



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 60 OF 2003

1. Dr. Ratansing Kaniram Tekwadekar
(@Pardeshi), Age 52 years,
Occu. Medical Officer, Government
Medical College and Hospital,
Aurangabad.
2. Dr. (Mrs) Kanta Ratansing Tekwadekar
Age 42 years, Occ. Private Practice (Medical)

Both R/o Plot No. 17, Chandra Nagar
Housing Society, N-9, HUDCO,
Aurangabad.

... Appellants
[Orig. Accused]

Versus

State of Maharashtra

... Respondent

.....

Mr. Satyajit S. Bora, Advocate for the Appellants.
Mrs. Chaitali Choudhari Kutti, APP for the Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.04.2024

Pronounced on : 19.04.2024

JUDGMENT :

1. Instant appeal arises out of the judgment and order of conviction handed down by learned Special Judge, Aurangabad in Special Case No. 24 of 1997 convicting both appellants for commission of offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act] and under Section 12 r/w 7 of the PC Act respectively.

PROSECUTION CASE IN TRIAL COURT IN BRIEF IS AS UNDER

2. One Gautam Bahadare died in a road traffic accident on 15.07.1996. His body was referred to Government Medical College and Hospital for autopsy. Sudarshan, who was brother-in-law of deceased Gautam, was summoned by the autopsy doctor (accused no.1) and informed that deceased had consumed liquor. Autopsy doctor further asked him whether deceased was insured and on hearing answer in affirmative, accused suggested that if he reports that deceased was drunk at the time of accident, insurance could not be claimed and therefore asked Sudarshan to pay Rs.10,000/- to get benefit of insurance and finally, on negotiations, accused doctor agreed to accept Rs.3,000/- for refraining to mention detection of alcohol. Accused issued provisional death certificate. However, Sudarshan was not ready and willing to pay bribe and therefore he lodged report Exhibit 19 with ACB authorities, who summoned pancha, planed trap, explained the procedure and pre-trap panchanama Exhibit 31 was drawn around 17.30 hours. Complainant Sudarshan and shadow pancha Hasan visited Bhushan Hospital. There, demand was made and when complainant removed the amount, he was directed to keep it on the table. Wife of accused came there, who was directed by accused no.1 to count and collect the amount. Accused no.1 filled the last column of post-mortem report,

prepared death certificate and after collecting it, complainant relayed the pre-determined signal, followed by apprehension of accused persons.

3. Investigating Officer PW4 lodged complaint Exhibit 56 and after investigation, chargesheeted both accused persons, husband and wife, and they were made to face trial before learned Special Judge, who, by his judgment and order dated 31.12.2002, recorded conviction. Hence the appeal.

SUBMISSIONS

4. Briefing the case of prosecution, learned counsel for the appellants pointed out that there is apparently false implication. According to him, there is no cogent, reliable and legally acceptable evidence in support of case of demand. Secondly, according to him, prosecution's own evidence suggests that there was no acceptance of bribe and it was allegedly forcibly kept on table. Accused no.1 did not come in contact with the currency, nor accused no.2 is shown to be connected in any manner with alleged demand or acceptance. Therefore, none of the ingredients to attract the charges were available.

5. Learned counsel pointed out that in fact, accused persons had probabilized the defence that due to previous acquaintance, complainant Sudarshan had borrowed an amount of Rs.3,000/- from wife of accused no.1, i.e. accused no.2, and had already executed credit note. Complainant was avoiding to repay. Because of consistent demand and reminders, finally on 17.07.1996, complainant came with said amount which was due towards him. Thus, there was no illegal gratification.

6. Learned counsel took this Court through the evidence of complainant PW1 as well as shadow pancha PW2 and would point out that they are not consistent or lending support to each other. Further, he also invited attention of this Court to the cross of complainant and would submit that there is categorical admission by complainant about borrowing Rs.3,000/- and even executing credit note Exhibit 25. Therefore, learned counsel submits that defence has been fortified.

7. Learned counsel further took this Court through the evidence of shadow pancha PW2 and would submit that this witness is unaware as to for what purpose alleged demand was made. Resultantly, he submits that evidence on behalf of prosecution was apparently weak

and was not trustworthy. He pointed out that in view of the cross of complainant admitting borrowing of loan and the essentials for demand and acceptance being patently missing from prosecution evidence, the very essential ingredients were not available in the evidence of prosecution. Recovery of tainted currency was admittedly not from accused no.1. Case of prosecution had collapsed the moment *sine qua non* for attracting offences like demand and acceptance being not available.

8. Lastly, he submitted that even sanction was improper for want of application of mind. Still, according to him, learned trial court has accepted the case of prosecution. According to him, learned trial court failed to consider and appreciate the defence of accused and straightway accepted the prosecution case.

Consequently, according to him, there is erroneous appreciation of evidence, law as well as approach of learned trial court, necessitating indulgence at the hands of this Court for allowing the appeal.

9. He seeks reliance on the following rulings :

1. ***Khaleel Ahmed v. State of Karnataka***
MANU/SC/1424/2015
2. ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*** MANU/SC/1339/2009
3. ***C. M. Sharma v. State of A.P. Th. I.P.***
MANU/SC/0981/2010
4. ***Rangnath v. State of Maharashtra***
MANU/MH/1206/2024.

10. In answer to above, learned APP pointed out that prosecution has proved the charge by adducing evidence of 4 witnesses. She pointed out that accused, who are medical practitioners, were chargesheeted on gathering sufficient evidence. Accused husband had demanded illegal bribe of Rs.10,000/- for not putting remark in the postmortem report regarding consumption of alcohol by deceased Gautam i.e. brother-in-law of complainant, who had met with road traffic accident, which would have dis-entitled wife of deceased or legal heirs of deceased Gautam from being beneficiaries of the insurance. Hearing from complainant that deceased was insured, he demanded above amount and finally agreed to accept Rs.3,000/-. He deliberately withheld death certificate till receipt of illegal gratification. That, Complaint was lodged, trap was laid, independent

pancha was arranged and both, complainant and pancha, during their visit to hospital, were demanded the amount and both, pre-trap and post-trap panchanamas were proved. According to her, pancha witness lends support to the story of complainant. She pointed out that tainted currency was accepted in the private hospital and thereafter death certificate was issued. That, all necessary ingredients were available and there being both, demand as well as acceptance, charges were held to be proved. According to learned APP, there is correct appreciation and no infirmity or perversity in the same, and hence she prays to dismiss the appeal for want of merit.

GIST OF THE PROSECUTION EVIDENCE

11. To establish its case, prosecution has examined following four witnesses.

PW1 Sudarshan at Exhibit 18 deposed that his brother-in-law Gautam met with a road traffic accident at MIDC Chikalthana and died on 15.07.1996. His dead body was taken to hospital. According to him, in the morning of 16.07.1996, accused no.1 asked as to who was the relative of deceased. When he approached, he was asked whether deceased had insurance and on answering in affirmative, accused no.1 told that if he wants to claim the amount of insurance in the name of deceased, he will have to issue postmortem report and thereby demanded

Rs.10,000/-, but finally agreed to accept Rs.5,000/-. Thereafter he approached ACB authorities and lodged complaint Exhibit 19. Pancha was called. He and pancha were explained the procedure and after giving necessary instructions, they were made to go to the hospital of accused, namely, Bhushan Hospital. He stated that accused asked whether money was brought. Thereafter, complainant was directed to keep the currency notes on the table. Accused called somebody by saying 'Saheba', upon which wife of accused no.1 came, counted the currency and took it inside the house. Accused no.1 followed her and returned with a file, caused signatures and handed down the papers. Thereafter complainant gave pre-determined signal and ACB authorities carried out raid.

PW2 Syed Jiyaulhasan at Exhibit 29 deposed that he works in the office of Executive Engineer and he was instructed to go to the ACB office and accordingly he went there. He was introduced to complainant and he heard the story of complainant. They were made to verify the allegations. He claims to have accompanied complainant to Bhushan Hospital. He deposed about meeting accused no.1 who allegedly asked complainant whether he brought the money and complainant informing that they were busy for rituals. Finally, on request, accused reduced the amount to Rs.3,000/- and complainant was directed to come on the next day. After returning to the ACB office, verification panchanama and pre-trap panchanama Exhibits 30 and 31 were drawn. On 17.07.1996, he again accompanied complainant to the hospital. Accused came around 4.00 p.m. and questioned whether amount has been brought and further

directed to keep the amount on table. Accused called his wife, who came and took away the tainted currency. Accused asked her to count the currency. Accused followed his wife in the house and returned with the file. He issued certificate stating that he had not mentioned about alcohol consumption by deceased. Complainant came out and gave signal followed by raid.

PW3 Yenganna Ippewar, Deputy Secretary, Health Services, Mumbai was the sanctioning authority. He deposed about receiving papers from Home Department, studying the papers, applying his mind and then according sanction Exhibit 44.

PW4 Dy.S.P. Shrinivas Tandale is the Investigating Officer. He narrated all the steps taken by him during investigation till filing of chargesheet.

ANALYSIS

12. Complaint under the provisions of PC Act seems to have been entertained and investigated and case of prosecution is that in the death certificate of brother-in-law of complainant, to avoid remark about deceased being drunk at the time of accident, there was demand of Rs.10,000/-, but it was finally agreed to accept Rs.5,000/-.

13. Evidence of complainant and shadow pancha, as usual, is of significance in view of nature of charge.

14. On carefully analyzing the evidence of complainant, it seems that when the dead body was taken for autopsy, accused called complainant and he seems to have inquired whether deceased Gautam was insured, and further informed that deceased was drunk at the time of accident and if benefits of insurance are to be availed, then he would not mention about finding alcohol but for that, gratification should be paid. Evidence of complainant shows that on same day of demand, he lodged report Exhibit 19 followed by necessary steps and procedure by ACB authorities. In para 4 of the examination-in-chief, complainant has stated that after reaching hospital of accused on 17.07.1996, accused demanded money. When complainant was about to hand over the currency, accused directed him to keep it on the table. Accused called a lady by name Saheba. Complainant stated that his wife came there. Accused directed her to count the money and take it inside the house. Accused then followed her inside the house and after some time returned with the file and issued two papers. Thereafter signal was relayed and accused were apprehended.

In cross, complainant has admitted that he was knowing accused no.1 since previously and that his wife was running a hospital and he and his family members were taking treatment at her hospital.

He answered that he borrowed amount of Rs.3,000/- from accused no.2 but he is unable to give date. He also admitted that he issued credit slip and he identified the same to be at Exhibit 25. In further cross, he is unable to state whether accused has issued provisional death certificate to the wife of deceased Gautam. He is unable to state whether he put the tainted currency on the table saying that it was money of madam (accused no.2). In para 9, he has denied that bond paper was planted.

15. PW2 Syed Jiyaulhasan also deposed about being called at ACB office, introduced to complainant, verifying the complaint, signing it, thereafter he accompanying complainant to the hospital, in his presence accused asking whether amount has been brought and verification panchanama Exhibit 30 to be drawn. He also deposed that on 17.07.1996 he accompanied complainant to the hospital and in his presence, accused no.1 asked whether he has brought the money. Complainant took out the tainted currency and offered it to accused no.1. Accused no.1 asked him to put it on the table. Thereafter accused no.1 called accused no.2 and she was further directed to count the money. She took away the tainted notes. Accused no.1 followed her in the house and returned with a file, filled the last column of the paper and gave copies of certificate to the

complainant. Complainant gave signal and raiding party entered and apprehended accused.

In cross, he is asked whether at the time of oral complaint, there was reference of any lady, to which he denied. He also denied about complainant informing him that doctor had given any certificate. He answered that after verification, complainant was asked to come on the next day with money. In cross para 6, he answered that on 17.07.1996, he had been to Bhushan Hospital. He is unable to state as to which portion was noted by the doctor on documents Exhibits 20 and 21. Rest is all denial.

16. Therefore, above evidence of complainant and shadow pancha clearly shows that, accused had demanded illegal gratification for not mentioning about detection of alcohol at the time of autopsy i.e. in the death certificate. Complainant has lodged prompt report. It was verified by PW2 shadow pancha and he has signed it. There is verification panchanama when both, complainant and shadow pancha, went to verify about demand. They are consistent to that extent. They both are found to be consistent about the events that took place at the hospital on 17.07.1996. Both are unanimous as regards to accused asking about bringing money, complainant taking

out the money, call being given to a lady i.e. accused no.2, and she being directed by accused to count the cash and then she took the cash and went inside the house, accused followed her and returned back with a file and thereafter issued documents.

18. Therefore, here, there is evidence suggesting demand as well as acceptance. Nothing adverse has been brought in their cross so as to doubt their version. True it is that complainant, while under cross, gave certain admissions about borrowing amount from accused no.2, but that cannot be connected with the episode of illegal gratification. There is no conversation between complainant and accused no.1 with regard to said borrowing by complainant from accused no.2. Moreover, PW2 who accompanied PW1 for verification of demand, also does not speak about talks between any previous borrowings. Therefore, the defence so taken is not probable. There is also no further conversation between accused no.2 and complainant in presence of PW2, i.e. when she came on being called by accused no.1, regarding previous borrowings. Accused no.2 has simply picked up currency, counted it and went inside the house. Therefore, the story of previous borrowings between accused no.2 and complainant has no nexus with the demand of accused no.1 for issuing death certificate which would favour legal representatives of deceased Gautam to

apply for insurance.

19. Consequently, here, there is clear evidence suggesting demand of bribe being made only for issuing death certificate by refraining to mention about consumption of alcohol. Resultantly, all essential ingredients for attracting charge are patently available. Sanction is also valid. In appeal, validity of sanction has also not been questioned. Therefore, there is no good ground or merit in the appeal. Hence no need to interfere. Accordingly, following order is passed :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

20. On pronouncement of this judgment, learned counsel for the appellants prays for eight weeks time to surrender so as to enable them to approach the Hon'ble Apex Court.

21. Learned APP strongly opposes the same.

22. Considering the above request made by learned counsel for the appellants, eight weeks time is granted for the appellants to surrender.

[ABHAY S. WAGHWASE, J.]

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