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Court : Delhi

Decided On : Oct-17-2014

Judge : S. Muralidhar

Appellant : Munshi Ram

Respondent : State

Advocate for Pet/Ap. : Dr. Kanwal Sapra, Mr. H.R. Dhamija, Ms. Isha Khanna

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.728 of 2008 Reserved on: October 13, 2014 Decision on: October 17, 2014 MUNSHI RAM ..... Appellant Through: Dr. Kanwal Sapra and Mr. H.R. Dhamija, Advocates. versus STATE ..... Respondent Through: Ms. Isha Khanna, APP. AND CRL.A. No.729 of 2008 ROHTASH KANWAR ..... Appellant Through: Dr. Kanwal Sapra and Mr. H.R. Dhamija, Advocates. versus STATE ..... Respondent Through: Ms. Isha Khanna, APP. CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
1710.2014 1. These two appeals are directed against the impugned judgment dated 7th August 2008 passed by the learned Special Judge in CC No.129 of 2006, convicting the Appellants for the offences under Sections 7 and 13 (1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 (PC Act) as well as the order on sentence dated 11 th August 2008, whereby for the offence under

Section 7 of the PC Act each of them were sentenced to undergo rigorous imprisonment (RI) for a period of one year along with fine of Rs.2,000/- each and in default to undergo simple imprisonment (SI) for two months each and for the offence under Section 13 (1) (d) read with Section 13 (2) of the PC Act, each of them were further sentenced to undergo RI for two years each with fine of Rs. 3,000 each and in default to undergo SI for three months each. Both the sentences were directed to run concurrently.

2. Criminal Appeal No.728 of 2008 is by Munshi Ram, Accused No.1 (A-1) who was Sub Inspector (SI) in the Delhi Police (DP) and Criminal Appeal No.729 of 2008 is by Rohtash Kanwar, A-2 who was a Constable in the DP.

3. It requires to be noted that this Court by its order dated 4 th September 2008 suspended the sentences of the Appellants during the pendency of these appeals.

4. The case of the prosecution is that the Complainant, Kanta Prasad Gautam (PW-8) was having a jewellery shop at P-2/201, Sultan Puri, Delhi. On 3rd October 2000 A-1 along with three police officials came to his shop and took him to PS Sultan Puri. One Ashok present with them stated that PW-8 had purchased stolen jewellery items from him. A-1 asked PW-8 to return the jewellery or give money in its place failing which A-1 would arrest PW-8. A-1 then demanded Rs. 1 lakh from PW-8 and asked him to come on the following day with the money.

5. On the following day, i.e., 4th October 2000 PW-8 went to A-1 and requested him not to demand any bribe amount. Thereupon A-1is stated to have agreed to accept Rs. 50,000. A-1 sent one Roop Chand (PW-6) to the house of PW-8. PW-6 went there and collected Rs. 20,000 from Smt. Ram Shri (PW-2), the mother of PW-8. On 5th October 2000 one police official came to the house of PW-8 and called him to the PS. PW8 went to PS in the evening when again A-1 stated to have demanded Rs. 30,000 from PW-8 and upon request of PW-8 A-1 agreed to accept Rs. 5,000. At that stage, PW-8, who was against giving of any further bribe, went to the Anti-Corruption Branch (ACB) at around 4 pm and got his complaint (Ex.PW-3/A) recorded by the Raid Officer (RO), Inspector Abhey Ram (PW-10) in the presence of panch witness Kamal Singh (PW-3) who was on duty at the ACB and at that time was an LDC in the office of the Commissioner of Industries, CPO

building, Kashmiri Gate Delhi. PW-8 produced eight government currency (GC) notes of Rs.500 each and 10 GC notes of Rs. 100 each. PW-10 noted their serial numbers in the pre-raid report (Ex. PW-3/B). Thereafter, PW-10 applied phenolphthalein powder to the said GC notes and gave a demonstration of its effect. He then handed over the treated GC notes to PW-8 who kept them in the left pocket of his shirt. Instructions were given to PW-3 to stay close to PW-8 and give a signal when the bribe money was handed over. The raiding party including PW-9, PW-8, PW3 and PW-10 and certain others thereafter left for PS Sultan Puri.

6. According to PW-3, the raiding team reached there at about 7.30 pm. PW-3 along with PW-8 went inside the P.S. and the other members of the raiding took suitable positions outside the room on the first floor of the PS where the Appellants were sitting. A-1 asked PW-8 whether he had brought the bribe money to which PW-8 replied in the affirmative. Then A-1 asked A-2 to collect the bribe money from PW-8 and also asked PW-8 to bring Rs. 5,000 more. Thereafter, PW-8 handed over those treated GC notes to A-2. At that stage PW-3 went outside and gave the pre-determined signal to the raiding party.

7. According to PW-3, after accepting the bribe amount A-2 ran away from that room and PW-8 started shouting that A-2 had run away after taking the bribe. In the meanwhile, the members of the raiding party reached the room, and A-2 also returned there but without the bribe amount. The search of both A-1 and A-2 did not result in anything being recovered. The memo (Ex.PW-3/C) was prepared. The search of the room also did not yield anything. The right hand wash of A-2 turned pink. The right pocket wash of the pant of A-2 was also turned pink. Both solutions were transferred into four empty clean small bottles which were sealed and labelled. A pullanda was made of the pant of A2. The post-raid report (Ex.PW-3/E) was prepared by the RO. Both A-1 and A-2 were arrested.

8. As already mentioned at the trial, PW-8 turned hostile. He claimed not to know A-1 and A-2 and stated that they had not demanded any bribe amount. He also claimed that he did not give any bribe amount to either of them. He denied giving any complaint to the ACB. He also denied the pre-raid proceeding and post-raid proceedings. He further claimed that he had signed the memos in the ACB

forcibly. He identified his signatures on the bottles containing the samples of hand washes and pant of A-2. He also identified his signature on the right pocket of the pant. In his cross-examination by counsel for the accused, PW-8 stated that so long myself and other members of the raiding party remained in PS Sultan Puri there was complete pitch darkness in the PS. There was no any other source of light in PS or any other room. It is correct that as there was darkness in the PS no document was prepared or read over to me and I was made to sign the documents forcibly.

9. While it is interesting to note that PW-8 in his cross-examination by learned APP totally denied the pre-raid, raid or post-raid proceedings, the above answer given by PW-8 in his cross-examination by counsel for the accused shows that he was indeed present in the PS along with the raiding party at the concerned time. Clearly, therefore, PW-8 was trying to help the accused.

10. Much has been made about the correction made to the post-raid proceeding (Ex.PW-3/E) where the name 'Rohtash Singh' has been overwritten as Rohtash Kanwar. This was obviously done by the RO, PW-10, who confirmed this in his cross-examination by counsel for the accused. Although it was submitted by Dr. Kanwal Sapra, learned counsel for the Appellants, that Rohtash Kanwar had replaced some other accused who was let off, it has not been shown by the accused that there was any other person at the PS whose first name was Rohtash.

11. It was submitted by Dr. Sapra that neither PW-5 nor PW-6 supported the case of the prosecution and that PW-2 Smt. Ram Shri, mother of PW-8 also did not support the version of PW-6. Reliance was placed on the decisions in S.K. Singhal v. State (C.B.I.) 199 (2013) DLT690 Arjun Bajirao Kale v. State of Maharashtra 2009 (4) Crimes 504 (Bom.), Anand Prakash& Anr v. State of Haryana 2008 (4) Crimes 365 (P&H) and Udai Singh v. State 182 (2011)DLT28to urge that that the prosecution had failed to prove beyond reasonable doubt the demand and conscious acceptance of the bribe amount by the accused.

12. As far as PW-2 is concerned, she stated that when she went to PS Sultan Puri she saw her son, PW-8, sitting in a room on the first floor. She further stated that

one police official came to her house and asked her to arrange Rs. 20,000 for the release of PW-8. Thereafter, PW-2 arranged the money from her neighbours and accompanied with that police official along with the money and the money to the tune of Rs. 20,000 was given by me to Munshi Ram, police official, who is present in Court today.

She further stated:

it is incorrect to suggest that I never paid any amount to SI Munshi Ram nor SI Munshi Ram came to my house for collecting Rs. 20,000.

The above answer corroborates the complaint given by PW-8 to the ACB in the presence of PW-3. PW2 does not talk about PW-6 coming to her house to collect Rs. 20,000. Consequently, the fact that PW-6 turned hostile during the trial does not affect the credibility of the evidence of PW-2.

13. Dr. Sapra submitted that PW-3 was a stock witness. On the relevant date he was not assigned to the ACB on duty. He was a witness against his will. The Court finds that this criticism of PW-3 is too vague to merit acceptance. Nothing has been brought out in the crossexamination of PW-3 except that he had been deputed to the ACB three or four times as panch witness. This cannot per se lead to the inference that he is a stock witness. There is some inconsistency when PW-3 states in his examination-in-chief that PW-8 came to the ACB after PW3 had reached there whereas in his cross-examination he states that when he went to ACB at 5.30 pm he found that PW-8 had already present. This could be on account of the fact that the examination-inchief of PW-3 took place on 24th March 2006 and his cross-examination took place more than one year on 4th April 2007. In any event the inconsistencies pointed out by Dr. Sapra in the evidence of PW-3 are not material enough to doubt his credibility.

14. In the considered view of the Court, the evidence of PW-3 on the material aspect of demand and acceptance of the bribe amount fully supports the case of the prosecution. Despite PW-3 being crossexamined at great length, nothing has emerged to doubt his credibility. While he stated in his cross-examination that I could not see the place of the other person sitting in front of Munshi Ram as it his

back towards me, so I cannot identify the person clearly, PW-3 was talking about what he saw at the time when he entered the room of A-1. This did not mean that PW-3 was unable to identify A-2 as was sought to be suggested by Dr. Sapra. He was present throughout the raid and postraid proceedings and therefore had ample opportunity to observe A-2 at close quarters. The decisions cited by Dr. Sapra turned on their peculiar facts and do not come to the aid of the present Appellants.

15. Much has been made about the darkness inside and outside the PS Sultan Puri in the cross-examination of PW-3. It had emerged that there was candle light in the room. While in the cross-examination by learned counsel for A-2, PW-3 admitted that there was darkness inside and outside PS Sultan Puri at the time of the raid, in his cross-examination by counsel for A-1, PW-3 clarified that the room was thereafter illuminated by lighting the lantern and some candles. It is incorrect to suggest that there was complete darkness in the room and that it was neither illuminated with any candle nor thereafter any lantern was brought in that very room.

Therefore, it would be incorrect to read the answers of PW-3 in isolation on this aspect. PW-9 stated in his cross examination by counsel for A-2 that when he reached the spot at 11 pm there was electricity. An answer was elicited in the cross-examination of PW-10 that electricity of the area had gone and therefore, it was dark inside the PS. However, there was nothing elicited from PWs 9 and 10 to contradict the answer given by PW-3 in his cross-examination that the room was illuminated by a lantern and some candles.

16. Dr. Sapra dwelt at some length regarding the time during which the raid took place. He pointed out that according to PW-3 in his cross examination, the raiding party must have left the ACB at 7 pm whereas PWs 9 and 10 stated that they left at around 6.30 pm. Further PW-3 stated that they reached PS Sultanpuri at 7.30 pm whereas PWs 9 and 10 stated that they reached PS Sultan Puri at 11 pm and thereafter left for ACB. The Court is unable to agree that these are glaring contradictions which discredit the entire prosecution story. On the main aspect of demand and conscious acceptance of the bribe amount, the evidence of PW-3

stands proved and corroborated. As regards the factum of hand washes and pant washes of A-2 turning pink again there is clear cut evidence which is fully corroborated by the FSL report.

17. Dr. Sapra dwelt on the overwriting and change of alphabets of seal S N and alphabets mentioned in the labels. As pointed by the learned APP, the hand wash labels have been referred to as RHPPW-1 in some places and at some other place as RPPW-1. Even the overwriting and change of alphabets of seal S N found in the statement dated 20th October 2000 under Section 161 Cr PC of Head Constable Phool Chand and Constable Om Parkash is not found in the statement of Constable Surinder Singh dated 7th October 2000. The malkhana report also mentioned alphabets in the seal as SN. The Court is not therefore, impressed with the submission that there was any tampering with the seal or any doubt on the validity of the FSL report.

18. It was submitted that in the raid report it was mentioned by the RO that PW-3 had informed him that the money had been given by PW-8 at the main gate of PS Sultan Puri whereas according to the evidence of PW-3, money was given in the room of A-1. In the considered view of the Court, PW-3 was not confronted with the statement made in the preraid report in order to contradict him on this aspect. With the hand washes of A-2 and his pant pocket turning pink the burden shifted to the accused under Section 20 of PC Act to rebut the presumption of conscious acceptance of the bribe amount thus attracting the offence under Section 7 of the PC Act. The accused were unable to rebut the presumption. Consequently, the above submission is without merit.

19. Dr. Sapra submitted that failure to take up the personal search of PW-8 in order to ascertain whether he had retained the bribe amount was fatal to the case of the prosecution. The Court is unable to agree with the submission. No question in this regards was put to the IO in his cross examination. The FSL report corroborated the fact that the hand and pant washes of A-2 turned pink. A-2 was unable to rebut the presumption attracted under Section 20 of PC Act vis--vis Section 7 of PC Act to show that he had not consciously accepted the bribe amount.

20. Regarding A-2 having run away with the bribe amount, Dr. Sapra submitted that it was clear that no efforts were made by the RO or his team members to chase and apprehend A-2 and that it was improbable for A-2 to run away when members of the raiding party were standing outside the room of A-1. The above submission does not impress the Court. It is possible that since there was complete darkness outside the room, the raiding party may have been unable to effectively respond to the shouts of PW-8 that A-2 had run away with the bribe amount.

21. Having carefully examined the entire trial Court record, the Court is satisfied that the case against both A-1 and A-2 had been proved by the prosecution beyond reasonable doubt. The Court is unable to find any illegal infirmity in the conclusion arrived at by the trial Court regarding the guilt of the Appellants for the offences under Section 7 and 13 (1) (d) read with Section 13 (2) of PC Act.

22. On the question sentence, the Court is satisfied that what has been awarded to each of the Appellants is neither excessive or disproportionate and therefore, does not call for interference.

23. The appeals are dismissed with no orders as to costs. The bail bonds of the Appellants are cancelled. The Appellants are directed to surrender forthwith to serve out their remainder sentences.

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

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