

Subhash Chand Vs. State

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Court : Delhi

Decided On : Oct-15-2014

Judge : S. Muralidhar

Appellant : Subhash Chand

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

1. t October 2014 Decided on:

15. h October 2014 CRL.A. No.689 of 2008 SUBHASH CHAND Appellant
Through: Mr. Vinay Kumar Garg, Senior Advocate with Mr. Imran Ahmad Abbasi
and Mr. Neeraj Kumar Sharma, Advocates. versus STATE Respondent
Through: Mr. Rajat Katyal, APP. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

1510.2014 1. This appeal is directed against the judgment dated 29th July 2008 passed by the Special Judge in CC No.14 of 2001 convicting the Appellant for the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (PC Act) and the order on sentence dated 31st July 2008 whereby for each of the offences under Section 7 and Section 13 (2) of the PC Act the Appellant was sentenced to rigorous imprisonment (RI) for two years and a fine of Rs.4,000 and in default to undergo simple imprisonment (SI) for 2 months

with both sentences being directed to run concurrently.

2. The case of the prosecution is that the Appellant was a Junior Engineer (JE) working in the New Delhi Municipal Corporation (NDMC) which had awarded the work for renovation of the outer surface of the Mayur Bhawan Building to ACON Construction India Private Ltd. (ACON) of which Ashok Kapoor (PW-8) was a Director. According to the prosecution, the work which was for total value of Rs.23,97,655 was to be completed within 9 months. By November 1999 half of the work was completed and sum of Rs.11 lakhs was paid by then to the ACON. PW-8 had submitted a further bill for the sum of Rs.1,75,000 which was pending clearance with the Appellant whose job was to supervise the work, measure the work done by the contractor on a day to day basis, make an entry in the measurement book (MB) and verify the bills submitted in the first instance.

3. PW-8 met the Appellant on 24th December 1999 in connection with the said bill. According to PW-8, the Appellant demanded a bribe of Rs.7,000 for clearing the bill. PW-8 expressed his inability to pay the amount due to paucity of funds. On 28th December 1999 at around 11 am PW-8 met the Appellant who again asked about the bribe amount. PW-8 told him that he could pay the amount only after the bill was cleared. The Appellant is then stated to have asked to be paid half the bribe amount prior to the bill being cleared. PW-8 then asked the Appellant to approve the bill and stated that he would return after sometime after arranging half the amount as demanded. The Appellant is stated to have agreed and asked PW-8 to come with Rs.3,500 by the evening and to pay the balance after the bill was cleared.

4. Since PW-8 was against the giving of bribe, he went to the Anti Corruption Branch (ACB) and gave a written complaint (Ex.PW-8/A). The complaint was given in the presence of the Raid Officer (RO), Mr. M.S. Sangha (PW-10) as well as the panch witness Bhagwati Prasad (PW-9) who was an LDC in the Flood Control Department and was in duty with the ACB. PW-8 produced 7 GC notes of Rs.500 each. PW-10 recorded their serial numbers in the pre-raid report (Ex.PW8/B). He gave a demonstration of the effect of treating the said GC notes with phenolphthalein powder. The treated GC notes were then given to PW-8. PW-9

was directed to remain close to PW-8 to hear and observe the transaction and to give a signal once it was completed.

5. At around 3 pm on 28th December 1999, PW-10 along with PWs-8 and 9 and other members of the raiding party left the ACB in a government vehicle for Mayur Bhawan and reached there within 35 minutes. While PWs-8 and 9 proceeded to the eighth floor where the Appellant was sitting, the others took suitable positions. PW-8 introduced PW-9 to the Appellant as his Supervisor.

6. What happened inside the Appellants cabin has been testified to both by PWs-8 and 9. According to PW-8 when they entered the cabin of the Appellant there were two more persons sitting there. After they left, PW-8 enquired about his bill and told the Appellant that as desired by him he had brought 50% of the total bribe amount, i.e. Rs.3,500. According to PW-8, the Appellant then demanded the money by saying Lao. PW-8 then took out those treated notes from his pocket. The Appellant then asked him to keep the file amount in a file cover lying on his table. Accordingly, PW-8 kept the amount in the file lying on the table. At that point, PW-9 gave the pre-determined signal to the raiding party by going outside. The raiding party then entered. PW-10 introduced himself and challenged the Appellant about having demanded and accepted the bribe. While the Appellant initially denied having accepted the bribe he thereafter admitted his guilt. The Appellant then took out the treated GC notes from the file and gave it to the raiding party. The recovered GC notes were tallied with those noted in the pre-raid report. The hand washes of both hands of the accused as well as the file were taken, all of which turned pink. These were kept in separate bottles, which were sealed and labelled.

7. According to PW-9, PW-8 introduced him to the Appellant as a Supervisor and asked him about the clearing of the bills to which the Appellant replied that the bill had already been prepared and sent to the accounts branch. PW-8 then informed the Appellant that he had brought the pre-settled money. PW-9 stated:

Accused asked that it was not necessary. Complainant thereafter kept those GC notes under a file cover lying on the table of the accused.

PW-9 proceeded to confirm the fact of the seizure of the GC notes and the fact that the hand washes of the Appellant as well as the wash of the file turned pink. Since he had resiled on certain aspects as stated in his previous statement to the police, PW-9 was cross-examined by the Additional Public Prosecutor (APP). He now confirmed It is also correct that the Complainant had told the accused that he had brought Rs.3,500 and he would give balance of bribe amount after payment of the bill.

He further denied having told the police that when the Appellant demanded the money, PW-8 extended the treated GC notes towards the Appellant which the Appellant accepted with his right hand and counted with the help of his left hand and then kept them on the file lying on the table. In his further cross-examination by the counsel for the Appellant, PW-9 denied that no washes were taken at the spot and that all the proceedings were prepared at the office of the ACB. He stated that they remained at the spot up to 5 pm and thereafter went to the ACB where they remained up to 8 pm.

8. The third witness who spoke about what happened at the time of the raid is PW-10, the RO. He stated that he had instructed PW-9 to recover the bribe money and thereafter PW-9 recovered it from the file which was lying on the office table of the Appellant. Barring this slight inconsistency as to the manner of the recovery of the treated GC notes, PW-10 more or less corroborated the pre-raid, raid and post-raid proceedings.

9. The Appellant was arrested and subsequently charge was framed against him for the offences mentioned earlier. For the prosecution, 12 witnesses were examined.

10. In his statement under Section 313 Cr PC, the Appellant denied the prosecution evidence and maintained that PW-9 had not recovered the GC notes on the instruction of PW-10. He stated Rather Raid Officer told me that the GC notes are lying in the file and he asked me to take out the GC notes from the file and thereafter on the asking of Raid Officer. I opened the file and handed over the GC notes to the Raid Officer on his asking.

He further denied that any of the hand washes were taken at the spot and stated that they were done at the ACB. He maintained that the sanction was not validly granted. When asked if he had anything further to say the Appellant stated as under:

It is a false case. I am innocent in the entire episode. I never demanded or accepted bribe from the Complainant. The Complainant might have put the notes in the file lying on my table without my knowledge. I came to know about these GC notes only when Raid Officer asked me to take out the GC notes from the file lying on my table and I took out the GC notes from the file on the asking of Raid Officer.

11. No witnesses were examined for the defence.

12. In the impugned judgment one of the first issues dealt with by the trial Court was whether the sanction had been validly granted. The trial Court answered the said issue in the affirmative and negated the plea of the Appellant to the contrary. On merits, the learned trial Court observed that while PW-8 had turned hostile as regards the manner in which the bribe amount was accepted and PW-9 had turned hostile as regards the demand of the bribe amount by the Appellant, neither of their testimonies could be totally discarded and that to the extent they corroborated the case of the prosecution their testimonies had to be accepted. It was concluded that PW-8 had perhaps resiled as far as the manner of recovery of the bribe amount only to help the accused. The version of PW-8 that the Appellant had taken the GC notes from the file cover did not explain how both his hand washes turned pink. To the extent PW-9 admitted to having signed the post-raid report after going through the same, it could be relied upon and was not hit by Section 162 Cr PC. The report of the Forensic Sciences Laboratory (FSL) (Ex. PW-12/F) proved the presence of phenolphthalein powder and sodium carbonate and thus corroborated the case of the prosecution regarding conscious acceptance of the bribe amount by the Appellant. It was further held by the learned trial Court that even if PWs-8 and 9 turned hostile, the conviction could still be based on the solitary evidence of PW-10. Accordingly, the trial Court convicted the Appellant and sentenced him in the manner indicated hereinbefore.

13. Mr. Vinay Kumar Garg, learned Senior counsel appearing for the Appellant, first submitted that on 28th December 1999 itself the bill had been cleared as was deposed by the Executive Engineer (EE) Mr. D.K. Aggarwal (PW-6) as well as Mr. V.K. Nimish (PW-2) who was the Assistant Engineer (AE). There was, therefore, no role to be performed by the Appellant as far as the bill of ACON was concerned. Secondly, it was submitted that there was no occasion for the Appellant to ask that the bribe money should be kept in the file. As regards demand of bribe for refund of the security deposit, Mr. Garg referred to the notings on the file which showed that the Appellant was in no way involved even as regards the decision to return security deposit. The EE had already taken a decision to withhold 5% while approving the return of the security deposit to ACON. Mr. Garg submitted that with PW-8 himself not supporting the case of the prosecution and making inconsistent statements, there was no proof of demand or acceptance of the bribe amount. Reliance was placed on the decisions in M.K. Harshan v. State of Kerala (1996) 11 SCC720 State of Punjab v. Madan Mohan Lal Verma (2013) 14 SCC153 Narendra Champaklal Trivedi v. State of Gujarat (2012) 7 SCC80 G. Harinatha Rao v. State of A.P. 2014 (2) SCALE253 P. Parasurami Reddy v. State of Andhra Pradesh (2011) 12 SCC294 Rajinder Prasad Sharma v. State 2014 (2) JCC1162 and Har Bharosey Lal v. State of U.P. 1988 CrI LJ1122 It was submitted that where the Complainant himself has turned hostile, the mere fact that the hand washes turned pink was insufficient to return a finding of guilt against the Appellant. Reliance was also placed on the decision of this Court in Vishal Chand Jain @ V.C. Jain v. C.B.I. 2011 (1) JCC570 14. In reply, it was pointed out by Mr. Rajat Katyal, learned APP for the State that a careful perusal of the evidence showed that both the files, i.e., file containing the bill of ACON which had to be passed and the security file of ACON were with the Appellant on the relevant date, i.e. 28th December 1999. He pointed out that money was in fact kept in the file concerning passing of the bills of ACON. Without the Appellant clearing the bill there is no question of payment being released to ACON. It could not be said that PW-8 had turned completely hostile. Further the evidence of panch witness, PW-9 also corroborated the evidence of PW-8 in material particulars.

15. The above submissions have been considered by the Court. An examination of the trial Court record reveals that during the course of investigation, specific questions in writing were asked of the EE, PW-6, regarding the submission of bills of ACON. In response to a question whether the JE was competent to clear the bills, PW-6 stated that JE is not competent to clear the bill. He only verifies the bill submitted by the contractors/records the measurement of the work executed at site in M.B. for preparation of abstract of the bill which is then submitted to Sub-Division office.

He further answered in the affirmative the question whether on the date of the raid, the bill was pending with the JE, i.e., the Appellant.

16. It also appears that the security file was pending in fact with the Appellant on the date of the raid. Ex.PW-8/G is the seizure memo. Serial No.2 referred to the MB No.1293 which included page No.87, bearing the writing and signature of PW-8 dated 28th December 1999 as Bill and measurements accepted on the reverse (i.e. page 87). It included MB No.1292 which again included page No.34 which had the signature of PW-8 with the date 28th December 1999. From the table of the JE, i.e, the Appellant one letter dated 29th November 1999 from PW-8, Director of ACON addressed to the EE, NDMC was found. This showed that on the date of the raid the bills concerning ACON including the MBs were pending with the Appellant. The seizure memo of the ACON file No.BG1099 (Ex.PW-10/B) showed that it was the file from which the treated GC notes were recovered. Although the notings on the file were referred to by Mr. Garg to show that the decision had already been taken to clear the bills and approve the refund of the security, it appears from the above evidence that the files were sent back to the Appellant and on the relevant date they were with him.

17. The evidence of PW-2, V.K. Nimish, refers to the MBs and in particular entries at page No.88 in MB No.1293 where the gross amount and net amount of the 8th running bill were shown to have been accepted by PW-8 on 28th December 1999. He also confirmed that the security deposit file was received in his office on 24 th December 1999 itself. This corroborates the evidence of PW-8 who states that when he met the Appellant on 24th December 1999 the Appellant demanded the

bribe amount. It also corroborates his statement that on the morning of 28th December 1999 when he met the Appellant in his office at Mayur Bhawan the Appellant asked that at least 50% of the asked amount should be paid in advance. The submission of Mr. Katyal that during his first visit on 28th December 1999 the Appellant's signatures were obtained on the MBs concerned and by the time the Appellant returned in the afternoon the paper work concerning the bills had been completed by the Appellant appears plausible .

18. As regards the demand and conscious acceptance of the bribe amount by the Appellant, PW-8 clearly stated that when he and PW-9 entered the cabin of the Appellant, the Appellant demanded the bribe money by saying Lao and then PW-8 took out the treated GC notes from his pocket. The Appellant then asked PW-8 to keep the bribe amount in the ACON file lying on his table. The only point of difference is that in his statement to the police (PW-8/J) PW-8 had stated that he had given the GC notes in the right hand of the Appellant who then counted the notes with both hands.

19. Turning to the evidence of PW-9 it is seen that according to him, when PW-8 introduced PW-9 to the Appellant as his supervisor and asked about clearing the bills. The Appellant relied that his bill was already prepared and was to be sent to the Account Branch for payment.

PW-9 stated that The complainant asked the accused that he had brought pre-settled money. Accused asked that it was not necessary. Complainant thereafter kept those GC notes under a file cover lying on the table of the accused.

20. The above statement of PW-9 when viewed together with the entire evidence of PW-8, unmistakably shows that the bribe amount was kept in the file by PW-8 with the full knowledge and consent and in the presence of the Appellant. No suggestions was made to either PW-8 or PW-9 that the money was thrust into the hands of the Appellant or somehow kept in the file without his knowledge. In fact the Appellant does not deny that GC notes were recovered from the file. In response to Question 20, in his statement under Section 313 Cr PC, the Appellant stated that the raiding officer, PW-10, asked him to take out the GC notes from the file and thereafter he opened it and handed over the GC notes to PW-10. For the

purposes of Sections 7 and 13 (1) (d) PC Act, the above evidence is sufficient to prove both demand and conscious acceptance of the treated GC notes by the Appellant. With the hand washes having turned pink, the presumption under Section 20 PC Act vis-a-vis the offence under Section 7 was attracted and the burden shifted to the Appellant to rebut the presumption. The Appellant was unable to rebut the presumption by leading credible evidence.

21. The decision *M.K. Harshan v. State of Kerala* turned on its own facts. There the order granting licence in favour of the Appellant had already been made ready even before the raid. In the circumstances, the demand by the accused was highly improbable. In the present case however, from the sequence of events it appears that while the bill may not have been passed by the Appellant in the morning of 28th December 1999, the conscious acceptance of the bribe amount by the Appellant in the afternoon was explained by the fact that in the meanwhile the paper work in that regard had been completed by the Appellant.

22. Although the trial Court in the instant case proceeded on the basis that PW-8 turned hostile, a careful perusal of his deposition reveals that he supported the prosecution case on the material aspects as far as Section 7 and Section 13 (1) (d) read with Section 13 (2) of PC Act is concerned. Further, it is not a case where it can be said that the evidence of the Complainant forms the sole basis for convicting the Appellant. The evidence of the panch witness, as already noticed, corroborates the evidence of PW-8 in all the material aspects. The decisions in *Rakesh Kapoor v. State of Himachal Pradesh* (supra) and *State of Punjab v. Madan Mohan Lal Verma* turned on the peculiar facts of those cases and do not help the case of the Appellant. The facts in *G. Harinatha Rao* are also distinguishable on facts. The inconsistencies in the evidence of PWs 8 and 9 when compared to their previous statements to the police are not material enough to discredit their testimonies. As far as the decision in *P. Parasurami Reddy v. State of Andhra Pradesh* is concerned, the Court would like to observe that the hand washes of the Appellant turning pink, and this being subsequently proved by the FSL Report to contain phenolphthalein, does not in the present case constitute the sole basis of the conviction of the Appellant.

23. Consequently, the Court is unable to find any error having been committed by the learned trial Court in finding the Appellant guilty of the offences under Sections 7 and 13 (1) (d) read with Section 13 (2) of the PC Act.

24. Turning to the question of punishment, the Court finds that the sentence of two years RI for each of the offences cannot be said to be disproportionate. Accordingly, the sentence also does not call for interference.

25. The appeal is dismissed and the bail bonds of the Appellant are hereby cancelled. He is directed to surrender before the trial Court forthwith to serve out the remaining sentence.

26. The trial Court record along with a certified copy of this judgment be delivered forthwith to the trial Court. S. MURALIDHAR, J.

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