

Mool Pal Singh Vs. State

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Court : Delhi

Decided On : May-16-2014

Judge : S. Muralidhar

Appellant : Mool Pal Singh

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 210 of 2008 Reserved on: May 2, 2014 Decision on: May 16, 2014 MOOL PAL SINGH Through: Appellant Mr. R.M. Tufail and Mr. Vishal Raj Sehijpal, Advocates. versus STATE Through: Respondent Ms. Isha Khanna, APP. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

1605.2014 1. This appeal is directed against the impugned judgment dated 23 rd February 2008 passed by the learned Special Judge, Delhi in Complaint Case (CC) No.86 of 2002 convicting the Appellant for the offence under Section 7 and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 (PC Act) and the order on sentence dated 26th February 2008 sentencing the Appellant to undergo rigorous imprisonment (RI) for a period of three years and a fine of Rs. 3,000 and in default to undergo simple imprisonment (SI) for a period of one month for the offence under Section 7 of the PC Act. For the offence under Section 13 (2) of the PC Act, the Appellant was sentenced to undergo RI for

a period of three years and a fine of Rs. 3,000 and in default of payment to undergo SI for a period of one month. Both the sentences were directed to run concurrently.

2. By an order dated 19th March 2008, this Court suspended the sentence awarded to the Appellant during the pendency of the appeal, subject to terms. The case of the prosecution 3. The case of the prosecution was that Ajay Chaudhary, PW-7 along with his brother Sanjay Chaudhary, PW-8 were running a STD/PCO booth at his house, i.e., 326-C, Chanakya Marg, Chajjupur, Shahdara, Delhi. He had made two applications in the office of the Sub Divisional Officer (SDO), Mahanagar Telephone Nigam Limited (MTNL), Shahdara, Delhi for transferring of two telephone connections, i.e., 2137857 and 2139533 from House No.326-C to House No.C-410/A, Chajjupur, Delhi. 20 days thereafter the Appellant, Mool Pal Singh, who was working as an Assistant Engineer (AE) with MTNL came to the shop of PW-8 and asked him to show where the telephone connections were to be transferred. At that time the Appellant is stated to have demanded a bribe of Rs. 5,000 from PW-8 for transferring the said connections. The Appellant is further stated to have told PW-8 that the part of the said bribe amount was to be paid to the higher officers of the department. When PW-8 expressed his inability to pay Rs. 5,000 the Appellant is stated to have agreed to accept Rs. 2,000 before and the remaining amount after the transfer of the connections. The Appellant informed PW-8 that he would come again on 12th November 2001 to collect the bribe amount.

4. PW-8 went to the Anti Corruption Branch (ACB) and gave a complaint (Ex.PW-8/A) in the presence of the panch witness, Herman Kujur (PW-9), Head Clerk at the Kasturba Polytechnic for Women, who was on that day on duty with ACB. The complaint (EX.PW-8/A) was made in his presence at around 12 noon. PW-8 had brought four government currency (GC) notes of Rs. 500 each for being given to the Appellant.

5. ACP H.N. Meena (PW-11) on 12th November 2001 was posted as an Inspector at the ACB. PW-11 recorded the serial numbers of the GC notes produced by PW-8 in the pre-raid report (Ex.PW-8/G). He then demonstrated the effect of applying

phenolphthalein powder on those GC notes. The treated GC notes were then handed over to PW-8 who kept them in his left pocket of his shirt. PW-11 instructed PW-9 to remain close with PW-8 and to overhear the conversation between him and the Appellant and after being satisfied that the bribe had actually been paid by PW-8 to the Appellant, PW-9 was told to give a signal by hurling his hand over his head.

6. At about 2.45 pm PW-11 along with Inspector S.S. Sandhu (PW-10) who was the Investigating Officer (IO), PW-8, PW-9 and other members of the raiding team left the ACB in a government vehicle and reached Shahdara at 3.30 pm. The government vehicle was left at some distance and the members of the raiding team reached at the spot. PW-10 along with the driver remained in the government vehicle.

7. At about 3.50 pm the Appellant came there on his scooter and entered the shop of PW-8 after parking his scooter outside. After some time the Appellant came out with PW-8 and both of them left on the scooter. After 5 to 10 minutes, PW-8 returned and informed PW-11 that the Appellant had taken him on the main road and after taking a bribe of Rs. 2,000 from him, had gone towards Bhajan Pura. The raiding team waited for the Appellant but he did not return. Thereafter, PW-11 along with the raiding team went to the office of MTNL, Dilshad Garden and waited until 6.30 pm. However, the Appellant did not turn up there either. Thereafter, PW-8 informed PW-11 that the Appellant was residing in the area of Karawal Nagar. The raiding team reached there and met a boy aged 10 to 12 years who stated that he was the Appellant's son. He confirmed that the Appellant had arrived there earlier on his scooter. On the call of the boy, the Appellant emerged. PW-9 identified the Appellant. PW-11 disclosed his identity to the Appellant and challenged him that he had taken a bribe. The Appellant is stated to have become perplexed and begged for pardon and said that he would return the money to PW-8. The Appellant took out some GC notes from his pocket and gave them to PW-8. On the instructions of PW-11, PW-9 tallied them with the GC notes mentioned in the pre-raid proceedings. Thereafter, the hand washes of the Appellant and a wash of his left shirt pocket were taken in a colourless solution of sodium carbonate which turned into pink. The solution was then transferred to the empty

bottles which were properly sealed. The appellant was arrested. The seized material was sent to the Forensic Science Laboratory (FSL).

8. By an order dated 24th September 2003, charges were framed against the Appellant for the offences under Section 7 and 13 (2) read with Section 13 (1) (d) of PC Act. He pleaded not guilty and claimed trial. The prosecution examined 11 witnesses.

9. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (Cr PC) the Appellant stated that he was acquainted with the family of PW-8 since 1999. Neither PW-8 nor PW-9 was working. On his advice they had applied for an STD booth. He helped them in getting that STD booth and thereafter they wanted to get it transferred. Since the Appellant knew PW-8 and his family members, he had on 20th August 2000 given them Rs. 10,000 as a friendly loan, as asked by them because they were not employed anywhere and were not working. According to him, one Sompal Singh had written some receipt for the transaction. After some time the Appellant started demanding the return of the money from PW-7, due to which the bitterness increased between the Appellant and PW7 and PW-8. The Appellant alleged that since the IO and PW-8 belonged to the same caste and were related to each other they had conspired to get him falsely implicated. He further alleged that during the trial of the case, he had been contacted by the Complainants through the mobile and the landline telephone. They had demanded Rs. 1 lakh for not deposing against him.

10. The Appellant examined Sompal Singh as DW-1. He was shown the purported receipt Ex.PW-7/DB which was supposedly in his handwriting and supposed to be a receipt for advancing a friendly loan of Rs. 10,000 by the Appellant to PW-8. DW-1 stated that he had written something but the same was scrapped by PW-7 stating that he would write it himself. PW-7 had come to take a loan from the Appellant. He denied the suggestion in the cross-examination that he had forged the said document (Ex.PW-7/DB) in connivance with the Appellant.

11. As far as the prosecution witnesses were concerned, PW-3, Raj Kumar Garg, Sub Divisional Engineer, MTNL confirmed that he had marked the complaint of PW-7 on 15th October 2001 to the Appellant. In his cross-examination, nothing

was elicited to discredit his testimony. PW-5, Prem Singh, Area Manager, MTNL passed an order dated 11th October 2002 under Section 19 of PC Act granting sanction to prosecute the Appellant. He denied in his cross-examination that he relied upon the draft sanction order sent by the ACB. He denied the suggestion that he had accorded the sanction in a mechanical manner without application of mind.

12. Two critical witnesses of the prosecution were PW-7 and PW-8. PW-7 stated that he had written both the applications to MTNL for shifting of the telephone numbers and PW-8 used to pursue those applications. He was not present on the spot on the day of the raid. He confirmed that he had called the Appellant on four occasions on 16 th May, 2006, once on 17th May 2006, four times on 11th September 2006 and once on 12th September 2006 and three times on 25th October 2006 to find out the status of the case. He admitted his signature on the receipt dated 20th August 2000 (Ex.PW-7/DB) but he stated that he had signed it on the blank paper but could not recollect it when he had signed it. He had not borrowed money from the Appellant on 20th August 2000. He maintained that the Appellant had demanded a bribe. He denied the suggestion that he demanded Rs. 1 lakh from the Appellant for not deposing against him.

13. PW-8 was a part of the raiding team. He stated the facts about the Appellant demanding a bribe sum of Rs. 5,000. When he expressed his inability to pay Rs. 5,000 then the Appellant agreed to take Rs. 2,000 before and the balance after the transfer of the telephone connections. He confirmed the pre-raid proceedings. He further stated that after the Appellant came to his shop on the afternoon of 12 th November 2001, parked his scooter outside the STD/PCO booth and met him, the Appellant then demanded Rs. 2,000 from PW-8 and he took out the treated GC notes from his pocket and gave it to the Appellant who took them with his right hand, counted them with both hands and kept them in the left pocket of his shirt. Thereafter, the Appellant went on his scooter and PW-8 returned to his PCO and informed the raiding team including PW-11 about the demand and acceptance of the bribe by the Appellant. PW-8 confirmed the subsequent events viz., the raiding team reaching the office of the Appellant and thereafter his residence in West Karawal Nagar. PW-8 also confirmed that the Appellants son met them and that

he called his father (the Appellant). When challenged by PW-11 the Appellant admitted his guilt , begged for pardon, took out four GC notes of Rs. 500 from his pocket and gave them to the raiding party. PW-9 then tallied the serial numbers with those notes which had been mentioned in the pre-raid proceedings. PW-8 confirmed that the hand washes of both hands and of the left shirt pocket of the Appellant when taken in a colourless solution of sodium carbonate turned pink. The scooter of the Appellant was also taken into possession. PW-8 also confirmed that the Appellant was arrested and taken to the ACB. Nothing was elicited in the cross-examination of PW-8 to doubt his testimony.

14. In his cross-examination PW-8 was confronted with his previous statement to the police where he stated that he was not on visiting terms with the Appellant and so he did not know his house number and therefore, he did not tell the police about the location of the house of the Appellant or his house number. He stated that he had reached the house of the Appellant at about 9 pm on the day of the raid and remained at his house for about one hour. No writing work was done at the house of the Appellant. It was done in the ACB. He further added that PW-11 had given a sweet box to the Appellant when they had gone to his house. He denied that the treated GC notes were kept in the sweet box. PW-11 had told the Appellant to distribute sweets from that sweet box as it was a Diwali occasion. PW-8 admitted to have called the Appellant about 26 times from May to November 2006. He was not aware if his brother (PW-7) had taken a loan of Rs. 10,000 from the Appellant. PW-8 denied that the Appellant had been complaining to him that PW-7 was not returning the loan amount. He denied the suggestion that the Appellant did not call him or that he had started calling the Appellant on the telephone after receiving the summons in the case.

15. The panch witness, PW-9 did not support the case of the prosecution. In his examination-in-chief he confirmed that PW-8 had come to the ACB and lodged his complaint (Ex.PW8/A) and that the GC notes brought by him were treated and that a demonstration was given. He also confirmed that he had been instructed by PW-11 to remain close to PW-8 and to overhear the conversation and after being satisfied that a bribe had been given to show a signal by hurling his hand over his head. He confirmed that the raiding team at about 12.45 pm left the ACB in a

government vehicle for the spot. He along with PW-8 went inside the STD/PCO booth. He had correctly identified the Appellant and stated that after 15-20 minutes the Appellant came to the spot and inquired from PW-8 about him. PW-8 replied that PW-9 was his worker. However, PW-9 stated that no conversation regarding the transaction of money took place in my present there. Thereafter, PW-8 and the Appellant left the STD booth. PW-9 did not follow them. After some time the Complainant came back and told the raiding team about the Appellant having left the spot. He too stated that thereafter the raiding team went to the office of the Appellant and waited there till 6.00/6.30 pm but the Appellant did not turn up. They went to his residence and took a sweet box. He further stated that at the house of the Appellant, those GC notes were recorded. He did not know from where those GC notes were recovered and what was done thereafter.

16. Since PW-9 turned hostile he was cross-examined by learned Additional Public Prosecutor ('APP') for the CBI. He confirmed that the police had recorded his statement. PW-9 stated that he had raised an objection when his statement was being recorded and that he had not seen the bribe transaction. He further admitted his signatures on the seizure memo of the GC notes and that the hand washes of both the hands and the left side shirt pocket wash of the Appellant had turned pink. He also admitted that the Appellant was arrested in his presence and his personal search was conducted and that his scooter was also seized. He also identified the case property. However, he maintained that it was wrong to suggest that the Appellant had demanded the bribe from PW-8 when he had come into his STD booth.

17. When PW-9 was cross-examined by counsel for the Appellant, he stated that from the house of the Appellant he was brought to the office of ACB and no writing work was done at the house of the Appellant. Even the hand washes took place in ACB. PW-9 now stated that he could not say if the GC notes were taken to the house of the Appellant in a sweet box. He further stated that the address of the Appellant was obtained from the MTNL office.

18. The raid officer PW-11 corroborated PW-8 about what transpired in the house of the Appellant. He confirmed that PW-8 was not having a sweet box when he

went with them to the STD booth. PW-8 and PW-9 did not accompany the raiding party back from the house of the Appellant to the ACB.

19. The trial Court on analysing of the evidence held that although PW-9 had not supported the case of the prosecution as far as the demand, acceptance and recovery of the bribe amount was concerned, he corroborated the prosecution version on the details of the raiding party, and the arrest of the Appellant from his house. The trial Court referred to the decision of the Supreme Court in *Hazari Lal v. State (Delhi Administration)* AIR 1980 SC873 to hold that conviction of the Appellant in particular facts and circumstances can be based on the solitary statement of the raid officer and may not require corroboration. As regards the receipt dated 20th August 2000 (Ex.PW-7/DB), the trial Court noticed that the signatures of PW-7 had been obtained on some blank paper; there is some cutting above his signature; the contents of this letter appears to have been written later. This probablises the explanation of PW7 that his signature was obtained on blank papers by the Appellant in connection with the shifting of the telephones. The trial Court disbelieved the defence of the Appellant that he had been falsely implicated in this case because he had demanded repayment of the loan of Rs. 10,000 as advanced to PW-7. Although there was some concealment on the part of PW-8 about his acquaintance with the Appellant, the fact of the trap transaction was fully proved by the prosecution. The trial Court held that it did not matter that the address of the Appellant was obtained by PW-11 from the office of the Appellant or whether it was given by PW-8. As regards the sweet box it is possible that it might have been used to gain easy entry in the house of the Appellant because of the Diwali festival and also to rule out any suspicion in the mind of the Appellant.

20. This Court has heard the submissions of Mr. R.M. Tufail and Mr. Vishal Raj Sehijpal, learned counsel for the Appellant and Ms. Isha Khanna, learned APP for the State.

21. It is first submitted that although PW-9 failed to support the case of the prosecution and stated that all the documents were prepared in the office of the ACB and even that the hand washes of both the hands and of the left shirt pocket of the Appellant in the ACB, learned APP did not re-examine PW-9 on the above

aspects.

22. A careful examination of the deposition of PW-9 shows that the learned APP did not specifically question PW-9 on the point of preparation of the documents in the office of the ACB or the hand washes being taken there, his cross-examination by learned APP started at the point where he had stated that he was not present when the GC notes were recovered from the Appellant. It is only during cross-examination by learned counsel for the Appellant that for the first time it is stated that hand washes were done in the office of the ACB and the accused was not searched in his presence. Since then he had turned hostile and examined by learned APP, nothing much lay on the fact that he was not again re-examined by learned APP on the above aspect. Learned APP nevertheless did confront PW-9 with the portions of the statement (PW-9/A) where he had stated that he had seen the treated GC notes in right hand of the Appellant which he had counted with both his hands and kept them in his left shirt pocket. He was also confronted with the previous statement where he spoke of the recovery of the GC notes from the Appellant and hand washes turned pink.

23. The fact that PW-9 did not support the case of the prosecution on the above aspects of demand and acceptance of bribe amount cannot lead to the discarding of his evidence altogether. Interestingly he does state that PW-8 in his presence had come to the office of the ACB to give his complaint. He had handed over the GC notes which were then treated and a demonstration was given in the pre-raid proceeding.

24. It was submitted that there was a long gap between the raiding party visiting the shop of the Appellant and later reaching the house of the Appellant at around 9 pm in the night and therefore, this entire period it was probable that in view of the effect of applying phenolphthalein powder on the hands of the Appellant there could have been traces of it on the handles of the scooter and it was important for the prosecution to have taken the washes of the handles of the scooter in order to confirm that the Appellant did indeed take the GC notes with his hands prior to coming to his residence. It was further submitted that there was a possibility that a sweet box that was purchased may have been treated with phenolphthalein

powder and that when it was handed over to the Appellant he may have touched it and which is why his hand washes turned pink.

25. Interestingly, in his defence under Section 313 Cr PC no such case was put forth by the Appellant at all. As observed by the trial Court, it is possible that the said sweet box was purchased to enable the raiding party to gain easy entry into the house of the Appellant as it was Diwali time. PW-8 and PW-11 corroborated each other as to what happened during the raid proceedings. The Court is satisfied that their evidence is reliable and trustworthy. The evidence of PW-11 is not the sole witness in the present case. The fact was that the Appellant visited the shop of PW-8 which was not his place of work and for which he did not have any reasonable explanation. Further, that he had accepted illegal gratification was proved by hand washes of both hands and his left pocket shirt turning pink. In fact when the left hand shirt pocket turned pink it was clear that the Appellant touched the notes with his hands and then kept them in his left shirt implying acceptance. The defence of the Appellant was not substantiated by credible evidence. He was unable to state the date on which the so-called friendly loan was advanced by him to PW-8. There was a scoring out of the signature of PW-7 on the so-called receipt which is confirmed by DW-1. The said document does not inspire confidence. The Appellant was unable, even on a preponderance of probabilities, to rebut the presumption against him under Section 20 of the PC Act.

26. For the aforementioned reasons, the Court is satisfied that in the present case that the prosecution has been able to prove the case against the Appellant beyond all reasonable doubt and that he was rightly convicted for the offence under Section 7 and Section 13 (2) of the PC Act.

27. As regards the sentence it is seen that the Appellant had been sentenced to undergo RI for a period of three years on each count. Considering that the incident is of the year 2001 and that the Appellant has undergone the ordeal of a trial for six years and that the present appeal has remained pending for a further six years, the sentence awarded to the Appellant is modified to RI for two years for each of the offences under Section 7 and Section 13 (2) of the PC Act with both the sentences being directed to run concurrently. The fine amounts awarded by the

trial Court are maintained.

28. Consequently, this Court upholds the conviction of the Appellant as ordered by the trial Court by the impugned judgment dated 23rd February 2008, but modifies the order on sentence dated 26th February 2008 in the manner indicated in para 27 above.

29. The appeal is disposed of in the above terms. The bail bonds of the Appellant are cancelled. If he fails to surrender forthwith, he Appellant will be taken into custody without delay, to serve out the remainder of the sentence.

30. A certified copy of this order along with the trial Court record be delivered by Special Messenger to the trial Court concerned forthwith. A copy of this order be given dasti under the signature of Court Master. S. MURALIDHAR, J.

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