

D. Sudershan Vs. the State Represented by the Dy. Superin

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Court : Andhra Pradesh

Decided On : Dec-31-2012

Judge : Hon'Ble Sri Justice R. Kantha Rao

Appellant : D. Sudershan

Respondent : The State Represented by the Dy. Superin

Advocate for Def. : Sri. B. Venkata Ratnam Counsel

Judgement :

HON'BLE SRI JUSTICE R.

KANTHA RAO CRIMINAL APPEAL No.

1729 o

31. 12-2012 D.

Sudershan The State Represented by the Dy.

Superintendent of Police, Anti-Corruption Bureau, Warangal Range.

Warangal.

Counsel for the appellant: Sri B.

Venkata Ratnam Counsel for the respondents: Sri R.

Ramchandra Reddy Spl.Standing Counsel for ACB : : ?CITATIONS :

JUDGMENT

: This Criminal Appeal is filed against the judgment dated 29-10-2005 passed by the Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad in CC.No.

14 of 2001 whereby and whereunder the appellant-sole accused was convicted for the offence under section 7 and 13 (1) (d) of the Prevention of Corruption Act, 1988 and was sentenced to undergo Rigorous Imprisonment for one year for the offence under section 7 of the Act and also to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for three months and also sentenced to undergo Rigorous Imprisonment for two years for the offence under section 13 (1) (d) of the Act punishable under section 13 (2) of the Act and also to pay a fine of Rs.2,000/- and in default to undergo simple imprisonment for six months.

2.

Heard Sri B.Venkat Ratnam, the learned counsel appearing for the appellant and Sri R.

Ramchandra Reddy, the learned Special Public Prosecutor and Standing Counsel for ACB and CBI Cases.

3.

The prosecution case is that PW-1 the defacto complainant Sri Gorkati Ravi in this case is resident of Venkatapur village of Duggondi Mandal, Warangal district.

He belongs to scheduled caste.

He is a labourer.

On 07-03-1999 some houses in their village were gutted in fire accident.

The District Collector, Warangal had sanctioned an amount of Rs.16,500=00 to each individual whose house was burnt in the fire accident.

PW-1 was one such person, who was granted the amount by the District Collector for the purpose of reconstructing the house.

The appellant was working as Assistant Engineer in AP State Housing Corporation, Narasampet, Warangal district.

Cement bags were to be supplied to the complainant and other persons whose houses were burnt in the fire accident basing on the vouchers issued by the appellant for the construction of their respective houses.

The prosecution version is that the appellant issued vouchers for some cement bags and for issuing the remaining vouchers he demanded an amount of Rs.1,000/- from PW-1.

PW-1, who was not willing to pay the bribe amount to the appellant, approached PW-6 Deputy Superintendent of Police, ACB, Warangal Range and gave a complaint against the appellant on 26-03-1999 at 10:00 a.m.

A case in Crime No.4/ACB-WRL/99 came to be registered on 28-3-1999 against the appellant under section 7 and 13 (2) read with section 13 (2) (d) of the Prevention of Corruption Act, 1988.

In the course of investigation, a trap was laid on 28-03-1999 in the course of which as directed by the Deputy Superintendent of Police, PW-1 approached the appellant and offered an amount of Rs.800/- as bribe.

He received the same and the trap laying party rushed in on receiving the pre-arranged signal.

The chemical test conducted on the fingers of the appellant yielded positive result and the tainted amount of Rs.800/- was recovered from the possession of the appellant.

4.

In the course of trial before the learned court below, the prosecution examined PWs 1 to 6 and marked Exs.P-1 to P-13.

The appellant did not depose or examine any witnesses and marked Ex.D-1 tour diary on his behalf.

5.

PW-1 is the defacto complainant and PW-2 is his sister.

They were the crucial witnesses in this case.

They resiled from their earlier version and supported the theory put forth by the appellant, which was to the effect that he borrowed an amount of Rs.1,000/- from PW-2 the sister of PW-1 earlier to the trap and on the date of trap he received an amount of Rs.800/- from PW-1 as PW-1 represented to him that was repayment of loan by his sister through him.

Since the appellant accepted the receipt of amount from PW-1 and there was no accompanying witness while PW-1 allegedly offered the amount to the appellant as bribe, the evidence of the mediator becomes in consequential except in so far as it relates to the recovery of the tainted amount from the possession of the appellant.

The learned trial court however despite the fact of PWs 1 and 2 not supporting the prosecution version., taking into account the admitted factum of recovery of Rs.800/- from the possession of PW-1 coupled with the other circumstances, considered the receipt of amount as voluntarily acceptance of bribe by the appellant drew a presumption under section 20 of the Act convicted the appellant for the graft charge and sentenced him to punishment as mentioned hereinabove.

6.

The point therefore which arise for consideration in the present appeal is whether the order of conviction and sentence passed by the learned trial court can be sustained 7.

PWs 1 and 2 are labourers.

PW-2 specifically stated in her evidence before the trial court that she is a coolie and earns an amount of Rs.20/- per day.

She also stated that her husband is a coolie.

PW-1 is also admittedly a labourer.

PWs 1 and 2 supported the loan theory put forth by the appellant and PW-1 stated in his deposition before the trial court that on the advice given by somebody to the effect that if a complaint is given to the Anti-Corruption Bureau, the appellant would issue the vouchers for the remaining cement bags, he gave a report to the Anti-Corruption Bureau and in fact the appellant did not demand any bribe from him for issuing the vouchers relating to the cement bags.

He also stated that his sister PW2 borrowed an amount of Rs.1000/- from the appellant as hand loan earlier and on the date of trap he gave an amount of Rs.800/- to the appellant stating it to be the repayment of hand loan, which his sister borrowed and the appellant received the same.

PW-2 also stated in her evidence that she borrowed an amount of Rs.1000/- from the appellant and after some time she repaid the said loan through her brother PW-1.

8.

Under section 20 (1) of the Act when the recovery of tainted amount from the possession of the accused is proved by the evidence on record and if it is found to be voluntarily accepted it becomes obligatory on the part of the court to draw a legal presumption against the accused to the effect that the accused has accepted the bribe amount as motive or reward as mentioned in Section 7 of the Act and then the burden shifts on the accused to rebut the presumption.

The burden required for discharging the presumption may not be of the standard of proof beyond all reasonable doubt but of the standard of preponderance of probability.

The defence raised by the accused therefore should appear to be probable.

The mere explanation given by the accused is not enough but the explanation must be supported by the circumstances which probablise the defence theory put forth by the accused.

9.

In the instant case, as already said, PW-2 the sister of PW-1 was a coolie, earning Rs.20/- per day.

The appellant was Assistant Engineer in the A.P.

State Housing Corporation, Narsampet, Warangal district.

His advancing hand loan of Rs.1000/- to PW-1 is most unlikely.

Further in his evidence, PW-1 admitted that he had no disputes with the appellant.

Therefore, it cannot be said that PW-1 falsely involved the appellant in a case of graft on account of his motive or ill-will.

His version before the court was that on the advise of some body to the effect that if the complaint is given against the appellant to the Anti- Corruption Bureau he would get the voucher for the remaining cement bags is not at all convincing.

It would appear that after the trap, PWs.1 and 2 were won over by the appellant and thus they gave a total different version to which they gave before Investigating Officer, while their statements were recorded under section 161 Cr.P.C.

and before the Magistrate when their statements were recorded under section 164 Cr.P.C.

Admittedly official favour was pending on the date of trap with the appellant.

There was no enmity between PW-1 and the appellant.

PW-1 admits that he gave the complaint against the appellant to the Anti-Corruption Bureau.

The evidence of PW-4 the mediator and PW-6 the Investigating Officer discloses that when the appellant was asked by the Investigating Officer to produce the amount received from PW-1 he went inside bed room, got a cartoon box, took out bundle of notes from telephone address book of 50th Annual report 1997-98 of the Great Eastern Shipping Company Limited and handed over the amount to the mediator.

If really the amount received by the appellant was towards repayment of loan, there was absolutely no need for him to secret the amount.

The defence therefore taken by the appellant that he received the amount as repayment of loan made by PW-2 through PW-1 does not stand to reason and the said defence theory does not inspire confidence of the court.

Therefore, in the instant case, the learned trial court rightly drew presumption against the appellant-accused as aforesaid under section 20 (1) of the Act and the appellant-accused failed to displace the said presumption by showing the circumstances, which probablise his version.

The conviction and sentence passed by the learned trial court against the appellant therefore do not call for any interference in the present appeal.

The appeal is therefore dismissed.

_____ JUSTICE R.

KANTHA RAO.

31/12/2012

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