

Rajinder Prasad Sharma Vs. State

Rajinder Prasad Sharma Vs. State

SooperKanoon Citation : sooperkanoon.com/1133916

Court : Delhi

Decided On : Mar-11-2014

Judge : Indermeet Kaur

Appellant : Rajinder Prasad Sharma

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

06. 03.2014. Judgment delivered on:11.03.2014. CRL.A. 85/2006 RAJINDER PRASAD SHARMA Appellant Through Mr. K.B. Andley, Sr. Advocate with Mr.M.L.Yadav, Adv. versus STATE Through Respondent Mr.Varun Goswami, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment and order of sentence 01.02.2006 & 02.02.2006 respectively wherein the appellant Rajinder Prasad Sharma has been convicted under Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the PC Act) and has been sentenced to undergo RI for a period of 2 years and to pay a fine of Rs.20,000/- and in default of payment of fine, to undergo SI for 4 months. 2 On 27.09.1999 ACP Arjun Singh (PW-1) had made a complaint to the Anti-Corruption Branch which was to the effect that the appellant/accused Rajinder Prasad who was working as Inspector in

the State Transport Department (STD) had offered to pay a bribe to PW-1 on account of the fact that since he was illegally extorting money from drivers while checking the vehicles at Rajokri Chowk and this activity had been brought to the notice of PW-1 and in order that PW-1 would not report the matter to the higher officers of the appellant, bribe of Rs.15,000/- had been offered by the appellant to PW-1. Complaint to the said effect was filed before the Anti-Corruption Branch. This complaint has been proved as Ex.PW-5/A. It was recorded by the raid officer ACP Niranjana Singh examined as PW-5. PW-1 has admitted his signatures on this complaint but has stated that these signatures were obtained on this complaint without his knowing the contents of the complaint; his submission on oath being that some persons from the Anti-Corruption Branch had come to his house in the early morning hours of 27.09.1999 where he had signed 10-12 documents at their asking without reading their contents. 3 Pursuant to this complaint (Ex.PW-5/A), a raiding party had been constituted and on 27.09.1999 since it had been agreed that the appellant would visit the house of the complainant on that date, the panch-witness Y.P. Talwar (PW-3) had been apprised of the proceedings and he had been directed that on appropriate signal being given, the raiding party would reach the spot. The panchnama recorded at the spot has been proved as Ex.PW-3/A. As per this panchnama, the appellant (Inspector Rajinder Sharma) along with HC Mahender Singh had visited the house of PW-1; bribe money amounting to Rs.6,000/- had been given to PW-1 which was in the presence of PW-3; on the appointed signal being given i.e. Savita Campa Lao, the raiding party including PW-5 reached the spot. PW-5 challenged the accused stating that he had taken the bribe money. The tainted money i.e. the sum of Rs.6,000/- comprising of 60 notes in the denomination of Rs100/- each were seized vide seizure memo Ex.PW-1/D. 4 On the basis of the aforementioned evidence, the challan was filed; prosecution has examined 6 witnesses; in his statement under Section 313 of the Cr.PC, the appellant had denied offering any bribe money to PW-1; submission being that although he had gone to the house of PW1 on the fateful day i.e. on 27.09.1999 which was in connection with some work of PW-1 and on his asking; there was no occasion for the appellant to offer any bribe to PW-1 as they were both from different departments and the appellant had no connection with PW-1. 5 No evidence has been led in defence. 6 On behalf of the appellant, arguments had

been addressed in detail. It is submitted that PW-1 the complainant has not supported the version of prosecution and has categorically stated that sum of Rs.6,000/- which had been recovered from his house had been put on the table by HC Mahender Singh; in fact the appellant was not present at that time; he had gone to purchase sweets from the market; it is pointed out that PW-3, the panch witness is also hostile and he has also given the same version as PW-1. It is further submitted that the judgment of the Sessions Judge convicting the appellant on the sole testimony of PW-5 is clearly an illegality for the reason that PW-5 had admittedly reached the spot after the transaction was over and although undisputedly the bribe money was recovered from the house of PW-1 on the fateful day when both the appellant and HC Mahender Singh were present; the version of PW-1 and PW-3 who were the only eye witnesses to the incident is consistent and which is to the effect that it was HC Mahender Singh who had offered this bribe money and not the appellant. In such a scenario, the trial Judge relying upon the version of PW-5 has clearly committed an illegality. To support this argument, learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reported as AIR 2010 SC1589 Banarsi Dass Vs. State of Haryana; submission being that in the absence of proof of any acceptance or demand and until and unless the prosecution has proved all the essential ingredients necessary for the offence, conviction of the appellant cannot be sustained. For the same proposition, reliance has also been placed upon another judgment of this Court in Crl. Appeal No.95/2006 Rajinder Kumar Narang Vs. State. 7 Arguments have been refuted by the learned public prosecutor for the State. It is pointed that on no count, does the impugned judgment call for any interference. It is pointed out that the version of the raid officer, if credible, is by itself sufficient to nail the accused and for this proposition reliance has been placed upon 2009 VII AD (Delhi) 390 Ram Chander Vs. State (NCT of Delhi). For the same proposition reliance has also been placed upon a judgment of this Court in Crl. Appeal No.58/1999 decided on 29.09.2008 Samay Singh Vs. State of Delhi. Learned public prosecutor has also relied upon the provision of Section 114 of the Indian Evidence Act; submission being that the common course of natural events and human conduct has to be followed for which proposition reliance has been placed upon 188 (2012) dLT661Parmanand Kansotia and Seetha Lath & Anr.;

submission being that it would be difficult to imagine that an educated Inspector would sign blank documents. 8 Arguments have been heard. Record has been perused. 9 The version of the prosecution was that PW-1 had made a complaint (Ex.PW-5/A) which was to the effect that he was being offered a bribe by the appellant Rajinder Prasad who was posted as an Inspector in the State Transport Department and was checking vehicles at the Rajokri Chowk and on the fateful evening of 25.09.1999 and 26.09.1999, PW-1 who had been deputed by the seniors in the AntiCorruption Branch to keep a vigil had noted these illegal activities of the appellant which had led the appellant to offer a bribe to PW-1 pursuant to which the aforementioned complaint (Ex.PW-5/A) had been recorded. 10 The star witness of the prosecution was PW-1 who is the complainant himself. He has not toed the line of prosecution. His version is that on 24.09.1999, he was called by V.V. Chaudhary, DCP, Anti-Corruption Branch and was directed to go for surveillance in the STA in the morning of 25.09.1999 at the G.T. Karnal Road; he proceeded for his job towards Murthal; there was a long queue of traffic being checked by the STA staff at the crossing; he sent his driver to find out why there was such a long queue; he was informed that some drivers were being challaned unnecessarily. PW-1 alighted from his vehicle and went to the In-Charge who was the appellant Inspector Rajinder Prasad whom he identified from his name plate. PW-1 also recognized the appellant as he had met him on earlier occasion of 26.06.1999 at Gurgaon at the shagun ceremony of his friends son; further version of PW-1 being that the appellant has offered him a cup of tea on 25.09.1999 which was refused; PW-1 told the appellant that he must do his job honestly; on 27.09.1999 at 08:15 am, he received a telephone call from the appellant who expressed his desire to visit him. PW-1 refused the courtesy but had an apprehension that the appellant would in fact visit him and accordingly he informed his senior V.V. Chaudhary; the earlier incidents of 25.09.1999 & 26.09.1999 were also informed to him. Further version of PW-1 being that V.V. Chaudhary thereafter dictated a report addressed to the Additional C.P., Anti-Corruption Branch wherein he had got recorded that the appellant had offered a bribe of Rs.10,000/- to PW-1; PW-1 categorically denied that any such offer was made by the appellant who had only offered him a cup of tea; this report was kept to V.V. Chaudhary. Further deposition of PW-1 being that on 27.09.1999 his door bell

rang; on opening the door, he saw HC Mahender Singh of STA Branch standing there; he was informed that Inspector Rajinder Sharma wants to buy some sweets; there upon HC Mahender Singh took out a packet wrapped in a piece of newspaper and placed it on the centre table of drawing room of PW-1; PW-3 who was a member of the raiding party and who had been deputed to give the appointed signal at the appropriate time given the signal of Savita Campa Lao; PW-5 entered the scene; he saw the packet of money lying there. PW-3 opened the pack. There were 60 currency notes of Rs.100/denomination totaling to Rs.6,000/-. The door bell rang again and at that point of time, the appellant walked in. This stand further continued in his cross-examination when he was declared hostile and even in his cross-examination, his continuous stand being that the sum of Rs.6,000/had been brought in a packet of HC Mahender Singh and put it on the centre table of his room at the time when the appellant had gone to the market to purchase sweets; the packet of money had been opened by PW-3 on the asking of PW-5 containing the amount of Rs.6,000/- and it was only thereafter that the appellant entered the scene. In further part of his cross-examination, PW-1 has stated that although he had signed the document (Ex.PW-5/A) yet it was signed at the time when he had consumed liquor on 27.09.1999 and he had gone to sleep; sometime at 03:00 am SI Kanwar Singh had come to his house and had asked him to sign 8-10 papers which he had signed without reading them; at that time, he was under the influence of liquor; he stated that he should not have taken excessive drink; he reiterated that the report given by V.V. Chaudhary to the Additional C.P. contained false facts and PW-1 had in fact not read the report but he did this only at his asking and under pressure of V.V. Chaudhary. He admitted that he was forced to sign papers in which false allegations have been made; his submission was that he did not want to report the matter to his senior A.A. Farooqi as he was not on good terms with him. PW-1 further admitted that on 27.09.1999, he had received a telephone call from the appellant at his residence where he was told that he wishes to do some sewa paani and for that purpose he wanted to meet him. He admitted that apart from the incidents of 25.09.1999 & 26.09.1999, he had no contact with the appellant. 11 The panch witness Y.P. Talwar was examined as PW-3. He also did not toe the line of prosecution. His version was same as that of PW1. He had joined the raid proceedings on 27.09.1999. He admitted that HC

Mahender Singh from the STA had come to the house of PW-1 where he had taken out a packet and put it on the centre table of drawing room of PW-1 and he told the complainant that yeh paise aap key liye hain; at that time the appellant had gone to buy sweets from the market. It was thereafter that the appellant reached there and informed the appellant that these sweets are for his children; PW-1 had refused to take them. Further version of PW-3 being that as per instructions given to him by the Anti Corruption Branch officials, he thereafter gave the signal of Savita Coke Lao. PW-5 entered the room. The packet of newspaper lying on the table and Rs.15,000/- was lying wrapped in that packet. Currency notes were seized vide seizure memo Ex.PW-1/D. PW-3 admitted his signatures on the aforementioned seizure memo. PW-3 was also declared hostile and was permitted to be cross-examined by the public prosecutor. He however stuck to his stand. He admitted that he had signed the document i.e. panchnama which was prepared at the spot (Ex.PW-3/A) as also the seizure memo of notes (Ex.PW-3/B) as also the search memo of the flat (Ex.PW-3/D). However his stand otherwise being consistent that it was HC Mahender Singh who had brought this packet of money and he had put it on the center table of room of PW-1. It was only thereafter that the appellant had come into the room as he had gone to market to purchase sweets for PW-1; PW-5 had entered the scene thereafter. 12 PW-5 ACP Niranjn Singh is the raid officer. He had recorded the statement of PW-1 and of PW-3. He had on oath deposed that the panch witness i.e. PW-3 and the complainant (PW-1) and the contents of Ex.PW-5/A had been read over to PW-3 and to the complainant PW-1. He reiterated that in the pre-raid proceedings, it had been explained to PW-3 and he had been appointed to give the appointed signal at the time when bribe money was being offered to PW-1. He has deposed that on the fateful day at about 07:15 pm, the panch witness i.e. PW-3 had given the pre-decided signal Savita Campa lao and soon thereafter he entered the drawing room where both HC Mahender Singh and PW-1 were sitting on the sofa; the panch witness and the complainant were also present. PW-5 disclosed his identity to the appellant and challenged him that he had taken money. He has further deposed that panch witness i.e. PW-3 had told that Inspector Rajinder Prasad (the appellant) had told Arjun Singh (PW-1) that mithai to siraf bacho key liye hai, aap key liye tow kuch aur laye hai; stating that the panch witness had told that the

bribe money had been offered to PW-1 by the appellant. This witness has been subjected to a lengthy cross-examination. He stuck to his stand and stated that the bribe money had in fact been offered by the appellant to PW-1. 13 The Special Judge had relied upon this version of PW-5 to draw a conclusion that the case of the prosecution has been proved to the hilt. The learned Judge has also placed reliance upon a judgment of the Apex Court in 1998 SC1474 State of U.P. Vs. Zakaullah to draw a conclusion that the testimony of the raid officer, if credible, is by itself sufficient to nail the appellant. The trial Judge had also noted that the versions of PW-1 and PW-3 although hostile, to some extent do corroborate the version of PW-5 and in this context, the finding of the Sessions Judge reads as under:

Although the evidence of the raid officer PW-5 does not require any corroboration but I find that the complainant PW-1 does not corroborate the evidence of the raid officer PW-5 as the complainant PW-1 has admitted in his evidence that he had noticed a traffic jam on 26.06.1999 at about 03:30 PM near Rajokri Chowk on National Highway No.8 and he personally verified and found that the drivers of the vehicle complained to him that accused and his STA staff were challaning their vehicles unnecessarily and were extorting money from the vehicle drivers and accused Rajinder Prasad Sharma had telephoned the complainant PW-1 on that day. Similar is the version of the complainant PW-1 regarding the incident of 25.09.1999 in his evidence. The complainant PW-1 has supported the prosecution case to the extent that he has admitted in his evidence that on 27.09.1999 at about 08:15 AM he had received a telephonic call from accused Rajinder Prasad who told him on the phone that he wanted to see him for doing his seva pani because the complainant had heard about complaints against the accused on the above referred two occasions. The recovery of the bribe money Ex.P-1 to Ex.P-150 wrapped in a newspaper Ex.P-152 and sweet box Ex.P-151 from the spot and arrest of the accused from the spot is not disputed. If accused had gone at the instance of DCP V.V. Chaudhary to the house of the complainant PW-1 for the work of complainant in STA then what was the occasion for the accused to have taken the sweet box Ex.P151 to the house of the complainant. It does not stand to reason as to why the complainant would plant such a heavy amount upon the accused especially when it is not even the case of the accused that the

complainant has planted this amount upon him. No reasonable explanation is forthcoming from the side of the accused on this vital aspect. The recovery of the bribe money has been initiated by the panch witness PW-3 at the spot and the evidence of the panch witness in this regard supports the prosecution case. It is evident from the evidence of panch witness PW-3 that he has twisted the prosecution case by concealing that accused Rajinder Prasad had offered bribe money wrapped in a newspaper but he has admitted in his evidence that accused Rajinder Prasad had come to the house of the complainant PW-1 with a sweet box Ex.P-151. As already observed above, there was no occasion for the accused to come with a sweet box to the house of the complainant. Upon taking an overall view of the evidence available on record, I do find that the evidence of the complainant PW-1 and the panch witness PW-3 do provide some corroboration to the prosecution case. This corroboration may not be sufficient by itself but there is evidence of the raid officer PW-5 which is clinching.

14 Accordingly, the appellant stood convicted. 15 This Court is not in agreement with this finding of the learned Special Judge. Admittedly even as per the version of the prosecution, PW-5 had entered the scene only after the incident stood complete; as such PW-5 was clearly not in a position to know whether the bribe money was offered to PW-1 by HC Mahender Singh or the appellant. The consistent stand of the eye-witnesses i.e. the complainant and the panch witness on this score is that the bribe money had been offered by HC Mahender Singh to PW-1 by putting a newspaper packet on the centre table of PW-1. Whereas PW-1 had stated that this bribe money comprised of Rs.6,000/- i.e. 60 notes in the denomination of Rs.100/-, the other discrepancy in the version of PW-3 is that this bribe money was Rs.15,000/-. Be that as it may, the version of PW-5 is not reliable on the incident in question as he was admittedly never a witness to this incident; this is also not the version of the prosecution either. PW-5 admittedly entered the scene after the incident was complete. That part of the version of PW-5 wherein he has on oath stated that the panch witness i.e. PW-3 had told him that the bribe money had been paid by the appellant to PW-1 is a hearsay testimony; such a hearsay evidence is not admissible and in fact should not have been relied upon by the trial Judge to base the conviction of the appellant. The eye-witnesses i.e. the complainant (PW-1) and the panch witness (PW-3) not endorsing the version

of the prosecution and giving a totally different version by stating that it was HC Mahender Singh who had offered and put the bribe money on the table of PW-1 and not the present appellant, the conviction of the appellant holding that it was the appellant who had offered this bribe money to PW-1, in this background, clearly suffers from a huge illegality. 16 The trial Judge also noting that testimony of PW-5 stood corroborated by the versions of PW-1 and PW-3 is again faulty. There is no doubt that PW-1 has admitted that he had noticed traffic jam on 26.09.1999 and he had given details of the incident of 25.09.1999 to his senior V.V. Chaudhary. He has also admitted that he received a telephone call from the appellant who told him that he wants to do some sewa paani but what that sewa paani was, has never been elaborated in the version of prosecution. There was also no doubt that the bribe money of 150 notes of Rs.100/- each totaling to sum of Rs.15,000/- had been recovered from the spot but the crucial question is whether this bribe money was offered by HC Mahender Singh or the appellant in order to nail the appellant. Both the eye witnesses on this score and at the cost of repetition have deposed that this money had been put on the drawing room table by HC Mahender Singh and not by the appellant. The appellant had, at that time, gone to purchase sweets. Trite it is to say that a suspicion cannot take the place of proof and even if a grave suspicion had arisen in the mind of the trial Judge that the appellant having accompanied HC Mahender Singh had offered this bribe money to PW-1 without there being clinching evidence on this score, conviction based in such a background qua the appellant is not sustainable. 17 PW-1 has in his cross-examination admitted that he had signed 10-12 documents without reading them as SI Kanwar Singh from the Anti-Corruption Branch in the early morning hours at 03:00 AM had come to his house to get certain documents signed from him and at that stage he being in the stage of intoxication having taken liquor on the previous evening did not read them before signing. In a further part of his cross-examination, he has admitted that this was his fault and he should not have done this. Relevant would it be to also state that the public prosecutor had cross-examined this witness but he did not put any suggestion to him that this is wrong statement which has been made by him. Thus the judgment relied upon by the learned prosecutor does not come to his aid. 18 The Courts have time and again reiterated that the penal provisions under the PC Act are strict and

conviction of an accused cannot be founded on the basis of an inference; offence has to be proved against the accused beyond reasonable doubt either by direct evidence or by circumstantial evidence. To constitute an offence under Section 12 of the PC Act the necessary ingredient for abetment of the offence which is punishable either under Section 7 or section 11 of the said Act and penal provisions providing punishment of not less than six months which may be extended to 5 years and also liable for fine have to be established. This has not been done. 19 The impugned judgment cannot be sustained. It is accordingly set aside. Appeal is allowed. Appellant is acquitted. His bail bond is cancelled. Surety discharged. 20 File be consigned to record room. INDERMEET KAUR, J
MARCH11 2014 A

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com