

Kanwar Singh Vs. State

Kanwar Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/1137445

Court : Delhi

Decided On : Apr-16-2014

Judge : S. Muralidhar

Appellant : Kanwar Singh

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: April 04, 2014
Decision on: April 16, 2014 CRL.A. No.256 of 2008 KANWAR SINGH Through:
..... Appellant Ms. Sima Gulati, Ms. Ridhima Gulati & Mr. Alok Tripathi, Advocates.
versus STATE Through: Respondent Ms. Aashaa Tiwari, APP. CORAM:
JUSTICE S. MURALIDHAR

JUDGMENT

1604.2014 1. This appeal is directed against the judgment dated 21 st February 2008 passed by the learned Special Judge in CC No.204/07 convicting the Appellant for the offence under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (PC Act) and the order on sentence dated 22nd February 2008, whereby the Appellant has been sentenced to rigorous imprisonment (RI) for two years and a fine of Rs.2,000, and in default of payment of fine, to undergo RI for six months for the offence under Section 7 of the PC Act and sentenced to RI for three years and fine of Rs. 6,000, and in default, to undergo RI for a period of nine months for the offence under Section 13 (2) read

with 13 (1) (d) of the PC Act. Both the sentences were directed to run concurrently.

2. The case of the prosecution was that Ravi Kumar, s/o Raj Kumar (PW4) was admitted to Hindu Rao Hospital (HRH) on 2nd June 2001 with a history of assault by a sharp weapon. He remained admitted till 6th June 2001. In the medico legal certificate (MLC) of Ravi, the doctor gave an opinion that the injuries were simple. PW4 decided to get a copy of the MLC for Court purposes.

3. On 5th July 2001, PW4 went to the medical record room of HRH, where the Appellant was posted as Statistical Clerk-cum-Record Clerk. When PW4 sought a copy of the MLC of his son, the Appellant is stated to have demanded a bribe of Rs. 1,000 for making available the required photocopy. After some negotiations, the Appellant scaled down his demand to Rs. 500 and directed PW4 to come with Rs. 500 on 6th July 2001.

4. PW4 was not willing to pay the bribe amount. On 6th July 2001, he went to the Anti Corruption Branch (ACB) and lodged a complaint. It is stated that on that day, Inspector M.S. Sangha (PW7) was to perform his duty as a raid officer. A public servant Jag Ram Meena (PW3) was already present in the ACB as per the duty roster for being associated as an independent witness in the raid. PW7 recorded the complaint of PW-4 (Ex. PW3/A). PW3 signed the complaint to affirm that it had been made in his presence. PW4 produced two government currency (GC) notes of Rs. 100 each and six GC notes of Rs. 50 each before PW7 which recorded the numbers of these notes in the pre-raid report. PW7 then treated the GC notes with phenolphthalein powder and gave a demonstration by asking PW3 to touch the GC notes and dip his fingers in the colourless solution of sodium carbonate. When PW3 did so, the solution turned pink. The treated GC notes were handed over to PW4, which he kept in the left pocket of his shirt. PW7 instructed PW4 to have a conversation with the Appellant and enter into the transaction with him in the manner as could be heard and seen by PW3. PW7 directed PW3 to remain close to PW4 to hear the conversation and see the transaction and to give a signal by twice waving his hand over his head once the transaction was complete. All the persons joining the demonstration washed their hands. The pink colour solution of the demonstration was thrown away. All these proceedings were recorded in the

pre-raid report (Ex.PW3/B).

5. A raiding party was organized under PW7. PW3, Inspector N.S. Minhas and the ACB officers formed part of the raiding party. At around 8:05 am on 6th July 2001, the raiding team reached HRH. Inspector N.S. Minhas, the Investigating Officer (O) stayed back in the vehicle with the driver. PW7 directed PWs 3 and 4 to contact the Appellant. PWs 3 and 4 reached the 7th floor of HRH but found the room of the Appellant locked. They came to the ground floor and waited for the Appellant. At around 9:30 am, the Appellant was seen entering HRH. PW4 informed PW3 that the Appellant was the same person who had demanded the bribe and also named the Appellant. The Appellant reached the 7th floor and opened the lock of his room. PWs 3 and 4 went inside the room of the Appellant and took their seats on the chairs lying opposite to the chair of the Appellant. When PW4 asked for the medical papers of his son, the Appellant is stated to have inquired about the identity of PW4. PW4 then told the Appellant that PW3 was his friend.

6. The Appellant is then stated to have taken out a photocopy from one file and given it to PW4. The Appellant then asked PW4 whether he had brought the money, to which PW4 replied in the affirmative. The Appellant then sent PW3 outside the room, and after some time, PW4 called PW3 in the room. Thereupon, PW3 is stated to have given the pre-determined signal.

7. PW7 entered the room and noticed that the Appellant was counting the money. PW4 informed PW7 that he had given the bribe amount of Rs. 500 to the Appellant. PW3 told PW7 that the Appellant had given a photocopy to PW4 and had thereafter demanded and obtained the bribe money from PW4. When PW7 disclosed his identity, the Appellant became perplexed. PW7 then directed PW3 to recover the GC notes from the possession of the Appellant.

8. According to PW7, the GC notes were recovered by PW3 from the right hand of the Appellant. PW3 then tallied the numbers of these GC notes with those recorded in the pre-raid report. PW7 took the recovered GC notes into his possession vide memo Ex.PW3/C. The wash of the right hand of the Appellant turned pink and it was transferred in two clear small bottles and labeled

appropriately. The wash of the left hand also turned pink and the said hand wash was also transferred in two clean bottles and labeled. All the four bottles were then sealed. The IO was summoned and handed over custody of the accused, the GC notes with memos, sealed wash bottles and seized sample sealed impressions. The Appellant was formally arrested and his personal search was taken. A site plan was prepared and the MLC file of the son of PW4 was seized.

9. The report dated 31st August 2001 of the Forensic Science Laboratory (FSL) confirmed that the washes in the sealed bottles tested positive for the presence of phenolphthalein and sodium carbonate. After the sanction was accorded under Section 19 of the PC Act, a chargesheet was filed. By the order dated 23d January 2004, the Special Judge framed the charges against the Appellant under Sections 7 and 13 (2) read with 13 (1) (d) of the PC Act. The prosecution examined nine witnesses.

10. When the incriminating evidence was put to him under Section 313 Cr PC, the Appellant admitted that he was a Statistical Clerkcum-Record Clerk at HRH; he did not know about the admission of injured Ravi Kumar in the hospital nor about the copy of the medical record which PW4 wanted; he had never met PW4 and had never demanded any bribe from him; on the day of the raid, PWs 3 and 4 along with one Mr. Anil, who was working in the Record Room, came to the room of the Appellant, stayed for some time and then left; no talks took place between the Appellant and the said three persons; the Appellant did not handover any copy of any document to anyone; thereafter, some persons stated to be from the ACB entered his room and falsely arrested him; no tainted GC notes were recovered from his possession; no hand washes were taken and no raid proceedings were conducted by the Raid Officer.

11. In the impugned judgment dated 21st February 2008, the learned trial Court first dealt with the question of the validity of the sanction accorded by PW6, Mr. Anand Prakash, the Additional Commissioner (Health), Municipal Corporation of Delhi. The learned trial Court concluded that nothing had come on record to show that PW6 had not applied his mind while granting sanction. Accordingly, it was held that the sanction had been validly granted.

12. On an analysis of the evidence of the prosecution, the learned trial Court concluded that nothing had come on record in the cross-examination of PW3 which could create a doubt on his testimony about the demand of a bribe of Rs. 500 by the Appellant from PW4 in his presence on the day of the trap. The deposition of PW4 also established that the Appellant had consciously handled the GC notes of Rs.

500. PW4 had deliberately introduced the character by the name of Anil and this part of his testimony was liable to be discarded. Even if it was assumed that Anil was present in the room of the Appellant, it did not create any doubt on the fact that the GC notes were in fact handed over to the Appellant.

13. The learned trial Court noted that PW3 stated that when PW7 disclosed his identity, the Appellant stood from his chair and became perplexed. The trial Court held that this conduct of the Appellant was relevant and admissible under Section 8 of the Indian Evidence Act 1872. This was not challenged in the cross-examination of PW3. Further, the defence counsel did not challenge the testimony of either PW3 or PW7 both of whom confirmed that both the hand washes of the Appellant had turned pink. Thus, the fact that the Appellant accepted the treated GC notes, counted them and this resulted in his hand washes turning pink stood established. The testimony of both PWs 3 and 4 about the recovery of the treated GC notes from the possession of the Appellant was consistent.

14. The learned trial Court further held that the stand of the Appellant that no treated amount was recovered from him was a false one and constituted an additional incriminating circumstance against him. The presumption under Section 20 (1) of the PC Act stood attracted. It was accordingly held that the Appellant accepted Rs. 500 as gratification other than the legal remuneration during the discharge of his duty as a public servant for providing a photocopy to PW4. Accordingly, the Appellant was found guilty of the offence under Sections 7 and 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (PC Act) and sentenced as noticed hereinbefore.

15. Ms. Sima Gulati, learned counsel for the Appellant first submitted that there were inconsistencies in the depositions of prosecution witnesses at every stage of

the proceedings. While PW3 stated that PW4 had come to the office of the ACB at around 7:15am and got his complaint recorded (PW3/A), PW7 stated in his cross-examination that PW4 had come to the ACB before the raid one day prior and appeared before the senior officer.

PW7 further stated that on 5th July 2001 he was told by his senior officers that he had to conduct a raid in the early hours of the next day and he was asked to be present in the ACB at early hours.

16. As far as the above discrepancy is concerned, it is seen that PW4 in his examination-in-chief does not precisely say when he went to the office of ACB. The relevant portion of his deposition reads as under:

On 5.7.2011, I had gone to Hindu Rao Hospital in record room to collect some medical documents from there. One Anil had met me there and who got introduced Kanwar Singh with me who is present in the court (correctly identified). Anil informed me that I should come next day in the morning along with Rs. 500/-. I am against giving bribe so I went to anti corruption branch where my statement was recorded. The same is Ex.PW3/A which bears my signatures at point B.

17. If one reconciles the depositions of PWs 3 and 7, although both did say that PW4 came to the ACB on 6th July 2001 in the morning hours, this does not contradict the statement of PW7 that PW4 came to the ACB the previous evening, i.e., 5th July 2001 as well. It is possible that PW4 was again asked to come in the early morning of 6th July 2001 and it was at that time that the formal complaint was got registered. In the considered view of the Court, this discrepancy is not really material.

18. It was next submitted by Ms. Gulati that the so-called public witness, PW3 was on his own admission on duty as panch witness in the ACB and reached the ACB at 7 am on 6th July 2001. This according to her made it highly doubtful that he was an independent witness.

19. On the above aspect the Court finds that PW7 was cross-examined and he answered thus:

I was deputed on duty as panch witness once in the Anti Corruption Branch before this case. The raid was made on some DESU employees in which I was joined as panch witness. I do not remember the name of Raid Officer of that case. I also do not remember the name of the accused of that case nor I remember the bribe amount as that case was very old. I do not have weak memory. I was never deputed on duty in the Anti Corruption Branch as panch witness after this case. It is wrong to suggest that I am a stock witness of Anti Corruption Branch. It is correct that there is a Secretary (Vigilance) under whom all departments are including my department. I do not say with certainty that if the Anti Corruption Branch is also under Secretary (Vigilance). It is correct that we are treated on duty whenever we joined raids organized by Anti Corruption Branch. It is correct that departmental enquiries are initiated at the instance of Anti Corruption Branch and Vigilance department. It is wrong to suggest that departmental enquiry is initiated against a witness if he does not depose as per the statement recorded by the police. It is wrong to suggest that I am deliberately concealing this fact.

20. The above answer of PW3 appears to be a satisfactory explanation as to how he was asked to join ACB as a panch witness. If, in fact, PW4 had gone to the ACB the previous evening and a raid was to be planned for the next morning, the fact that PW3 was asked to report to the ACB on the morning of 6th July 2001 is not surprising.

21. Ms. Gulati then submitted that in the complaint originally filed with the police, there was no mention by the Complainant of a person called Anil being present and the said Anil demanding the bribe of Rs. 500 in the presence of the Appellant.

22. It is seen that because of this introduction of the character Anil by PW4 in his deposition, the learned APP cross-examined him. PW4 now stated:

It is correct that I did not tell the name of any person by the name of Anil in my complaint Ex. PW3/A in anti corruption branch. It is correct that I had stated in my complaint Ex.PW3/A that accused Kanwar Singh had demanded Rs.1000/- from me. It is correct that after the raid, police had recorded my statement regarding proceedings which took place during raid. It is incorrect to suggest that I had stated after the raid in my statement to the police that I had directly given the bribe

money to the accused (confronted with portion A to A of post raid report Ex.PW4/A wherein it is so recorded). It is incorrect to suggest that no person by the name of Anil had ever met me and I had given those treated GC notes to accused Kanwar Singh, now present in court. It is further wrong to suggest that I am deposing falsely on the confronted portion in order to save the accused as I have been won over by the accused and I have falsely included the story of one Anil. It is further wrong to suggest that in my presence the treated GC notes were recovered from fists of accused Kanwar Singh.

23. As noted by the learned trial Court, the presence or the absence of Anil at the time of meeting of PW4 with the Appellant does not make much of a difference. It is not denied that it was the Appellant who was the Statistical Clerk-cum-Record Clerk. It was the Appellant who was to give a photocopy of the MLC to PW4. As noted hereinbefore PW4 stated that the bribe amount was ultimately given to the Appellant.

24. As pointed out by Ms. Gulati there is some inconsistency in the evidence of PWs 3 and 4 as regards what happened when the raiding party reached the spot and the demand and obtaining of the bribe by the Appellant from PW4. After the Appellant reached the hospital, PW3 and PW4 reached the 7th floor. The Appellant asked PW4 whether he had brought the money, to which PW4 replied in the affirmative. Thereafter, PW3 was sent outside the room, and after some time, PW4 called him back into the room. At that time, PW3 gave the pre-determined signal. He further stated that when PW7 introduced himself to the Appellant, the Appellant stood up from his chair and became perplexed. PW3 stated that, on the instructions of PW7, he recovered the GC notes from the Appellant.

25. In his cross-examination, PW3 was confronted with his previous statement where he had not stated that the Appellant had asked PW4 whether he had brought the money. He further stated that the tainted money was recovered from the drawer of the table by me on the direction of the Raid Officer.

26. When the above version is contrasted this with the description of events by PW4, there appears to be some inconsistency. PW4 stated that he and PW3 waited on the ground floor of the hospital till 9:15 am when the Appellant was seen

coming. PW4 then followed the Appellant in the lift and then went inside the room of the Appellant. One Anil was already found sitting there. Anil then asked PW4 whether he had brought the bribe amount to which he replied in the affirmative. PW4 then handed over the treated GC notes to Anil who further handed over the same to accused Kanwar Singh.

In the meanwhile, PW3 gave the pre-determined signal and the raiding party came inside the room. PW4 stated:

Thereafter the recovery of those GC notes was affected from the accused but I could not notice from where those GC notes were recovered.

27. On a careful perusal of the statements of PWs 3 and 4, it is seen that on the essential elements of a demand being made in the presence of the Appellant and his ultimately receiving the bribe money there is no inconsistency. PW4 introduced the character Anil through whom both the demand and the receipt were made by the Appellant. In both versions ultimately the demand is made by the Appellant or in his presence and on his behalf. In both the versions, the bribe money is ultimately found with the Appellant. Whether the bribe money was recovered from the hand of the Appellant, as spoken to by PWs 4 and 7, or from the drawer as spoken by PW3 does not matter since all these witnesses confirm that the washes of both hands of the Appellant turned pink. The hand washes have tested positive for the presence of phenolphthalein and sodium carbonate. It is apparent that the Appellant has given a false explanation by completely denying that the hand washes ever took place.

28. Ms. Gulati then submitted that the FSL report was never exhibited and, therefore, could not be put to the Appellant in his statement under Section 313 Cr PC as an incriminating circumstance. She submitted that there is only a stray sentence in the deposition of PW9, Inspector Minhas that Later on I got sent the exhibits of the present case to FSL through Ct. Om Prakash. I collected the FSL result and placed all documents on the record.

Relying on the observations of this Court in *Dharam Pal v. State* 2011(125) DRJ417 she submitted that the FSL report could not be acted upon since its

author was not examined.

29. In *Dharam Pal v. State*, the Division Bench of this Court observed:

23. It is true that in view of Section 293 of the Code of Criminal Procedure, the report in question need not have been proved by summoning the author thereof, but that does not mean, that during trial nobody had to tender the same in evidence and have the same exhibited by deposing that either he himself went to the FSL Laboratory and collected the report in question or deposing that during investigation he obtained the report in question and that the same pertains to the investigation conducted in the case which was being tried. It must be deposed that the report in question pertains to the case at hand.

30. In the present case, PW9 was not confronted in his cross-examination as regards his statement:

I collected the FSL result and placed all documents on record.

PW5, Constable Raj Kumar, affirmed that the hand washes and other articles seized at the spot were deposited in the malkhana. He confirmed:

So long as the case property of this case remained with me, it was intact and was not tampered with in any manner.

No question was put to him that the samples were not properly preserved when it was sent to the FSL. The FSL report confirms that the seals were intact. As far as collecting the samples are concerned, PW8 Head Constable Phool Chand confirmed as under:

On 17.7.01 I handed over to Ct. Om Prakash two sealed bottles marked RHW-I, LHW-I and sample seal vide RC No.101/01 for depositing in FSL, Malviya Nagar. I made endorsement in the register which is Ex. PW8/B. As per record the result from FSL and the remnant case property was received from FSL through Ct. Om Prakash and the endorsement in this regard is Ex. PW8/C. The case property remained intact so long it remained with me.

31. PW8too was not cross-examined on the above aspect. When these three depositions are read together, it appears that the statement of PW9 that I collected the FSL result it could well mean that he had got it collected by PW8 which fact is confirmed by PW8 himself. If there was any doubt on this aspect, either PW8or PW9 ought to have been cross-examined by learned counsel for the accused.

32. It was proved by PWs 5, 8 and 9 that the samples pertained to the investigation; that they were in a safe condition in the malkhana when they were sent to the FSL; that they were deposited with the FSL and collected from the FSL with the report. In the circumstances, the Court is of the view that Section 293 of the Cr PC did permit reliance being placed by the learned trial Court on the FSL report.

33. Ms. Gulati then referred to the decisions in State of Punjab v. Madan Mohan Lal Verma AIR 2013 SC3368 State of Maharashtra v. Dyaneshwar Laxman Rao Wankhede (2009) 15 SCC200 Suraj Mal v. State (Delhi Administration) AIR 1979 SC1408and Banarsi Dass v. State of Haryana AIR 2010 SC1589and submitted that given that the evidence of PW4 was unreliable, the mere recovery of the treated GC notes from the Appellant was, by itself, an insufficient circumstance to return a finding of guilt.

34. In reply, Ms. Aashaa Tiwari, the learned APP, referred to the judgment in Mukut Bihari v. State of Rajasthan (2012) 11 SCC642and submitted that it was not necessary for the shadow witness to remain present when the bribe amount was actually given as long as his version is consistent with the presence of the Complainant with the Appellant at the time of the trap transaction. She also placed reliance on the decisions in Hazari Lal v. State (Delhi Administration) 1980 LawSuit (SC) 79 and Mahesh Prasad Gupta v. State of Rajasthan (1974) 3 SCC591and submitted that once it is shown that the Appellant had accepted the treated GC notes which was by way of illegal gratification, then the presumption under Section 20 of the PC Act would get attracted. Ms. Tiwari further pointed out that in response to the questions under Section 313 Cr PC, the Appellant did confirm the presence of both PWs 3 and 4 in the room.

35. The Court finds that there were two specific questions put to the Appellant under Section 313 Cr PC and his answers thereto were significant. These questions and their corresponding answers were: Q12: That complainant and panch witness then entered your room at the 7th floor and took seats on the chair lying in that room and then complainant asked you to hand over the documents and then you brought a photocopy from one file and you enquired about the identity of the panch witness from the complainant who told him that he was your friend. What have you to say?. A: The complainant and panch witness along with another person namely Anil who was working in Record Department came in my room and they stayed in my room for some time and then they left my room. No talks took place between me and any of those three persons. I did not hand over any copy of any document to anybody. Q13: That you then asked the complainant whether he had brought the money and complainant replied in the affirmative and then you sent the panch witness outside the room and after some time complainant called panch witness in the room and then the panch witness gave the predetermined signal upon which the raid officer with other members of the raiding team came over there. What have you to say?. A: It is incorrect that I demanded any money as alleged. Rather when those three persons left my room then after some time some other persons came who later on told themselves to be from AC Branch and falsely arrested me and recovered some notes from the drawer of my table.

36. Therefore, even according to the Appellant, PWs 3 and 4 were definitely present in his room when the raiding party arrived there. As pointed out by the Supreme Court in *Mukut Bihari v. State of Rajasthan*, it is possible that in a given case, a panch witness may not remain present when the actual handing over of the bribe amount takes place. It was concluded that it is always desirable to have a shadow witness in the trap party but mere absence of such a witness would not vitiate the whole trap proceedings.

In *Hazari Lal v. State (Delhi Administration)*, the Court reminded that the absence of an explanation from the Appellant as to how the currency notes were obtained from him would be a relevant factor. In the present case both PWs 3 and 4 confirm that the treated notes were recovered from the possession of the Appellant. Both

of them confirmed that the hand washes of the Appellant turned pink. The FSL report confirmed this. In the circumstances, the presumption under Section 20 of the PC Act stood attracted. The Appellant was unable to rebut the statutory presumption and instead raised a false plea of total denial.

37. Consequently, this Court is unable to find any legal error in the impugned judgment of the learned trial Court holding the Appellant guilty of the offence under Sections 7 and 13 (2) read with 13(1) (d) of the PC Act.

38. On the question of sentence, Ms. Gulati relied on the decision in V.K. Verma v. CBI (2014) 3 SCC485 and submitted that a lenient view may be taken as the Appellant is now 64 years of age and has suffered the ordeal of the trial and pendency of appeal for over nearly 13 years. She pleaded that the sentence may be reduced to the period already undergone by the Appellant.

39. The Court finds that the decision in V.K. Verma v. CBI pertained to the provisions of the Prevention of Corruption Act 1947 (the 1947 Act). In that case the first information report was registered in 1984. Under the 1947 Act, in terms of proviso to Section 5 (2), the Court could, for special reasons, impose a sentence of imprisonment of less than one year. However, under the PC Act 1988, there is a minimum mandatory sentence of one year for the offence under Section 13 (2) read with Section 13 (1) (d) of the PC Act. There is also a minimum sentence of six months for the offence under Section 7 of the PC Act. Therefore, the said decision is of no help to the Appellant.

40. However, in view of the extenuating circumstances pointed out by learned counsel for the Appellant, and consistent with the statutorily mandated minimum sentence, this Court modifies the order on sentence by directing that the Appellant be sentenced to RI for one year, both for the offences under Section 7 and Section 13(2) and 13 (1) (d) of the PC Act, with no modification in the fine amounts imposed by the learned trial Court. Both sentences are directed to run concurrently.

41. Consequently, the conviction of the Appellant for the offences under Section 7 and 13(2) read with 13 (1) (d) of the PC Act as ordered by the learned trial Court

by the impugned judgment dated 21 st February 2008 is confirmed. The order on sentence dated 22 nd February 2008 is, to a limited extent, modified as indicated in para 40 of this judgment. The Appellant will be taken into custody forthwith to serve out the remainder sentence.

42. The appeal is disposed of in the above terms. The trial Court record be sent back forthwith. A copy of this order be given dasti under the signature of Court Master. S. MURALIDHAR, J.

APRIL16 2014 tp

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