



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.419 OF 2006

Siddarth s/o Laxman Gajghate,
aged about 33 years,
occupation : agriculturist,
r/o Indapur, tahsil Bhiwapur,
district Nagpur.

..... **Appellant.**

:: V E R S U S ::

State of Maharashtra,
through Anti Corruption Bureau,
Civil Lines, Nagpur.

..... **Respondent.**

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Shri A.D.Dangore, Counsel with Shri S.B.Trivedi,
Advocate for the Appellant.
Mrs.Sneha Dhote, Additional Public Prosecutor for the
Respondent/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 15/10/2024

PRONOUNCED ON : 23/10/2024

JUDGMENT

1. By this appeal, appellant (accused No.2 Siddarth) has challenged judgment and order dated 30.6.2006 passed by learned Judge, Special Court for ACB, Nagpur (learned Judge of the trial court) in Special Case No.23/1999.

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2. By the said judgment impugned, learned Judge of the trial court convicted accused No.2 Siddarth for offence punishable under Section 12 of the said Act and sentenced to undergo rigorous imprisonment for one year and to pay fine Rs.500/-, in default, to undergo further rigorous imprisonment for three months.

3. The other accused, who was accused No.1 and was convicted, also filed appeal bearing Criminal Appeal No.389/2006 against the said judgment impugned. However, during pendency of the said appeal, accused No.1 died and, therefore, his appeal stood abated.

4. Brief facts of the prosecution as emerge from police papers and recorded evidence are as under:

The deceased accused was serving as Forest Guard. Kishor Shambharkar (the complainant) was constructing his house by using wooden logs. While he was constructing his house, he received a message from the deceased accused through one Ghude that he was

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called and, therefore, the complainant approached the deceased accused. The complainant was informed that he used wooden logs for construction of the house by bringing the same from forest without permission. The deceased accused demanded Rs.1000/- from him on which the complainant paid Rs.500/- and agreed to pay balance amount Rs.500/- after 2-3 days. As the deceased accused allowed the complainant to take wooden logs from forest, the complainant took wooden poles required for resting of the roof of his house. On 20.7.1998, when the complainant had been to bus stop, the deceased accused met him and told him that a criminal case would be filed against him as he used wooden poles by bringing from the forest. The complainant informed him that he had already paid Rs.1000/- for not filing the case. On which, the deceased accused demanded Rs.1500/- from him. As the complainant was not willing to pay the said amount, he approached the office of the Anti Corruption Bureau

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at Nagpur (bureau) on 29.7.1998 and lodged a complaint.

5. After receipt of the complaint, on the next day i.e. 30.7.1998, officers of the bureau called two panchas. The complainant narrated the entire incident to panchas and panchas verified the same from the complaint and, thereafter, the complainant produced tainted amount of Rs.1000/- before officers of the bureau. The officers of the bureau shown them demonstration as to phenolphthalein powder and sodium carbonate. The said solution was applied on the tainted notes and notes were kept in shirt pocket of the complainant. Accordingly, pre-trap panchanama was drawn. After the pre-trap panchanama, the complainant and pancha No.1 proceeded towards the office of the deceased accused. The deceased accused demanded the amount and asked accused No.2 Siddarth to accept the same. Accused No.2 Siddarth accepted the same. On getting signal, other raiding party members caught the

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deceased accused and accused No.2 Siddarth. The amount was recovered from accused No.2 Siddarth. The hand wash of the deceased accused and accused No.2 Siddarth and the complainant was collected. The solution as to shirt pocket of the complainant and pant pocket of accused No.2 Siddarth was also collected. After obtaining a sanction against the deceased accused, chargesheet was submitted against him and accused No.2 Siddarth.

6. In support of the prosecution case, the prosecution examined in all seven witnesses namely Kishor Shambharkar vide Exhibit-10 (PW1), the complainant; Balakdas Bante vide Exhibit-21 (PW2), the Shadow Pancha; Rajesh Dongare vide Exhibit-29 (PW3), pancha No.2; Ravinath Roy vide Exhibit-31 (PW4), the Sanctioning Authority; Hemant Kumar Pande vide Exhibit-34 (PW5), the Constable of the bureau; Laghu Bhude vide Exhibit-38 (PW6), and Purshottam Choudhary vide Exhibit-39 (PW7), the Trap Officer.

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7. Besides the oral evidence, the prosecution placed reliance on documents mainly complaint Exhibit-11, seizure memos Exhibits-12 and 13, pre-trap panchanama Exhibit-22, seizure memo Exhibit-23, the post-trap panchanama Exhibit-26, sanction Exhibit-32, japtinama by the Forest Department Exhibit-41, report Exhibit-42, First Information Report Exhibit-43, Chemical Analyzer's Report Exhibit-44.

8. After considering the evidence, learned Judge of the trial court held and convicted accused No.2 Siddarth as the aforesaid.

9. Heard learned counsel Shri A.D.Dangore for accused No.2 Siddarth and learned Additional Public Prosecutor Mrs.Sneha Dhote for the State.

10. Learned counsel for accused No.2 Siddarth submitted that as far as accused No.2 Siddarth is concerned, he is charged under Section 12 of the said Act. He submitted that the entire prosecution case is

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rested upon the evidence of complainant PW1 Kishor Shambharkar and Shadow Pancha PW2 Balakdas Bante. As far as the complainant is concerned, he specifically admitted that the amount was given to accused No.2 Siddarth because the trap was failed. He further admitted that accused No.2 Siddarth was not aware that the amount given to him was bribe amount. He further submitted that even the evidence of the Shadow Pancha shows that he did not support the prosecution case as far as involvement of the accused is concerned. He denied that accused No.2 Siddarth demanded the amount and, thereafter, the complainant took out the amount and delivered the same to accused No.2 Siddarth. During cross examination by learned APP also, nothing transpired to show that accused No.2 Siddarth was knowing that it was bribe amount and he accepted the same knowingly that it was bribe amount. Thus, as far as ingredients of offence to prove the charge under Section 12 of the said Act is not established. There is no evidence to show that accused

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No.2 Siddarth abetted the deceased accused to demand the amount and accepted the same. Learned Judge of the trial court has not considered these aspects and convicted accused No.2 Siddarth.

11. *Per contra*, learned Additional Public Prosecutor for the State submitted that though complainant PW1 Kishor Shambharkar and Shadow Pancha PW2 Balakdas Bante have not supported the prosecution case, the evidence of Pancha No.2 PW3 Rajesh Dongare shows that the amount was recovered from accused No.2 Siddarth. The Chemical Analyzer's Report substantiates the allegation that the hand wash and pant pocket wash of accused No.2 Siddarth contains contents of phenolphthalein powder and sodium carbonate.

12. Thus, the evidence in the nature of circumstantial evidence establishes involvement of accused No.2 Siddarth.

13. After hearing both sides and perusing the evidence on record and what has been called by learned

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Judge of the trial court in the judgment impugned, I am of a view that so far as the prosecution case against accused No.2 Siddarth is concerned, it stands on very shaky grounds and, therefore, there is a scope of making interference with findings recorded by learned Judge of the trial court as against accused No.2 Siddarth.

14. As far as the evidence of complainant PW1 Kishor Shambharkar is concerned, it shows that the entire allegations are made by him as to the demand against the deceased accused who was serving as a Forest Guard. As per allegations, the complainant brought wooden logs from the forest for construction purpose. The deceased accused accepted amount Rs.1000/- from him for not taking the action. Subsequently, again he demanded Rs.1500/- for not filing a criminal case and, therefore, the complainant approached the office of the bureau and lodged the report. As per the evidence of the complainant, on day of the trap, he along with

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pancha No.1 approached the deceased accused. During communication, the deceased accused demanded the amount and at the relevant time accused No.2 Siddarth came there and the deceased accused asked him to pay the amount to accused No.2 Siddarth. On the say of the deceased accused, accused No.2 Siddarth accepted the amount and kept in his pant pocket. During cross examination, the complainant specifically admitted that accused No.2 Siddarth was not aware that the amount given to him was bribe amount. He further admitted that the amount was given to accused No.2 Siddarth before the trap was failed. One vital omission, that the complainant did not state before the police that accused No.2 Siddarth was asked to give Rs.1000/- to him as directed by the Forest Guard. As the complainant admitted that he has not stated before the police, the omission is proved. The another omission that he stated before the police as to the talk between the deceased accused and accused No.2 Siddarth to accept

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Rs.1000/- is not stated before the officer of the bureau while giving the statement.

Thus, the evidence as to involvement of the accused as to the demand and acceptance is an improvement by complainant PW1 Kishor Shambharkar.

Another witness is Shadow Pancha, who has not supported the prosecution case as far as involvement of accused No.2 Siddarth is concerned. During the cross examination, the said Shadow Pancha denied suggestion that accused No.2 Siddarth demanded the amount from the complainant and the complainant had taken out the amount from his shirt pocket and delivered it to accused No.2 Siddarth .

Thus, as far as the demand by accused No.2 Siddarth on the say of the deceased accused is concerned, the same is neither supported by the complainant nor by the Shadow Pancha.

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The evidence of the Shadow Pancha is concerned, it is only to the extent that the amount was recovered from accused No.2 Siddarth. During the cross examination, he admitted that he does not remember whether he stated before the police that the enquiry was made by the officer of the bureau as to bribe amount was kept and the complainant informed that the bribe amount was kept in the pant pocket of accused No.2 Siddarth.

15. The evidence of Trap Officer PW7 Purshottam Choudhary, as to involvement of accused No.2 Siddarth, is only to the extent that after the trap, he made enquiry with pancha and the complainant and he was informed that the amount is with accused No.2 Siddarth. The cross examination of the Trap Officer shows that the demand was not by accused No.2 Siddarth. Complainant PW1 Kishor Shambharkar has not stated in his statement that accused No.2 Siddarth called him back side of the forest office. He has not

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enquired with the complainant as to in whose possession the bribe amount was and, therefore, the statement of the complainant nowhere shows that the bribe amount was kept by accused No.2 Siddarth under his lungi.

16. Thus, from the evidence of aforesaid witnesses and circumstance in the nature of post-trap panchanama Exhibit-26, it can be seen that as far as accused No.2 Siddarth is concerned, there was no demand by accused No.2 Siddarth. He accepted the amount on the say of the deceased accused and he was not knowing that the amount accepted by him was bribe amount. Even the evidence of investigating officer shows that the complainant never complained that the demand was made by accused No.2 Siddarth.

17. Thus, from the evidence, it reveals that accused No.2 Siddarth was neither aware that the amount accepted was gratification amount. Accused No.2

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Siddarth is charged under Section 12 of the said Act, which deals with punishment for abetment of offences.

18. Section 12 of the said Act, reads thus:

12. Punishment for abetment of offences. -

Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.

19. Section 12 of the said Act seeks to punish abetment of offences punishable under Sections 7 and 11 of the said Act. What amounts to abetment of offence has not been defined in the said Act and, therefore, one has to take recourse to provisions of Section 107 of the Indian Penal Code (under Section 45 of BNS Act). Under the said Section, abetment of a thing can be done in 3 different ways : firstly, by instigation; secondly, by engaging oneself in a criminal

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conspiracy; and thirdly, by intentionally aiding a person in doing an act which is an offence.

20. In the instant case, the first two ways are not concerned through which abetment is possible. It is not the prosecution case that accused No.2 Siddarth instigated or compelled the deceased accused to demand the amount or take the amount as a bribe nor there is a case of conspiracy and, therefore, it is the case of aiding as accused No.2 Siddarth accepted the amount. So, this case would fall under 3rd category of Section 107 of the Indian Penal Code.

21. On going through the evidence, it reveals that accused No.2 Siddarth was not aware while accepting the amount that it was a bribe amount. There was no knowledge to accused No.2 Siddarth that the amount accepted for the deceased accused was a bribe amount.

22. When a person is charged with an offence of abetting commission of offence, the burden is upon the

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prosecution to prove the same intention of the abettor as the main accused was having.

23. The evidence is absolutely lacking in this case. What is apparent is that a person who is accused of abetment of commission of offence may accept something for and on behalf of the main accused in good faith without having an apprehension that the amount accepting is really a bribe amount. Therefore, it is necessary for the prosecution to establish that the abettor has shared the same intention as the main accused, which is absent here.

24. Learned Judge of the trial court, as can be seen from the judgment impugned in the appeal, has not considered the aforesaid material aspects while convicting accused No.2 Siddarth and the punishment imposed under Section 12 of the said Act cannot be sustained in law.

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25. In the circumstances, the criminal appeal deserves to be **allowed**, as per order below:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The judgment and order dated 30.6.2006 passed by learned Judge, Special Court for ACB, Nagpur in Special Case No.23/1999 is hereby quashed and set aside.

(3) Accused No.2 Siddarth is acquitted for which he was convicted and sentenced.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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