



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 307 OF 2003

Laxman s/o Dagadu Kusalkar,
Age : 59 years, Occ : Nil (Retired),
R/o : Andhale-Chaure Nagar,
M.I.D.C. Nagpur, Ahmednagar,
Dist. : Ahmednagar.

... APPELLANT
(Orig. Accused)

V E R S U S

The State of Maharashtra

...RESPONDENT
(Orig. Complainant)

.....
Advocate for the Appellant : Mr. N.R.Dhorde (Senior Advocate) i/b
Mr. V.R.Dhorde a/w Mr.S.P. Nimbalkar
A.P.P. for the Respondent/State : Mr. G.O.Wattamwar
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CORAM : KISHORE C. SANT, J.

Date of Reservation : 16.08.2024
Date of Pronouncement : 10.09.2024

J U D G M E N T :

1. This appeal arises out of the judgment and order passed

by the learned Special Judge, Ahmednagar, dated 29.03.2003, in Special Case No. 02 of 1994. The present appellant/Original accused is held guilty of the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as the 'PC Act'). For the offence punishable under Section 7, he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, in default, to undergo simple imprisonment for one month. For the offence punishable under Sections 13 (1) (d) read with 13 (2) of the PC Act, he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 500/-, in default, to undergo further simple imprisonment for one month. The Special Court has directed both the above sentences to run concurrently.

2. The case of the prosecution in short is that one Maruti Keshavrao Garje, the de-facto complainant approached Anti Corruption Bureau, Ahmednagar to lodge a report against accused Complainant's daughter namely Sharda had lodged a complaint against her in-laws in Pathardi Police Station. Its investigation was handed over to the appellant/accused, who was

working as A.S.I. in the said Police Station. The Complainant therefore, went to the Police Station on 02.11.1992 to make an inquiry in respect of the complaint lodged by his daughter and about progress of the investigation and also to see as to whether the in-laws of his daughter are arrested. There he met with an accused, on asking accused told him that if the case is to be investigated properly the Complainant need to pay an amount of Rs. 1,000/- to accused and on paying the said amount he will arrest the accused persons (in-laws). On conveying the inability to pay that much amount, the accused allegedly told to pay Rs. 100/- at that time and thereafter to pay Rs. 500/-. On that day the Complainant paid Rs. 100/- and assured to pay amount of Rs. 500/- on 04.11.1992. Thus, the Complainant approached the ACB Office and lodged a report. The ACB Officer decided to lay a trap on 04.11.1992. Accordingly, the trap was laid. Accused at the time of trap demanded an amount towards bribe. The Complainant paid the amount to the accused and thereafter the accused was apprehended. On completing investigation charge-sheet came to be filed after obtaining the sanction against the accused. The case was tried by the learned Special Judge,

Ahmednagar as stated above. After trial, the trial Court came to a conclusion that the prosecution has proved the aforesaid offences and awarded sentence accordingly.

3. Learned Senior Advocate Mr. N.R. Dhorde argued that it is a case of the accused that he had no any work with the Complainant. The complaint was lodged at the instance of one Yuvraj Devre, against whom the present accused had lodged a complaint in 1989 and in that case said Yuvraj was convicted by the learned JMFC, Pathardi. For these reasons Yuvraj instigated the Complainant to file report against accused due to grudge in the mind of said Yuvraj Devde against accused the accused is falsely implicated in the case. It is further argued by the learned Senior Advocate for the appellant/accused that the accused never demanded amount to the Complainant. There is variance in the version of the Complainant and the shadow panch as to the time and spot and demanding of the amount. There is no specific demand of any amount. The Special Court failed to consider the evidence properly and has wrongly convicted the accused.

4. As against this, learned APP Mr. Wattamwar, for the respondent State, argued that the Complainant has stated about the demand and acceptance of the amount of bribe, which is duly corroborated by the shadow pancha. The sanctioning authority has properly accorded the sanction. The prosecution has proved the involvement of the accused in the commission of crime and therefore, no case is made out to call for any interference in the order and conviction of the trial Court and prays for dismissal of the appeal.

5. The evidence in short of witnesses is as below. Maruti (PW 1), the Complainant, stated the prosecution story in his evidence. He stated that after lodging of complaint by Sharda, he went to police station Pathardi. He made an inquiry with one police officer as to whom investigation is handed over in the said offence. On that he told to meet the accused. The Complainant therefore met the accused where the accused made a demand. About the actual trap he stated that he went to the ACB, where he was told to come on 02.11.1992. Thereafter two pancha witnesses were called by the Officer. The officer gave information

about the procedure of trap and use of anthracene powder etc. He was introduced with shadow panch. He stated that thereafter, he went to police station Pathardi alongwith members of the raiding party. At the distance of 2 furlongs from the police station the other members of the raiding party were stopped and waited. The Complainant and the shadow panch both went in the police station by walking. They both met the accused. On meeting the accused, the accused asked the Complainant as to whether he has brought bribe money. The Complainant answered that he has brought the money. The accused thereon asked both Complainant and the shadow panch to wait outside. On this, they came out side and waited for some time. Within short time, accused came there. Thereafter, all the three went to a tea stall. A shadow pancha placed an order for tea. After having tea, the accused assured that he will make proper investigation and will arrest the in-laws of his daughter. After coming out of the tea stall they came near Nagar-Pathardi road. Again on asking by the Complainant about the investigation, the accused asked him to pay the amount and he will immediately arrest the accused persons in the said case. Thereafter, the Complainant took out

currency notes with his right hand from the left side shirt pocket and placed the amount before accused. The accused asked as to how much is the amount, the Complainant answered Rs.500/-. Thereafter, the accused counted the said currency notes and kept it in his back pocket of pant by his right hand. On that the Complainant gave a signal to the raiding party. The raiding party came and apprehended the accused. Thereafter, the Complainant was said to wait outside for some time. After completion of procedure the Complainant was called in the room. His hands were checked under the ultra violet lamp and blue shining of anthracene powder was seen to his hands.

6. In the cross-examination, the Complainant stated that he knows Yuvraj Devde, who was a sarpanch of village for quite some time. Said Yuvraj Devde is a big figure in Pathardi Taluka. A complaint that was filed by the daughter of Complainant was later on settled in the Court and thereafter she went to reside with her husband and also has children. The Complainant was not knowing the accused as he met him for the first time in the Police Station Pathardi. It is stated that the incident took place

on Wednesday, on weekly market day of Pathardi. The roads are being crowded on Wednesday due to market day. A suggestion was put to him that he happens to be a right hand of the said Yuvraj Devde. He was not knowing that since 1989 the accused was serving at village Mohoj Devde bit and that a complaint was filed against Yuvraj Devde in another case. The accused had done investigation in that case and said Yuvraj was arrested by the accused in that crime. That time the accused could not give answer to a specific question that the Complainant had requested the accused not to arrest said Yuvraj Devde. The omissions have come in the statement that the accused was investigating the complaint of his daughter Sharda and that at Pathardi Police Station the appellant made an inquiry with another Police Officer asking as to whom the investigation is assigned. He could not tell the name as to which of the lady officer with whom he made an inquiry about the accused. He could not tell as to why the date 04.11.1992 is mentioned in his complaint. It is stated that on the date of trap there was 'Bazar day' and most of the police force is on the bandobast duty.

7. Anil Kulkarni PW-2, a shadow pancha, corroborated the version of the Complainant. About the actual incident he stated that on reaching Police Station an inquiry was made about the accused. After meeting the accused, in his presence, the accused asked the Complainant whether he has brought the amount of bribe. The Complainant stated that he has brought the bribe amount. The accused told them to wait outside for some time. After some time accused returned and they three proceeded towards a tea stall and had a tea. Thereafter they went to a Stationary shop. There the accused asked Complainant as to how much amount he has brought and asked him to pay. The Complainant hold the bribe amount in his both hands and handed over to the accused. The accused accepted and counted the currency notes by his both hands and kept the amount it in his right side back pocket of pant. Thereon, a signal was given by the Complainant and on getting signal the raiding party members came and caught the accused and took him to the Police Station, Pathardi. Thereafter, the fingers of both hands of the Complainant and hands of the accused were checked under the ultra violate lamp, whereupon blue shining of anthracene powder

was seen to their hands. Back side pant pocket of the accused was also checked under the ultra violet lamp and blue shining was seen to pocket also. The pancha witness identified the currency notes and stated about the pre and post panchanama etc. and proved the same.

8. In the cross-examination a suggestion was put to him (PW-2) that he and another panch were acquainted with the investigating officer, therefore, they were asked to attend the ACB Office and were chosen for trap. He denied that the complaint Exh. 25 was reduced into writing in his presence and in the presence of Yuvraj Devde. He volunteers that he does not know Yuvraj Devde. It is stated that the accused was holding one rexine bag till the end whole episode. He could not tell as to why they proceeded towards the tea stall.

9. Shri Nimkar, PW-3 is the Investigating Officer, who deposed that on receiving complaint, he called the panch witnesses and decided to lay trap and thereafter stated about the procedure of investigation. He also stated that on examining the

hands of the accused they seen blue shining of anthracene powder to the tips of his right hand, fingers and left hand. The back side pocket of pant was also shined under the ultra violate lamp.

10. In cross-examination he stated that he selected two persons from the Zilla Parishad Office to act as panch witnesses, as their office is near to the Zilla Parishad and due to that both panch witnesses were known to him. He also accepts that the accused was having a rexine bag in his hand when he came out of police station and while going to the tea stall. He admitted that the said bag is examined under the ultra violate lamp, however, no blue shining was found on the said rexine bag when checked under the ultra violate lamp.

11. The last witness is Shri Sonwane, PW-4, the then Superintendent of Police of Ahmednagar, the sanctioning authority, who proved the sanction. He granted sanction to prosecute the accused, who stated that on receiving complaint he went through the pre and post trap panchanamas and the statements of the witnesses alongwith relevant documents. After

going through the papers he came to a conclusion that a case is made out for granting sanction and upon such satisfaction he accorded sanction. He denied suggestion that he had received instructions from the ACB office to grant sanction. First he draw notes of the documents produced before him and after studying the same he dictated the sanction order. He did not give an opportunity to the accused before according sanction.

12. On the basis of evidence laid before the Special Court, this Court has to appreciate the arguments of the learned Senior Advocate Mr. Dhorde and the learned APP Mr. Wattamwar for the State.

13. The main argument of the appellant/accused is that the complaint was filed at the instance of one Yuvraj Devde who, was arrested by the appellant/accused in another matter in a complaint dated 18.08.1989 and therefore, said Yuvraj had a grudge against the accused. This suggestion was put to PW-1 Complainant in the cross-examination, he had given evasive answer by saying that he does not know as to whether he himself

and his friend had requested the accused not to arrest Yuvraj Dehade. He further pointed out that the Investigating Officer in the present case was well connected with said Yuvraj Dehade as Yuvraj Dehade used to get cases for ACB. The acquaintance of the I.O. with said Yuvraj is accepted by the I.O. in his evidence. He also pointed out that in the evidence of PW-2, ample suggestions are put to this witness showing it is the defence of the accused. The contradictions are pointed out in the evidence of PW Nos. 1 & 2. PW 1 stated that the accused demanded amount when the Complainant, he himself and accused had been to have a tea at a tea stall and when they were returning back. Whereas, PW-2 has stated that the demand was made when all three were going to tea stall from the office of accused. By showing this contradiction it is submitted that there is variance in between the evidence of both these witnesses and the prosecution story and therefore the prosecution became doubtful. A doubt is created about the investigation and reliability of the evidence and also for the reasons that the I.O. had chosen the panch witnesses of his acquaintance in order to make trap successful. The I.O. seems to be interested in this case. Certain

omissions are also pointed out as discussed above while considering the evidence of cross-examination of the witnesses. It is vehemently argued that admittedly the accused was having a rexine bag in his hand, still. Traces of anthracene powder not found out on the said bag. It is submitted that there being anthracene power to the hands of the accused, certainly it would have also to be seen on the rexine bag, however, the said rexine bag is not seized by the police. It is thus submitted that the offence is not proved beyond reasonable doubt. Learned Senior Advocate for the appellant has relied upon following judgments :

- a) **Mukhtar Singh (since deceased) through his legal representative Vs. State of Punjab - (2017) 8 SCC 136,**
- (b) **P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another – (2015) 10 SCC 152,**
- c) **B. Jayaraj Vs. State of Andhra Pradesh – (2014) 13 SCC 55,**
- d) **G.Harinatha Rao Vs. State of Andhra Pradesh, represented by ACB – (2014) 13 SCC 44,**
- e) **A. Subair Vs. State of Kerala – 2010 ALL SCR**

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- f) **State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede – 2009 AIR SCW 5411,**
- g) **Babu Lal Bajpai Vs. State of U.P. - AIR 1994 SC 1538,**
- h) **V. Venkata Subbarao Vs. State, represented by Inspector of Police, A.P. - (2006) 13 SCC 305,**
- i) **Mr. Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra – 2018 ALL MR (Cri) 3711,**
- j) **Dagadu Paku Dhebe Since (D) thr. LR's Vs. State of Maharashtra - 2022 ALL MR (Cri) 4055,**
- k) **Suryakant Shankarrao Gaikwad Vs. The State of Maharashtra - 2016 ALL MR (Cri) 1844.**

14. In **Mukhtar Singh** (supra), the Hon'ble Supreme Court held that the evidence in that case, was inadequate to comply with the prerequisites to constitute the ingredients of the offence with which the original accused had been charged. The evidence of the Complainant about the demand of amount was not corroborated and therefore, the accused was acquitted.

15. In **P. Satyanarayana Murthy** (supra), the Hon'ble Supreme Court found that the evidence of PW-1, though accepted on the face value was short to prove the demand as a illegal gratification by the accused and in that case the accused was acquitted. In **B. Jayaraj** (supra), the Hon'ble Supreme Court held that to invoke the presumption under Section 20, it is necessary to prove foundational facts when the foundational facts itself are not proved, no presumption under Section 20 of the Act can be invoked. In **G. Harinatha Rao** (supra), the Hon'ble Court held that there was recovery of tainted amount, but the demand of amount was not proved as illegal gratification and in that view the appeal of the accused was allowed.

16. In **A. Subair** (supra), the Honble Supreme Court in the facts of this case held that the evidence of prosecution was not sufficient in its quality and credibility, therefore, it is held to be unsafe to convict the accused on the basis of such evidence and the appeal of the accused came to be allowed. In **Dnyaneshwar Wankhede** (supra), the Hon'ble Supreme Court held that the accused would not accept the amount in a public place. It is also

stated that the I.O. should give an immediate opportunity to explain to the accused. The Court is required to accept the explanation offered by the accused immediately given to the I.O. In **Babu Lal Bajpai** (supra), the Hon'ble Supreme Court held that the defence of the accused was that the Complainant tried to thrust money in the pocket of the accused. The accused resisted the same and thrown the notes on the floor and that evidence was supported by an independent witness. It was considered that there was no bill of Complainant contractor pending with accused and in that view the acquittal was recorded.

17. In **V. Venkata Subbarao** (supra), the Hon'ble Apex Court considered the point of sanction. In that case the Court came to a conclusion that there was no application of mind. Entire material was not with the sanctioning authority and as such it had no occasion to apply mind, and thus held that the sanction was invalid/vitiated.

18. In **Khushalchand Gaikwad** (supra), Bombay High Court, held that the accused had made demand to the son of the

Complainant, who was not examined by the prosecution. When the trap was made there was no one present in the police station and the amount was recovered from the drawer of the table of the accused. There was nothing to show that the said drawer was locked when the accused was out of police station. It was the defence of the accused that the money was planted by the Complainant and it was accepted by the Court and in that view the appeal of the accused was allowed acquitting him. In **Dagadu Dhebe** (supra), Bombay High Court held that on the basis of evidence in that case the Court came to a conclusion that the evidence as to the demand and acceptance of the bribe amount by the accused itself was doubtful and not established. By giving benefit of doubt to the accused he was acquitted in the appeal.

19. In **Suryakant Gaikwad** (supra), Bombay High Court held that it was the defence of the accused that the Complainant had lodged a false complaint in order to take revenge. On evidence defence the said defence was accepted as plausible defence and in that view the accused was acquitted.

20. So far as, the submissions of learned APP are concerned, it is his case that PW-1 and 2 have deposed about the demand. There evidence is corroborated except minor discrepancies in respect of recovery of amount from the pocket pant of the accused is established. The finger of the accused were also found with traces of anthracene powder under ultra violate lamp. It is not disputed that the daughter of the Complainant had lodged a complaint in the police station Pathardi and the accused was involved in the said crime. The accused had denied to give statement immediately after the raid. The sanctioning authority clearly stated that documents were provided to him. Sanction order shows that the authority had gone through documents such as statements, pre-trap and post-trap panchanams etc.

21. After taking into consideration the oral and documentary evidence and the submissions of the learned Advocates for the parties and after going through the judgments relied upon by the accused, this Court finds that the judgments are not applicable to the case at hand on the facts. In the present

case minor discrepancies are there on the point of actual place of demand of amount. Except that the evidence of PW-1 and PW-2 is corroborates each other. Though it is suggested that the trap was made on Wednesday, and that day happens to be a Bazar day and therefore, there was rush. However, this point is not taken on record as actually incident took place when there was rush. The defence is that the complaint was lodged at the behest of the Yuvraj Devre is far fetched. It is not specifically denied that no investigation was pending with the accused. So far as non examination of the rexine bag, this Court finds that it is not fatal to the prosecution case. There is no explanation as to how the tips of fingers of the hands of accused came into contact with anthracene powder. There is immediate explanation offered by the accused at the time of trap. Even in 313 statement there is an explanation as to how the tips of fingers of the hands of the accused found having anthracene powder. The amount is recovered from the back side pocket of pant of the accused. Anthracene powder is found on the tips of fingers of the hands of the accused as well on the pant pocket. These facts are clearly established by the prosecution. The benefit of doubt would arise

only in case that sufficient case is made out by accused to give said benefit. The far fetched argument would not give rise to raise doubt. To get the benefit of doubt, the defence of the accused appears to be a reasonable and plausible one. So far as the sanction order is concerned, the sanctioning authority in his evidence clearly established that after going through the documents he has granted sanction. Nothing has come in the cross-examination showing that no documents were supplied to the sanctioning authority. The evidence of sanctioning authority inspires confidence. In the cross-examination it has specifically come on record that it is the sanctioning authority who dictated the order of sanction after examining the documents. Thus, there is no any doubt on this point also. The application of mind of the sanctioning authority appeared on record.

22. Thus, considering over all discussion, this Court finds that the learned Special Judge has rightly considered all these aspects and has rightly convicted the appellant. No case is made out to call for any interference with the well reasoned judgment of the Special Court. Thus, this Court does not find any reason to

allow the appeal. For all the reasons stated above the appeal stands dismissed.

(KISHORE C. SANT)
JUDGE

23. After pronouncement of judgment, a request is made for time to surrender. The appellant to surrender within eight weeks from today.

(KISHORE C. SANT)
JUDGE

mahajansb/