidence of PW1 Narsing and PW4 Sachin confirms both demand as well as acceptance of bribe. Testimonies of both these witnesses have remained unshaken inspite of lengthy cross.

17. PW3 Narayan Dharma Sable, Sanctioning Authority categorically deposed that on receipt of papers from ACB, the same were studied and on application of mind, sanction was accorded. Therefore, there is valid sanction also. Consequently, all necessary requirements for attracting the charges are apparently and patently available in the prosecution evidence.

18. The fundamental ground raised in appeal about non-examination of Chayabai and Udhav i.e. sister-in-law and brother-in-law of complainant is already held in aforesaid paragraph to be insignificant by assigning reasons.

As regards to second ground regarding thrusting is concerned also has no force because already there is acceptance of part amount and accused has apparently taken complainant and shadow pancha outside the Office to receive amount in isolation. Both complainant and shadow pancha are in unison deposing about demand being made and amount being accepted in right hand. Traces to the right hand as well as to the right pant pocket belies and falsifies the defence of thrusting.

19. Perused the citations placed on record. Facts in those cases are apparently distinct.

The ruling *A.Subair v. State of Kerala [(2009) 6 Supreme Court Cases 587]* is also of no avail because in that case main complainant with whom demand was made was not examined. Here it is not so. Here demand is specifically with PW1 Narsing, who had approached accused for measurement on application of his sister-in-

law. Entire transaction is with PW1 Narsing. Demand is put to him, negotiations to bring down the amount is with him. Resultantly, even said ruling does not come to the aid of accused.

20. Perused the judgment taken exception to. In the considered opinion of this Court, there is no error or infirmity in appreciation of testimonies of PW1 Narsing and PW4 Sachin. No perversity or infirmity is brought in the appreciation of evidence, findings and reasons so as to interfere. No case being made out on merits, I proceed to pass following order :

ORDER

Criminal Appeal No.302 of 2006 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE

21. On pronouncement of this Judgment, learned Counsel for the appellant prays for six weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

22. Learned APP strongly opposes the same.

23. Considering the above request made by learned Counsel for the appellant, six weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE)
JUDGE

SPT