



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 277 OF 2002

The State of Maharashtra

... Appellant

(Orig. Complainant)

Versus

Ashruba Ramji Ragde,
Age : 55 years, Occu. : Labour,
R/o. Palaskheda Dabhadi,
Tq. Bhokardan, Dist. Jalna.

... Respondent

(Orig. Accused)

...
Mr. N. D. Batule, APP for Appellant - State
Mr. R. V. Gore, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13th MARCH, 2024

PRONOUNCED ON : 8th APRIL, 2024

JUDGMENT :

1. State is hereby questioning the judgment and order of acquittal dated 19.01.2002 passed by learned Special Judge, Jalna in Special Case No. 03 of 1998, acquitting the accused from offence punishable under sections 7, 9 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act).

FACTS LEADING TO TRIAL ARE AS UNDER

2. In nutshell prosecution case is that, accused Ashruba was Police Patil of village Palaskheda and as such, he was a public servant. One Sugrabai wife of Ganesh filed complaint to police

station, Hasnabad, alleging that, one Ganesh Dongre took away some construction material. On receipt of said complaint, inquiry was conducted and communication dated 08.09.1997 was issued to accused Police Patil to keep said Ganesh Dongre present at Police Station. Accused and said Ganesh Dongre approached Police Station. Accused Ashruba took said Ganesh on the pretext of tea and said that he will settle the matter by telling Police Head Constable Joshi and for that purpose he demanded Rs.200/-. When there was disinclination to meet the demand, accused Ashruba allegedly threatened to see that he would be put in jail. Therefore, said Ganesh approached ACB authorities, who entertained the complaint, planned the trap, sent complainant Ganesh with shadow panch and accordingly, accused Ashruba was caught after accepting the bribe by ACB authorities and after investigation, he was charge-sheeted and tried.

Learned trial court examined the evidence of PW1 Ganesh - Complainant, PW2 Ramchandra - Shadow Panch, PW3 PI Sheshrao Suryawanshi - Investigating Officer and PW4 Shivaji - Sanctioning Authority and on appreciating the oral and documentary evidence, learned trial court held that, prosecution failed to prove the case beyond reasonable doubt and thereby acquitted the accused from all charges by judgment and order dated 19.01.2002.

SUBMISSIONS

On behalf of Appellant - State :-

3. Learned APP has questioned the judgment and order of acquittal on the ground that, here, there is clear demand of illegal gratification by accused, who was Police Patil of the village. He was directed by police authorities to bring complainant, against whom there were allegations of taking away construction material. That, he brought complainant, however he demanded bribe to see that complainant goes scot free and that there would be no inquiry i.e. for not taking legal action on the report of Sugrabai. Learned APP pointed out that, in fact accused threatened complainant with dire consequences i.e. seeing him going in jail, if demand of Rs.200/- is not met. Consequently, prompt Complainant was lodged about demand of illegal bribe. ACB authorities had planned and arranged trap which was successful. Still, learned trial court has acquitted the accused.

4. According to learned counsel, there is improper appreciation of evidence. Legal position is also not correctly appreciated by learned trial Judge. Both, pre-trap and post-trap panchanamas are infact proved. That, there is demand as well as acceptance. Therefore, all ingredients for attracting the charges were available, but learned trial court unfortunately acquitted the accused.

5. Learned APP took this court through the testimonies of prosecution witnesses and would submit that their evidence is inspires confidence and the same has remained unshaken. There is valid sanction, and therefore, guilt ought to have been recorded, but learned trial court having failed, he prays to interfere by allowing the appeal.

On behalf of Respondent :-

6. Per contra, learned counsel for respondent accused would submit that, evidence of prosecution was apparently weak. Evidence of material witnesses like complainant and panch is full of contradictions and omissions. He took this court through the judgment of trial court, more particularly paragraph nos. 16, 17, 18 and 21 and would submit that there is correct appreciation of evidence as well as law. Lastly, he submitted that, the view arrived at by learned trial Judge is the most possible view that could emerge on appreciating entire evidence. According to him, there is no merit in the appeal and he prays to dismiss the same.

7. In support of his submissions, learned counsel for respondent accused places reliance on following decisions :-

- 1) Tryambak Lilaji Binnar v. State of Maharashtra,
2002 (3) Mh.L.J. 293

- 2) State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede
2009 (5) AIR Bom R 781
- 3) Ratnakar Narayan Morankar v. State of Maharashtra
2022 DGLS (Bom.) 3590
- 4) Dilip and Another v. State of Madhya Pradesh
2007 AIR(SC) 369

EVIDENCE ON RECORD

8. Complainant **PW1** Ganesh, who is examined at Exh.18 deposed that, Sugrabai, a widow and Police Patil had lodged report against him, accusing him for selling soil from the land of Sugrabai and in that connection, Police Head Constable Joshi asked accused Ashruba, Police Patil of the village to bring him to police station. When he went to Police Station, accused took this witness for tea and asked him to pay Rs.200/- to avoid any action on the report of Sugrabai. Next day also, accused approached complainant and told him to pay more money as a consideration for not taking action, and therefore, he sold grains and raised amount. At weekly bazar accused again told him that, it is not possible to do his work in only Rs. 200/- and he would be required to spend more money. Finally getting helpless, he approached ACB and lodged complaint (Exh.19).

He deposed that, ACB authorities, arranged panchas, namely, Moti Kawde and Kulkarni and all of them were apprised

about the procedure of application of anthracene to currency, which was to be paid on demand. He and panch Moti Kawde reached Latifpur. Accused met them near PHC Hasnabad. Complainant invited accused for tea and thereafter accused told him to pay the amount and accordingly he removed the amount from his pocket and handed it over to accused, who accepted it. Pre-determined signal was given and police apprehended complainant.

PW2 Ramchandra, shadow panch, deposed about visiting ACB authorities, being introduced to complainant, verifying facts of complaint and he endorsing over the complaint (Exh.19), ACB authorities explaining the entire procedure and issuing necessary instructions to the complainant that, after demand made by Police Patil or Police Constable Joshi, amount to be handed over, and thereafter, on acceptance, signal to be given. He further deposed about pre-trap panchanama being drawn and he accompanying complainant at Hasnabad. At weekly bazar complainant pointed him the Police Patil. After they approached accused Police Patil, they went to a hotel. That time, accused Police Patil asked whether he brought the money and before it, there was conversation between complainant and Police Patil regarding work of complainant. Complainant asked accused as to what had happened about his work, upon which Police Patil questioned

whether he has brought the money and only if he brought the money, the matter would be settled. Accused Police Patil asked complainant to handover the money, which was accepted and counted by Police Patil, after which signal was given. Accused was apprehended. Constable Baheti took out currency from the hands of accused and the same was later on seized.

PW3 PI Sheshrao Suryawanshi, Investigating Officer, narrated all steps taken after receipt of complaint (Exh.21) till charge-sheeting accused.

PW4 Shivaji Divekar is the Sanctioning Authority.

9. Accused has also adduced evidence of one Asaram Saudagar (DW1), who was working in the hotel and he deposed that, on the day of weekly bazar, at around 2:00 to 2:30 p.m., these customers ordered tea and he served it. One person was wearing cap and other one was wearing dhoti. The person wearing cap called him for taking money and told him about the bill amount and said person asked him whether he had change and he told the said person that he was going to serve the order he should bring the change and then pay money.

ANALYSIS

10. In chief PW1 Ganesh stated that, when he went to police station, accused took him out for tea and assured to see that

no action would be taken on complaint by Sugrabai, but only if Rs.200/- is paid. Complainant has not uttered that, said amount would be required to be paid as bribe to Constable Joshi, who was conducting inquiry of the alleged complainant. Complainant further states twice - thrice accused approached him, saying that, work cannot be done in Rs.200/-, but more amount would be required, however what was the quantum that would be required is not stated by complainant. Still, surprisingly, complainant has carried only Rs.200/-, which was unagreeable to accused. Further, complainant claims that he raised amount by selling grains, but when how much amount was raised, has not been elaborated by him. Further, exactly when complainant was called with bribe amount is also not stated by complainant. Rather his evidence shows that, he took shadow panch directly to weekly bazar and seeing accused in the weekly bazar, he seems to have been approached and there the amount has been allegedly paid.

Therefore, complainant's evidence firstly is ambagious as regards to what was the exact bribe amount expected by accused as according to him after initial demand of Rs.200/-. Accused has allegedly approaching twice - thrice on the ground that, more money would be required and more money cannot be paid.

11. His cross shows that, there is contradiction as regards to portion marked 'A', 'B' and 'C' of the complaint dated 17.09.1997 and portion marked 'A' and 'B' of statement before the police dated 21.09.1997s which he denied. The portion marks are reproduced as under :

Portion marked of the complaint dated 17.09.1997 (Exh.19)

- "A" "On that place Jamadar Joshi inquired me about the selling of the soil."
- "B" "I told him that we would see Jamadar Joshi and to clear the misunderstanding he had, if any."
- "C" "I somehow managed by saying that I have no money. Would do something for him later."

Portion marked of the statement before the Police dated 21.09.1997 (Exhs. 35 & 36)

- "A" "Then the Police Patil said that, Why you are telling me? You go and see Joshi Saheb on your own."
- "B" "Then the Police Patil said that, " you should pay Joshi Saheb the money on your own and get the matter settled."

Further his cross also shows that there are omissions in paragraph nos. 6 and 7 regarding informing Investigating Officer that he had agreed to pay amount to Joshi; that next day, prior to approaching Constable Joshi, accused met him at his residence, about informing Investigating Officer that Police Patil told to spend more money and that he would be required to spend more and so

he became helpless. He admitted that, Investigating Officer has instructed him that payment should be made only when demand made by Constable Joshi.

However, presence of Joshi is not marked either by complainant or shadow panch i.e. at the weekly bazar. Therefore, it is further doubtful whether accused was allegedly arranging bribe on behalf of Constable Joshi because it is he who was making inquiry on the complaint. Further, he admitted that the only conversation between him and accused was only about accused asking to pay the money and he paid the money.

12. Even PW2 Ramchandra, shadow panch stated that, while they were going towards weekly bazar, complainant saw accused. According to him, complainant invited accused for a tea in the hotel. However, according to him, accused said that work would be done only if he had brought money otherwise not. But such version is not coming from the mouth of complainant. Resultantly, complainant and shadow panch in spite of being together are not consistent.

13. Evidence of PW2 Ramchandra goes to show that, it is complainant, who was insisting accused to settle the matter. While under cross, he has also unable to recollect whether he had

narrated the portion marked 'A' in his statement dated 18.09.1998 i.e. regarding "*Dongare said to the person who was walking with him that [he] should see Joshi saheb and to settle the matter whatever it is.*" To this the other person said, "*You go and see Joshi saheb on your own. Why you are asking me?*" Material omission has been brought in his statement about accused asking complainant whether he brought the amount and if it brought, only then matter would be settled and thereafter complainant told him that he brought the money.

Therefore, considering the evidence of PW1 Ganesh and PW2 Ramchandra, they do not seem to be lending support to each other. They are at variance and their evidence is full of material omissions and contradictions, hence unsafe to rely.

14. Even as is pointed out by learned counsel for respondent, important witness like Constable Baheti, who actually apprehended accused and further took out tainted currency from the pocket of accused, is not examined by prosecution. Further, contents of Exh.37 goes to show that there is no demand, but complainant has voluntarily had handed over the amount. Such contents of panchanama which is allegedly drawn at the spot further creates doubt about prosecution version.

The net result of above discussion is that, prosecution case is not free from doubt.

15. On going through the impugned judgment, the view taken by learned trial Judge seems to be the possible view that could emerge with such quality of evidence on record. No case is made out by State to upset the findings of the trial court. Hence, I proceed to pass the following order :-

ORDER

The Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)