

Dr.Narayan Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-03-2013

Appellant : Dr.Narayan Singh

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR Criminal Appeal No.1489/2000 Appellant : Dr. Narain Singh aged about 35 years, s/o Shri Budh Singh, r/o Rao Colony, Shahdol, P.S. Shahdol, the Sohagpur District-Shahdol (M.P.) Vs. Respondent : The State of Madhya Pradesh Present: Hon. Shri Justice Ajit Singh & Hon. Shri Justice B.D.Rathi For appellant : Shri Mrigendra Singh, Advocate For the respondent : Shri Aditya Adhikari, Standing Counsel with Shri Satish Chaturvedi, Advocate

JUDGMENT

(.10.2013) The following judgment of the Court was delivered by: B.D.Rathi,J This appeal has been preferred under Section 374(2) of the Code of Criminal Procedure (for short the Code.) against the judgment dated 19.5.2000 passed by Special Judge (under the Prevention of Corruption Act, 1988(for short, the act.)) at Shahdol in Special Case No.3/97, whereby the appellant has been convicted under Sections 13(1)(d) read with 13 (2) of the Act and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.5,000/- and in default to suffer R.I. for one year.

2. It is admitted that during the relevant period i.e. 10th to 12th May, 1997, the appellant was working as Branch Manager in Adivasi Vitta Vikas Nigam, Shahdol (for brevity, 'the Nigam') and, accordingly, was a Public Servant. 2 Cr.A. No.1489/2000

3. Prosecution case, may be, summed up as under:- (a) Complainant Rampal Singh applied for loan at Branch Shahdol of the Nigam for purchasing Mini Bus and deposited margin money of Rs.36,000/-. Later, he decided to purchase a Tractor, margin money of which was Rs.20,000/-, and accordingly, Rs.16,000/- got deposited in excess. (b)After obtaining the order to purchase Tractor- Trolley, on 3.5.1997, he along with his brother Ajmer and a driver went to Bhopal and obtained Tractor Trolley and its accessories from the Agency. On 9.5.1997, he went to the office of appellant at Shahdol and asked for registration papers of the vehicle, upon which, appellant demanded a sum of Rs.15,000/-. (c) Not intending to pay illegal gratification of Rs.15,000/- to the appellant, on 10.5.1997, the appellant went to Superintendent of Police, Lokayukt and moved a complaint (Ex.P-25). Thereafter, Superintendent of Police provided him with a tape recorder and a cassette for recording his conversation with the appellant and also asked him to arrange for Rs.15,000/- as per the demand. (d)On the same day, the complainant returned to Shahdol and after meeting the appellant, recorded the conversation wherein the appellant reiterated the demand. Then along with constable Babadeen, he went to his village and arranged Rs.15,000/- from Ajmer. (e) Next day i.e. on 11/5/1997, he along with Ajmer and Babadeen went to Superintendent of Police, Lokayukt, Rewa, who in presence of his sub-ordinate staff, played the tape and got corresponding script (Ex.P-1) prepared and on the same day, complainant gave second complaint (Ex.P-9), on which, the Superintendent directed Shri Parihar (P.W.10), Deputy Superintendent of Police to take appropriate action. (f) Thereafter, on the same night, they proceeded for Jaisingh Nagar and took night halt there. In the morning, two Gazetted Officers viz. S.K. Tiwari S.D.O. Forest, and B.L. Mishra (PW4), Project Officer, Tribal Development, were called who with the consent of complainant, heard the tape and read the complaint and transcript (Ex.P-1). Thereafter, they noted the 3 Cr.A. No.1489/2000 numbers of currency notes amounting to Rs.15,000/-, 25 of which were in the denomination of Rs.500/- whereas remaining 25 notes were in the denomination of Rs.100/- each. Then Constable Manoj(PW2)

smear the notes with phenolphthalein powder. The said notes were kept in the pocket of complainant with the direction not to touch them before giving to the appellant and to signal after handing over the same to the appellant. To explain the chemical process, solution of sodium carbonate was prepared and except Manoj all were asked to wash their hands in one part of solution which did not change its colour. The said part of the solution was kept in a sealed container and Manoj was asked to wash his hands in the remaining part of the solution, that turned pink. It was also preserved in a sealed bottle. After completion of necessary formalities the trap party proceeded to Shahdol. (g) On 12/5/1997, at Shahdol, the appellant was not found in his Office. At 5 pm when he reached his home, complainant and Ajmer went to his house and after talks as per demand handed him Rs.15,000/- and thereafter, Ajmer, on the pretext of spitting, came outside and signaled upon which members of trap party reached the spot and caught the appellant counting notes. Thereafter, solution of sodium carbonate was prepared and firstly officers and members of trap party washed their hands but colour of the solution remained unchanged. Then, B.L. Mishra took Rs.15,000/- from the appellant and tallied the numbers of the currency notes with that recorded earlier. Subsequently, the appellant and complainant were asked to wash their hands in separate part of the solution and both the parts turned pink and officers of the trap party also washed their hands in another part of the solution that also turned pink. All these parts were preserved in separate containers and signed slips were affixed thereon. Accordingly, trap panchnama (Ex.P-5) and spot map (Ex.P-6) were prepared. (h) Documents pertaining to loan of the complainant were seized from the office of appellant and after recording the statements of witnesses the sealed containers were sent to Forensic 4 Cr.A. No.1489/2000 Science Lab for examination and after investigation, the charge-sheet was filed.

4. On 2/7/1998, appellant was charged with the offences punishable under Sections 13(1)(d) and 13(2) of the Act. He denied the same and pleaded false implication.

5. Learned counsel for the appellant submitted that demand and acceptance of the illegal gratification were not proved by leading cogent and reliable evidence and the prosecution case was not supported by independent witnesses. He further

submitted that the conversation recorded in the Tape recorder, was concocted and forged. He contended that the evidence of prosecution witnesses being full of material contradictions, omissions and exaggerations, could not have been relied upon, and the impugned judgment based on the same, cannot be affirmed. According to him, on the said date the complainant had gone to the house of the appellant with application cum specimen signature card Savings Bank Account to obtain the signature of the appellant to open joint account in Allahabad Bank, required for depositing installments of loan, envisaged under the rule prescribed for borrowing the loan from the Nigam and had requested the appellant to deposit the amount and get the Bank account opened as he had to attend his annual examinations at Rewa going to be conducted on the next date i.e. on 13.5.97. The appellant was returning the money to the complainant by explaining him the mode of opening the Bank account and in the mean time was surrounded by the trap party.

6. In response, learned Standing Counsel, while inviting attention to the incriminating pieces of evidence on record, submitted that the impugned judgment was well merited.

7. Having regard to the arguments advanced by the parties, impugned judgment and record of the trial Court were perused.

8. It is necessary for the prosecution to prove that the person demanding and accepting gratification is a public servant. In the 5 Cr.A. No.1489/2000 present case, there is no dispute that during the relevant period, appellant was a public servant. The prosecution must also prove a demand for gratification and that the gratification has been given to the accused. If these three basic facts are proved, the accused may be found guilty for an offence under the provisions of law that concerns us in this case. Therefore, it would be worthwhile to examine the case under the following heads: (i) Evidence pertaining to Demand (ii) Evidence pertaining to Acceptance Evidence as to Demand 9. Upendar Singh Parihar (PW10), the then Dy. Superintendent of Police, Lokayukt, deposed that on 10/5/97, application (Ex.P/25) given by the complainant to Superintendent of Police, was handed over to him for investigation, in pursuance whereof, he had

provided the complainant with a Tape Recorder and a cassette and asked him to record the conversation of the appellant with him and Panchnama (Ex.P/30) of the same was prepared at 3.30 p.m. Complainant Rampal Singh (PW5), in paragraph 21 of his cross-examination, has deposed that on 10th only he had started from Rewa and between 3 to 4 p.m. had reached at the Office of the Nigam at Shahdol. In para 7 he has deposed that the conversation was recorded between 3 to 4 p.m. Admittedly, distance between Shahdol and Rewa is about 167 kilometers and, therefore, it was not possible to reach Shahdol from Rewa within a period of 30 minutes.

10. Upendra Singh further deposed that after explaining complainant the method to operate the Tape, he had sent the complainant with Constable Babadeen. Babadeen (PW1) has deposed that at Shahdol, complainant had made him sit at a Kirana shop and after two hours, the complainant had come and informed him that the conversation had been recorded. Therefore, it is clear that there is no independent witness to the recorded conversation, as Babadeen, companion of complainant, was not present around or near the room where the conversation was going on and, hence, 6 Cr.A. No.1489/2000 there is no evidence as to authenticity of the voices recorded in the cassette. Babadeen has further testified that thereafter, he along with the complainant, had gone to Village Kunda Tola and rested there in the night. Next day, after arranging for Rs.15,000/- they went to Rewa and handed over the cassette to the Officers at the Lokayukt Office. Thus, from his testimony, it is evident that after recording the conversation, they had not immediately proceeded to Rewa to submit the cassette at Lokaykt Office, but had taken rest in the Village and, next day, had given the same at Lokayukt Office and during the intervening period, the cassette had remained in possession of the complainant only. Therefore, possibility of tampering and concoction of cassette cannot be ruled out.

11. A bare perusal of transcript (Ex.P/1) of the conversation recorded in the said cassette would reveal that in the last the appellant had asked whether its Reel was finished and the complainant had replied that Yes it was finished. This part of the transcript, renders serious doubt to the whole recorded conversation. Moreover, complaints (Ex.P/25 & P/9) also do not indicate as to when the demand was made

by the appellant for the very first time. There is no other evidence on record to establish the origin of demand of bribe by the appellant from the complainant.

12. From the above, it is quite vivid, that the prosecution has failed to prove the factum of demand by leading cogent and reliable evidence, in as much as, complainant Rampal acted in a strange manner by asking Babadeen to sit in a Kirana shop not allowing him to witness the conversation and also in view of the other material discrepancies as noted above.

13. Now we, advert to the second head, as indicated above. Evidence as to Acceptance 14. As per the prosecution version, the trap party comprised of two Gazetted Officers viz. S.K.Tiwari and B.L.Mishra. S.K.Tiwari has not been examined by the prosecution and B.L.Mishra (PW4) deposed that he was asked by the Constable of Lokayukt Office to 7 Cr.A. No.1489/2000 reach the Circuit House and after reaching there and upon asking, he was informed that some confidential proceedings were going on and he would not be informed about the same. In para 7, he deposed that in the Jeep, the Lokayukt party had taken signatures on some documents and he did not remember as to which documents he had signed on. According to him, no notes were given by the Lokayukt Party in the rest house to anyone before him and he was also not aware about the proceedings regarding chemicals etc. He further deposed in para 9 that after the trap, he had neither taken the notes from Inspector nor tallied the same and the notes were tallied by the Inspector. He was not declared hostile by the prosecution. Therefore, there is no reason to disbelieve him.

15. Details of the notes given by the complainant before trap were noted in Ex.P/33 and the Gazetted Officers, after completion of the trap, had made a short endorsement on the back of Ex.P/33 itself that the notes seized from the appellant tallied with those mentioned in Ex.P/33. However, complete details of notes seized from the appellant have not been mentioned therein. As indicated already, B.L.Mishra (PW4) deposed in para 9 that after the trap, he had neither taken the notes from Inspector nor tallied the same and the notes were tallied by the Inspector.

16. In view of the aforesaid, it is clear that acceptance of illegal gratification has not been corroborated by any independent witness and the same cannot be believed merely on the testimonies of complainant and his brother Ajmer Singh. Evidence of Babadeen, owing to his queer conduct of ignoring the directions of DSP and sitting outside at the instance of complainant, also does not appear to be trustworthy.

17. Moreover, there is nothing on record to render the defence version, as indicated above, doubtful, which has also been fortified by Ex.D/9 and Ex.D/10, respectively application form for opening joint account and deposit slip forms dated 12/5/1997 (the date of trap) duly signed by the complainant, particularly in view of Rule 7.2 of M.P. Adivasi Vitt Evam Vikas Nigam, Adivasi Vargon Ke Liye 8 Cr.A. No.1489/2000 Swarozgar Yojnayan Ki Niyamwali, 1995 (Ex.D/14) requiring the complainant to open a joint account with Branch Manager viz. the appellant for repayment of loan amount. Further, no explanation was given by the complainant in regard to his signatures on the said documents, which were admitted by him in para 25 of his evidence.

18. To sum up, on one hand, the incriminating evidence of the complainant suffered from serious infirmities and on the other, veracity of the trap proceedings was also questionable in the light of the surrounding circumstances. In the aforesaid premises, we are of the considered view, that the trial Court has misappreciated the evidence on record and committed grave illegality in convicting the appellant.

19. Accordingly, as neither demand of bribe nor acceptance thereof has been proved by the prosecution beyond reasonable doubt, therefore, in view of the judgment rendered by Apex Court in Syed Ahmed Vs. State of Karnataka (AIR 2012 SC3359, impugned judgment of conviction cannot be sustained.

20. In the result, the appeal is allowed. The conviction and consequent sentences are hereby set aside. The appellant is acquitted of the offences. Appellant is on bail. His bail bonds stand discharged. Fine amount, if deposited, be refunded.

21. Copy of the judgment be sent to the trial Court for information and compliance.
(Ajit Singh) (B.D.Rathi) Judge Judge /10/2013 /10/2013 (and)

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