



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 392 OF 2005

Ashok Nathu Sutar,
Age : 44 years, Occupation Service,
R/o R-27, Block No. 41, N-9,
MHADA Colony, Pratapgad Nagar,
HUDCO, New Aurangabad.

... Appellant
[Orig. Accused]

Versus

State of Maharashtra

... Respondent

.....
Mr. Joydeep Chatterji, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.11.2024

Pronounced on : 14.11.2024

JUDGMENT :

1. The appellant takes exception to the judgment and order of conviction dated 13.05.2005, holding the appellant guilty of offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

CASE OF PROSECUTION

2. In nutshell, in trial court, case set up by prosecution was that PW2 was facing 12th standard examination in 1999 i.e. after failing in examination held in March in subjects Hindi, Chemistry and Zoology, and was consequently appearing for supplementary examination. Accused was appointed as Chief Examiner. On 20.10.1999, accused demanded Rs.1,000/- from PW2 to permit him to cheat in the examination i.e. by copying. As PW2 did not pay the demanded amount, he was not allowed to cheat and copy in Chemistry paper. On 21.10.1999, PW2 approached ACB office and lodged report Exhibit 18. ACB officer Idhate planned and arranged trap. Shadow pancha was made to accompany complainant-PW2. When complainant entered the hall to appear for the examination, accused demanded the amount. Tainted currency of Rs.500/- was handed over on demand and on relaying necessary signal, raiding party apprehended accused.

3. Investigating Officer registered complaint, carried out investigation and after gathering evidence and obtaining sanction, accused was chargesheeted and finally tried vide Special Case No. 8 of 2001. Vide judgment and order dated 13.05.2005, prosecution case

was accepted and guilt and conviction was recorded. Present appeal is the offshoot of said judgment.

SUBMISSIONS

On behalf of the appellant :

4. Pleading innocence and false implication as well as criticizing the judgment, learned counsel for the appellant pointed out that prosecution has miserably failed to bring home the charges beyond reasonable doubt. Learned counsel took this Court through the evidence of PW2 and PW3, who are complainant and shadow pancha respectively, and would submit that they are not consistent and are rather contradicting each other on material count.

5. According to learned counsel, there was demand on 20.10.1999, but there is no supportive evidence about such demand. He submitted that shadow pancha has not fully corroborated complainant, as he has admitted that he did not hear the conversation between PW2 and accused and thus, it is submitted that, virtually there is no corroboration to the evidence of complainant about demand. It is further pointed out that defence set up immediately after arrest is of thrusting the amount for false implication. That, it has come in the evidence of prosecution witness, more particularly

cross of PW3 shadow pancha, that accused and witness shook hands. Therefore, there is possibility of transmission of anthracene powder which is said to be detected. He pointed out that mere possession cannot be held sufficient to implicate for demand of illegal gratification as, according to learned counsel, the aspect of very demand itself has come under shadow of doubt.

6. It is his next submission that evidence of shadow pancha, more particularly para 3 itself shows that there was *suo motu* offer and no demand. There are several lapses in the investigation as the shadow pancha admitted that he was not aware whether currency notes were examined under ultra violet rays.

7. Learned counsel further pointed out that very officer, who noted the complaint, arranged trap and drew pre-trap panchanama, was not available for giving evidence, having expired. However, prosecution has examined PW4, who was mere member of the raiding party and who had no knowledge about conversation between complainant and deceased Idhate. That, said witness has admitted that from the place where he was standing, events taking place in examination hall were not visible. Therefore also, prosecution case about demand and acceptance comes under shadow of doubt.

8. Lastly, it is submitted that with such quality of evidence, case not being proved beyond reasonable doubt and there being several serious lapses and lacunae, learned trial court ought not to have accepted the prosecution version and hence, he prays for indulgence.

On behalf the the respondent State :

9. Per contra, learned APP while supporting the judgment, pointed out that there is no denial either in statement under Section 313 of Cr.P.C. or in the evidence, about accused to be appointed as Chief of examination center. He has not denied candidature by complainant for the examination. Prompt complaint was lodged, trap was laid and in presence of shadow pancha, an independent witness, accused had demanded and accepted the illegal gratification and therefore, charges are brought home. According to learned APP, here, Section 20 of the PC Act can be invoked and learned trial court has rightly done the same. Consequently, it is his submission that, no fault can be found in the appreciation and there is no infirmity in the conclusion drawn by learned trial court and hence, he prays to dismiss the appeal.

SUM AND SUBSTANCE OF THE EVIDENCE IN TRIAL COURT

10. The role and status of four witnesses examined by prosecution in support of their case, and the sum and substance of their evidence can be summarized as under :

PW1 Shrikant Joshi is the sanctioning authority, who, in his evidence at Exhibit 9, deposed about working as Dy. Secretary to the Government in Higher and Technical Education and about being authorized to appoint and remove persons holding the post of lecturer. According to him, he received papers of investigation from Khultabad Police Station. He scrutinized the papers, applied his mind and on finding *prima facie* case for seeking opinion of the Law and Judiciary Department for prosecution of the accused appellant, forwarded proposal for sanction before Deputy Chief Minister through the Ministers of Higher and Technical Education, which was approved and on the basis of the same, he accorded sanction Exhibit 10.

PW2 Ritesh i.e. complainant in his evidence at Exhibit 17 stated that he studied in 12th standard in Ghrushneshwar Art and Science Junior College, Khultabad. He failed in Hindi, Chemistry and Zoology in the examination held in March 1999 and therefore appeared for supplementary examination held in October 1999. He appeared for three papers on 14.10.1999, 18.10.1999 and 20.10.1999, and on all these dated, accused was the Chief of

the examination center. On 20.10.1999, accused demanded him Rs.1,000/- to allow him to copy like other candidates. Complainant told accused that he had no money. Complainant was not allowed to copy. He apprised about it to his father and thereafter he and his father approached ACB and lodged report Exhibit 18. He deposed about officer Idhate introducing him to panchas, giving demonstration of application of anthracene powder and instructing complainant to meet accused while he was in the company of pancha and on demand, pay him tainted currency and then transmit signal. He further deposed that if it was not possible to transmit signal, then pancha would transmit it accordingly. He and pancha walked to the college. Accused was standing on the ground of college. They met accused. Pancha was introduced as elder brother. According to complainant, accused then asked what amount he had brought and he told that he brought Rs.500/-. Accused further told complainant that he was told to bring Rs.1,000/- and he brought Rs.500/-, upon which, complainant told him that his father gave him Rs.500/- only. He further deposed that while putting hand in the pocket, he asked accused whether he should pay him. However, accused told him to come to the examination hall and then he would accept the money. He went to the examination hall. Pancha stayed back. He appeared for the examination. Accused came to him and demanded money. Accused was told that money was with elder brother and he would come back after collecting it from him. So he went out of the examination hall, met pancha who was standing behind the hall and told him that accused had demanded money. He requested pancha to stand by the side of window of

examination hall to transmit signal. He then came back to the hall and took his seat. Accused came and again demanded money and therefore he took out tainted notes, held it before accused who collected it in his right hand, counted and kept it in his left pant pocket. At that time, pancha was standing near the window and he transmitted the signal. Raiding party came and caught hands of accused.

While facing cross, he was questioned about the place where he stayed, about his father to be member of Zilla Parishad and to be worker of Republican party. He denied that he did not appear for Zoology paper on 22.10.1999. He answered that no other students succeeded in those papers. Rest is all denial.

PW3 Baburao Dhade is the shadow pancha. He deposed at Exhibit 24 about being called to ACB office, introduced to complainant, shown the complaint, five currency notes taken from complainant and demonstration being given. He stated that Shri Idhate issued no instructions to them. Thereafter, panchanama Exhibit 25 was drawn. They marched to Khultabad. After reaching college, they went to a platform. One person came towards complainant and complainant told that person that he had brought money. Complainant introduced this witness to accused. Accused told that he would not accept money now and would see him in the class room. Complainant and accused went to the class room and he sat beneath a tree at a distance. After one and half hours, complainant came out and told him

that now he would give money and watch it while standing near the window. Complainant then went to the class room and he stood by the side of window of the class room. That time, he found that accused had gone to complainant and he noticed that complainant had taken out tainted notes, held it before accused, who collected and counted it and kept it in the left pocket of his trousers. So this witness transmitted signal, after which raiding party came and apprehended accused.

While under cross, he is unable to state whether he told police in his statement that accused had approached them when they reached the college. He denied stating portion marked "A". He answered that, *"Shelke told, sir, I have brought money as told by you. Sutar (accused) did not speak anything. Shelke (complainant) then showed tainted notes to Sutar. Sutar told that he would not take money, hence Shelke put those notes in his pocket. Sutar has asked Shelke about me. Shelke introduced me as his brother. I and Sutar shook hands. Shelke also shook hands with Sutar and then we dispersed."* He further answered in cross para 9 that complainant was sitting in opposite direction to the window. Window was 35 feet away from the bench of complainant. He stated that he found complainant sitting on the bench. He climbed the distance up to the window. He had not heard the conversation between accused and complainant. Accused collected tainted notes by his right hand and kept it in the left pocket and when he transmitted the signal, Idhate came.

PW4 Subhash Joshi, police officer stated that Idhate died one and half years back. Then he identified signature of Idhate. According to him, Idhate took him as member of squad of the trap laid on Shri Sutar. Pre trap panchanama was drawn in his presence, which bears signature of Idhate. Then he narrated that they marched to Khultabad and took position in the college. Complainant and one person left whereas pancha Dhade sat near a tree. After some time, complainant met pancha near the tree. They had some talk and complainant again entered into the building while pancha stood by the side of window of one hall. Around 11.00 a.m., pancha Dhade transmitted signal and they all went and caught accused. Accused was subjected to tests and his both hands reflected shining. Accused was told to make statement and he gave it in writing and the same is at Exhibit "F".

While under cross, he admitted that he prepared notes of evidence, which he referred while deposing. Then he is questioned about the pre-trap panchanama, location and measurement of the college and its situation. He answered that window of the hall was not visible from place "B" where he was standing.

ANALYSIS

11. In appeal, principal grounds raised are that, firstly, there is no corroboration to the evidence of complainant on the point of demand.

Secondly, signal on demand and acceptance is generally relayed by complainant, but here, signal to the raiding party was at the instance of shadow pancha, who deposed that there were no instructions to him by the Investigating Officer. Thirdly, shadow pancha in examination-in-chief stated that accused refused to accept money and also admitted about not having heard conversation between complainant and accused. Fourthly, very Investigating Officer, who entertained complainant, planned and prepared trap, has not stepped into the witness box. Rather, one of the members of the raiding party i.e. PW4 is examined in lieu of the Investigating Officer.

12. After carefully studying above discussed evidence, of which there is no dispute, it is revealed that complainant was a student who, after having failed in annual examination, had appeared for supplementary examination held in October. Case of prosecution is that, and the said fact is not denied, that present appellant was appointed as Chief of examination center.

13. Complainant in his evidence has deposed that accused demanded Rs.1,000/- to permit him to cheat in the examination. He reported his father and then claims to have approached ACB and lodged report after which, trap was planned. He has deposed about

Idhate noting his complaint, pancha being called and procedure being explained. He has also deposed that pancha accompanied him at the examination center and they both met accused and there was conversation, after which he went to appear for examination and shortly after commencement of examination, he again came out and told shadow pancha about demand being made and to stand by the window and further to relay the signal on acceptance of bribe, and thereafter went back.

14. Shadow pancha PW3 also supported by stating that after reaching the center, complainant talked with accused. Complainant told accused that amount has been brought and whether he should pay, but accused refused to accept there and further asked complainant to meet in the class. He has also deposed that complainant, after commencement of examination, came out and asked him to stand by the window and thereafter relay signal. He has also stated that he noticed accused accepting currency from complainant.

So much part of the evidence of complainant and shadow pancha has remained virtually undisturbed.

15. Learned counsel for appellant would submit that, shadow pancha had not heard the conversation and as such, there is no evidence about very demand being raised by accused and further, here, signal was not relayed by complainant as is usually done, rather it was by shadow pancha and that there were no instructions by deceased Idhate at all. However, there is no force in such submission. True it is that shadow pancha had relayed signal after acceptance. But this witness has stated that he watched and noticed from the window the actual transaction of acceptance and thereafter he relayed signal. It is obvious that complainant being inside the hall, was not in a position to relay any signal to the raiding party. It is pertinent to note that PW2 complainant, in his evidence para 4, has specifically stated that instructions were given to him to relay signal and he further categorically added that if it was not possible, then shadow pancha should relay signal. Therefore, above submissions advanced before this Court have no merit.

16. Consequently, here, independent pancha witness has deposed on oath about initially meeting complainant, accompanying complainant to the examination hall, getting introduced to accused and on information by complainant, going near the window of the

examination hall and watching the events taking place in the hall. Therefore, his evidence having remained intact, there is no reason to disbelieve his version. Though he did not hear conversation between complainant and accused, he has deposed about watching the process of acceptance and pocketing the bribe amount.

17. Defence taken about deliberate thrusting is not probabalized by any mode. Therefore, case of prosecution deserves acceptance.

18. Perused the judgment under challenge, findings and conclusion are apparently in consonance with the evidence and as such, there is no need to disturb or upset the findings which are reached and recorded by assigning sound reasons. Appeal fails. Accordingly, following order is passed:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

19. 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.

20. Learned APP strongly opposes the same.

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

[ABHAY S. WAGHWASE, J.]

vre