M.Balaram Vs. State of A.P. Rep. by Pubic Prosecutor,

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SooperKanoon Citation : sooperkanoon.com/1030167

Court : Andhra Pradesh

Decided On : Jul-25-2012

Judge : R.Kantha Rao

Appellant : M.Balaram

Respondent : State of A.P. Rep. by Pubic Prosecutor,

Advocate for Def. : Smt. D.Sangeetha Reddy Counsel

Advocate for Pet/Ap. : Smt. D.Sangeetha Reddy

Judgement :

THE HON'BLE SRI JUSTICE R.KANTHA RAO CRIMINAL APPEAL No.1090 o

25. 07.2012 M.Balaram State of A.P.

rep.

By Pubic Prosecutor, High Court, Hyderabad ACB Cases GIST HEAD NOTE: Counsel for Appellants: Mr.

Poorna Chandra Reddy representing Smt D.Sangeetha Reddy Counsel for Respondent: Special Public Prosecutor for ACB ?CASES REFERRED:

1. 2010 (4) SCC 45.2 AIR 200.SC 2011(1

1966. (3) SCR 73.

JUDGMENT

: This Criminal Appeal arises out of the judgment in C.C.No.10 of 1995 dated 30.06.2005 passed by the Principal Special Judge for SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad.

The first appellant-A.1 is the father of the second appellant-A.2.

The first appellant was a Senior Checking Inspector in the Civil Supplies Department at the relevant time.

PW.1 was a fair price shop dealer.

The indictment was that A.1 demanded PW.1 an amount of Rs.300/- for doing official favour, received the same and was caught by the DSP, ACB and his team when a trap was laid against him.

A case under Sections 7, 11, 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 (for short 'the Act') against A.1 and under Section 12 of the Act against A.2 was filed.

On being tried for the aforesaid offences, A.1 was convicted for the offences under Sections 7 and 13(1)(d) of the Act.

He was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, and further sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, respectively for the said offences.

Whereas A.2 was convicted for an offence under Section 12 of the Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/-.

The substantive sentences were directed to run concurrently.

Challenging the said order of conviction and sentence, the appellants-A.1 and A.2 preferred the present Criminal Appeal.

Brief facts essential for considering the present appeal are as follows: PW.1, Mr.

T.R.Venkat, was a fair price shop dealer of shop No.908 situated at Padmaraonagar, Secunderabad and Mr.L.Veeroji (LW.2) was a dealer in kerosene shop No.9010 located at Venkatapuram Colony Padmaraonagar, Secunderabad.

According to the prosecution, A.1 while working as a Senior Checking Inspector in the Civil Supplies Department, Hyderabad, who had jurisdiction over the fair price shop of PW.1, demanded an amount of Rs.300/- from him on the morning of 29.11.1993 at the fair price shop bearing No.908 situated at Padmaraonagar, Secunderabad as a gratification other than legal remuneration for showing official favour which was said to be for allowing the fair price shop to run smoothly and for not writing any adverse reports against PW.1.

It is stated that PW.1, who was not willing to pay the bribe amount to A.1, approached PW.5, the then DSP, A.C.B., City range, Hyderabad, submitted a written complaint against A.1.

After making discrete enquiries against A.1 and after obtaining permission from the DG, A.C.B., PW.5 registered a case in Rc.No.17/ACB-CR/93 under Sections 7, 11, 13(2) read with 13(1(d) and 12 of the Act and took up investigation.

Along with PW.2 and other mediators, he laid a trap on 01.12.1993 at 7.00 A.M.

with his team during the course of which it was said to have been revealed that, on the instructions of A.1, A.2 received an amount of Rs.300/- from PW.1 in the presence of PW.2, the mediator.

Thereafter, on receiving the prearranged signal from PW.2, the trap party rushed to the venue of the trap and when questioned by PW.5, A.1 allegedly stated that PW.1 forcibly thrusted the amount into the shirt pocket of A.2.

A.2 handed over the amount of Rs.400/- to PW.5 and the phenolphthalein-Sodium Corbonate reaction test was found to be positive in respect of an amount of

Rs.300/-.

After completing the formalities regarding the trap proceedings, PW.5 handed over the investigation to PW.6, the then Inspector of Police, City Range, Hyderabad who conducted the remaining part of investigation and filed the charge sheet against A.1 and A.2.

In the course of trial before the Special Judge for ACB Cases, the prosecution, in order to establish the guilt of the appellants, examined PWs.1 to 6, marked Exs.P.1 to P.13 and MOs.1 to 11.

On behalf of the defence, no witnesses were examined and Exs.D.1 to D.6 were marked.

PW.1, Mr.T.R.Venkat, is the complainant.

PW.2, Mr.M.Dayakar, is the mediator picked up by the DSP, A.C.B.

PW.3, Mr.

Mohd Omer, is the Assistant Secretary in Food and Civil Supplies Department, who was examined to speak about the sanction accorded by the authority concerned to prosecute A.1.

PW.4, Mr.Roop Reddy, is the Assistant Supply Officer in the Civil Supplies Department.

PW.5, Mr.Rajagopal Chetty is the then DSP A.C.B, City Range, Hyderabad who conducted trap proceedings.

PW.6, Mr.M.Diwakar, is the Inspector of Police, A.C.B City Range, Hyderabad who took over investigation from PW.5, completed investigation and filed charge sheet.

The learned Trial Court, on consideration of the entire evidence on record, convicted the appellants and, thereafter, sentenced them (A.1 and A.2) to punishment as mentioned above.

The question for consideration in the present appeal is whether the order of conviction and sentence passed by the learned Trial Court can be sustained or whether the accused are entitled for benefit of doubt.

Sri Poorna Chandra Reddy representing Smt D.Sangeetha Reddy, learned Counsel for the appellants, contended that, in the instant case, absolutely there is no evidence showing that A.1 demanded legal gratification from PW.1 and, on his instructions, A.2 received bribe amount from PW.1 but the Trial Court erroneously recorded conviction against appellants without there being any legal evidence.

Learned Counsel submits that the conviction and sentence are liable to be set aside.

On behalf of the State, learned Special Public Prosecutor for ACB would contend that the factum of receiving bribe amount was proved by the prosecution and the appellants having failed to discharge the burden that they received the amount for some other purpose, the conviction and sentence passed by the Trial Court are proper which need no interference in the present appeal.

Heard the submissions made by both the learned counsel and perused the judgment passed by the Trial Court, depositions of the witnesses and all the material papers available on record.

PW.1, the dealer of the fair price shop, who gave the written complaint against A.1 and A.2 deposed before the Trial Court that on the day of laying trap against A.1, he (PW.1) on the instructions of PW.5, DSP A.C.B., went to his shop along with PW.2, the mediator, that after sometime, appellant Nos.1 and 2 came on scooter to the shop, that A.1 made a noting in the register and took him to the kerosene shop of Mr.

L.Veeroji (LW.2) and then A.2 stayed back at his shop.

He further stated that A.2 noted in the stock statement register and told LW.2 to give an amount of Rs.100/- and LW.2 gave an amount of Rs.100/- and PW.1, on the instructions of A.1, received the said amount and thereafter he (PW.1) and A.1 came to his fair price shop.

Subsequently, he (PW.1) says that A.1 asked him to give an amount of Rs.300 and also Rs.100/- which was taken by him from LW.2 and, at the instance of A.1, he gave the amount to A.2.

Later on, according to PW.1, PW.2 went out and gave prearranged signal to the trap party and PW.5 held post trap proceedings complying with the requisite formalities during the course of which phenolphthalein test proved positive in respect of currency notes of Rs.300/-.

PW.2, the mediator, supported the prosecution version and his version is that after PW.1 and A.1 came back to the shop of PW.1, PW.1 offered Rs.400/- to A.1 and, on the instructions of A.1, PW.1 gave the amount to A.2 who received the amount and kept the amount in his shirt pocket.

It is relevant to note that PW.2 did not state in his deposition that A.1 demanded any amount from PW.1 in his fair price shop either initially when he came there or subsequently when he returned from the shop of LW.2.

The defence version is that on the date when the trap was laid, an amount of Rs.329/- was due from PW.1 to the Government and the said amount was said to be the differential cost of sugar.

According to the defence, A.1 had been insisting upon payment of the said amount and also the margin money of Rs.5,000/- which was due from PW.1 to S.C.

Corporation in connection with the loan of Rs.25,000/- which PW.1 obtained from the bank of Maharashtra.

In this context, the evidence of PW.1 in the cross-examination assumes importance.

He stated in the cross-examination that he received a notice from Assistant Supply Officer, Circle-I, Secunderbad to repay the margin money to the S.C.

Corporation which sanctioned the loan and that A.1 was also demanding the margin money as well as an amount of Rs.329/- which was the differential cost of sugar as part of his duties.

He also stated in the cross-examination that one Subash was the predecessor of A.1 but Subash never demanded the amount and only after A.1 assuming the charge, he started insisting upon him for clearing of the said dues.

PW.2 also admitted in the cross-examination that before PW.1 and A.1 went to the shop of LW.2, there was no demand and acceptance of amount by A.1 at PW.1's shop.

He also stated that he did not know what happened in the shop of LW.2.

PW.4, the Assistant Supply Officer in Civil Supplies Department, stated in his evidence before the trial Court that the fair price shop of PW.1 was under the jurisdiction of A.1, that he issued memo to the concerned inspectors including A.1 to collect the differential cost of sugar within a week and remit the amount in the shape of demand drafts.

He specifically stated in his evidence that the fair price shop No.908 in Padmaraonagar belonging to PW.1 also fell due in respect of the differential cost of sugar.

This witness further stated in the cross-examination that he issued instructions to endorse good service certificate to the Inspectors who collected the dues.

He admitted that Ex.D.4 was the memo issued by him to all the Inspectors to collect the differential cost of sugar within seven days along with the statement of differential cost to be collected from 32 fair price shop dealers.

As per the said memo and endorsement, he says that shop No.908 of PW.1 was due an amount of Rs.329/-.

There was also an endorsement on the memo that A.1 received it on 25.11.1993.

The said endorsement was marked as Ex.D.5.

Ex.D.6 is the demand draft for Rs.329/- issued in favour of the Senior Regional Manager, Food Corporation of India, Hyderabad on 14.03.1994.

Ex.D.6 shows that after the trap proceedings, PW.1 paid the amount to the department.

In support of his contention, the appellants counsel relied on a decision in Banarsi Dass vs State of Haryana1 wherein the Supreme Court held as under: "It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference.

The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused.

The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence.

To constitute an offence under Section 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused.

Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties is sine qua non to the conviction of the accused." Learned Counsel also relied on C.M.Girish Babu vs Cbi, Cochin, High Court of Kerala2, wherein the Supreme Court held as follows: "It is well settled that the presumption to be drawn under Section 20 is not an inviolable one.

The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.

If the accused fails to disprove the presumption the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification.

It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case.

It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt.

As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond a reasonable doubt.

(See Jhangan Vs.

State3).

(Emphasis supplied) Now turning to the facts of the present case, absolutely there was no official favour which was pending with A.1 to exercise the same in favour of PW.1.

PW.1 though mentioned, in his written complaint, that A.1 was asking bribe for the purpose of not sending any adverse reports against his fair price shop, it has not been specifically spoken to by PW.1 in his evidence and only there was a vague allegation that, as a routine, A.1 was asking bribe.

Admittedly, the differential amount of Rs.329/- was due to be paid to the department by PW.1 and the evidence on record clearly indicates that A.1 was insisting upon PW.1 to pay the amount.

The defence version seems to be that as A.1 was persuading upon PW.1 to pay the differential amount of sugar and margin amount in connection with the loan sanctioned by the S.C.

Corporation to PW.1, PW.1 became infuriated and got the appellants involved in a false charge of trap by approaching A.C.B.

Even, on the date of trap, no action was proposed against PW.1, the fair price shop dealer.

Even if he pays the amount of Rs.400/- to A.1 as bribe, he will not be relieved of paying the said amount to the department which was due from him (PW.1) to be paid towards the differential amount relating to the price of sugar.

Therefore, in my view, there was no occasion for A.1 to demand any bribe and for PW.1 to pay the same.

The defence taken by the appellants is that the amount was forcibly thrusted into the pocket of A.2 by PW.1 after arranging the trap.

In view of the fact that the phenolphthalein test yielding positive result, even if it is considered that the prosecution proved that on the instructions of A.1, A.2 received the amount, A.1 could be able to rebut the prosecution against him by bringing on record the uncontroverted circumstances relating to the differential amount due from PW.1 to the department and also the margin amount of Rs.5,000/-which was due from PW.1 to be paid to the S.C.Corporation.

From the evidence forthcoming in this case which has been discussed hereinbefore, it has to be necessarily presumed that since A.1 was insisting upon PW.1 to pay the differential amount of sugar and as he was entitled to collect the same from PW.1 directly, the inevitable conclusion which emerges is that A.2 received the said amount on the instructions of A.1 considering it to be the differential amount of sugar which was to be ultimately paid to the Department.

The Trial Court lost sight of the circumstances in favour of the appellants, had it considered the said circumstances, it would have recorded a finding that the appellants could successfully rebut the presumption under Section 20 of the Act against them.

In view of the law laid down by the Apex Court in the judgments which were relied upon by the learned Counsel appearing for the appellants, the appellants are entitled for benefit of doubt and the conviction and sentence passed against them by the Trial Court have to be set aside.

Accordingly they are set aside and the appellants are acquitted.

The Criminal Appeal is allowed.

R.KANTHA RAO,J Date:25.07.2012