

Narayan Vs. State of Maharashtra

Narayan Vs. State of Maharashtra

SooperKanoon Citation : sooperkanoon.com/1175257

Court : Mumbai Nagpur

Decided On : Jul-11-2014

Judge : P.N. Deshmukh

Appeal No. : Criminal Appeal No. 379 of 2001

Appellant : Narayan

Respondent : State of Maharashtra

Advocate for Pet/Ap. : Shri. Daga

Judgement :

Oral Judgment:

1. This criminal appeal takes exception to the judgment dated 30/11/2001 passed by the Special Judge, Nagpur in Special Case No.30/1991 by which appellant/accused is convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-and in default, to undergo simple imprisonment for four months. The appellant is also convicted for the offence under Section 13(1)(d) punishable under Section 13(2) of the said Act and is sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.500/- and in default, to suffer simple imprisonment for six months.

2. The prosecution case can be briefly stated as under :

Complainant Ratan Deole had purchased part of agricultural field from his grandmother Tulsabai Deole in the year 1984 and wanted to dig a well on obtaining loan, for which purpose he required 7/12 extract of the field of his share and accordingly approached appellant being Talathi at Sawangi. During his meeting with appellant, the complainant was informed that the field was recorded in the name of Tulsabai and unless mutation is carried on in the name of the complainant, 7/12 extract could not be issued in his name as cultivator and owner. The complainant thus returned back to his village Asola. The complainant again contacted the appellant in his office 15-20 days thereafter with the same request and produced the Sale Deed, when the appellant demanded him Rs.500/-, upon which the complainant paid Rs.50/- to the appellant and assured to make payment of balance amount of Rs.450/- later on whenever he could arrange for the said amount. During this meeting, the appellant supplied notices to the complainant for obtaining signatures of legal heirs of Tulsabai since she was not alive by then.

3. According to prosecution, about four months thereafter the complainant visited appellant along with signatures on the notices when appellant demanded him Rs.450/-. However, the said amount was not carried by the complainant and he still insisted the appellant to issue 7/12 extract as he was badly in need of the same. However, appellant refused to issue the same saying that unless Rs.450/- were paid, he would not issue 7/12 extract. It is the further case of the prosecution that after some days, village Kotwal came to the complainant and informed him that he was called by the Talathi (appellant). 10-15 days thereafter the appellant visited village Asola when complainant met him and again requested him for 7/12 extract, upon which appellant informed complainant that he had already sent notices for obtaining signatures of other co-owners and told complainant to contact him after receipt of the notices duly signed by them with Rs.450/-, else it would not be possible for him to complete the work, upon which complainant returned home.

4. Lastly, on 8/4/1991, complainant met appellant while he was proceeding to village Hingna. According to prosecution, during this meeting appellant asked complainant to pay Rs.450/- for issuing 7/12 extract. However, on that day also, complainant was not having said amount and thus, informed the appellant that he would arrange for said amount within 2-3 days, upon which appellant informed

complainant to come to his office with said amount on Wednesday when he would issue 7/12 extract. As the complainant was not interested to make payment of the said amount, on 10/4/1991, he lodged complaint against appellant with the Office of Anti Corruption Bureau.

5. On receipt of the complaint, Investigating Officer in the presence of independent witnesses informed complainant about effect of phenolphthalein powder on the sodium carbonate solution and gave necessary instructions to the complainant to pay the bribe only on demand and to give the proposed signal by wiping his face with handkerchief. P.W.2 Yuvraj, the panch, was instructed to accompany the complainant and to hear the conversation whatsoever takes place between the complainant and appellant while P.W.4 Noor Mohammad, the second panch, was instructed to accompany the raiding team. After drawing first panchanama in the office of Anti Corruption Bureau, trap came to be laid in the office of the appellant where he came to be apprehended for having demanded and accepted bribe of Rs.450/-, which came to be seized from the possession of P.W.10 Manohar as per post trap panchanama. It is the case of the prosecution that on accepting above amount, appellant handed over the same to P.W.10 Manohar from whose possession, it came to be recovered.

6. P.W.9 Prabhakar, Investigating Officer thereafter lodged a report with Butibori Police Station on the basis of which, Crime No.23/1991 came to be registered and was further investigated. During the course of investigation, all the documents were referred to P.W.11 Jagdish Patil for grant of sanction to prosecute the appellant. On receipt of sanction for prosecution and on completion of investigation, charge-sheet came to be filed before the Special Court.

7. Charges were framed against the appellant for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, to which he pleaded not guilty and claimed to be tried. His defence was of total denial. The learned Special Judge on considering the evidence, convicted the appellant as aforesaid. Hence, this criminal appeal.

8. Heard Shri Daga, learned Counsel for the appellant and Shri Laddhad, learned Additional Public Prosecutor for the respondent. To effectively evaluate the

submissions advanced by the learned Counsel for both the sides, I have scrutinized the evidence on record with their assistance.

9. P.W.1 Ratan (complainant), in his evidence, has stated that in the year 1984, he had purchased part of the field admeasuring 4 acres, out of 16 acres, from Tulsabai and remaining part of the field was purchased by other purchasers and wanted to dig a well in his field for which purpose he was in need of 7/12 extract for obtaining loan and thus, contacted the appellant about 2-3 months prior to the incident. He has further stated that the appellant issued him notice for obtaining signatures of other co-owners upon which he obtained such signatures and returned the same to the appellant in 2-3 days when appellant informed him that there would be expenditure to the extent of Rs.500/- for obtaining 7/12 extract, out of which amount of Rs.50/- is said to be paid by the complainant to the appellant. He has further stated that at that time, appellant informed him to pay balance of Rs.450/-. The complainant has further stated that eight days thereafter, appellant had sent Shatrughna Khadatkar, Kotwal, who enquired the complainant whether he would be paying the money. According to the complainant, few days thereafter appellant visited his village, to whom he met and enquired about his 7/12 extract and mutation, upon which he was directed to meet appellant at Sawangi. Accordingly, complainant met the appellant, when the appellant enquired him whether he had brought the amount, to which he expressed his inability to pay the same and returned back to his village as the appellant had informed him to arrange the money within 4-8 days, which complainant agreed. The complainant accordingly borrowed Rs.450/- from his relative and visited the office of Anti Corruption Bureau and lodged a report (Exh. 23).

10. When above evidence of the complainant is minutely considered, the complainant has not deposed as to on what date and time, the appellant had made demand of Rs.500/- prior to lodging his report dated 10/4/1991 (Exh.23). On the contrary, from the evidence of the complainant, it is revealed that in the year 1984, he had purchased 4 acres of land, out of 16 acres of land, owned by his grandmother Tulsabai and after the said transaction was over, since he wanted to dig a well on obtaining loan, he required 7/12 extract and for that purpose, contacted the appellant. It is specifically deposed by the complainant that he had

visited the appellant 2-3 months prior to the incident for obtaining 7/12 extract required for the purpose of obtaining loan. The evidence of the complainant is totally silent as to how many days prior to his lodging report, he had met the appellant when he had demanded the bribe amount. Admittedly, complainant had purchased field in the year 1984. The report (Exh. 23) was lodged in the year 1991. In the absence of any specific evidence on record, it cannot be said as to how many days prior to lodging report by the complainant, the appellant had made the alleged demand.

Even on considering evidence of the complainant about so called visit of appellant to village Sawangi where complainant alleged to have met him when appellant is said to have reiterated his demand of Rs.450/-, upon which the complainant is said to have agreed to make said payment in four-eight days and thereupon on collecting the amount from his relative, visited the office of Anti Corruption Bureau and lodged his report, there is no explanation on the part of the complainant as to why no immediate report was lodged after his alleged meeting with the appellant at Sawangi when according to him, the appellant had demanded the bribe, which was agreed to be paid by the complainant within 4-8 days. The complainant has admitted that prior to his lodging report, he had met the appellant 5-6 months before. The complainant has also admitted that after paying Rs.50/-, he visited the appellant in his office only at the time of raid. In the light of the above evidence, prosecution cannot be said to have established demand alleged to be made by the appellant.

11. Even the case of the prosecution does not inspire confidence with reference to the demand and acceptance of bribe by the appellant as from further evidence of the complainant, it has come on record that from the office of Anti Corruption Bureau, he along with P.W.2 Yuvraj, first panch and members of the raiding team proceeded to Sawangi and went to the office of appellant where he was not found present. Accordingly, complainant waited till his arrival. The complainant has stated that after arrival of appellant, he along with panch no.1 entered the office and enquired from appellant about 7/12 extract, if it was ready when appellant enquired about P.W.2 Yuvraj, who was accompanying the complainant. The complainant introduced P.W.2 Yuvraj as his maternal brother. He has further

stated that appellant thereafter stated that 7/12 extract was ready and enquired whether complainant had brought the amount, to which complainant replied in affirmative when appellant demanded the same, upon which complainant paid him Rs.450/-.

In the cross-examination, complainant has admitted that for 7/12 extract, he had not given any application to the appellant. The above evidence of complainant particularly with reference to conversation whatsoever took place in the office of appellant, even otherwise does not inspire confidence when complainant appears to have tried to prove his version so as to suit the case of the prosecution as though he has stated to have mentioned in his statement recorded by the Police that the appellant had demanded Rs.450/-, he is unable to state as to why said fact does not find place in his statement. Above omission on the part of the complainant is fatal to the prosecution, more particularly in the light of prosecution's failure to establish demand on the part of the appellant.

12. Evidence of P.W.2 Yuvraj on the point of demand and conversation when perused, does not corroborate the version of the complainant at all when he has stated that on his reaching the office of appellant along with complainant, the appellant was present there. However, according to the evidence of the complainant, on reaching the office of the appellant since appellant was not present in the office, the complainant along with P.W.2 Yuvraj waited till his arrival. Though the said aspect does not go to the root of the case, it is difficult to rely upon evidence of these two witnesses who, according to the prosecution, at the time of trap had visited the office of the appellant. Leaving this aspect as it is, when further evidence of P.W.2 Yuvraj is considered, he has stated that in the office of appellant, some persons were sitting while appellant was doing his work. He has stated that at that time, one person came and gave call to the appellant when he came out, when complainant paid money to the appellant and demanded 7/12 extract from him, upon which appellant stated that he would issue the same. Except for above, there is no whisper from P.W.2 Yuvraj with reference to the conversation whatsoever took place between appellant and complainant as deposed by the complainant. In the circumstances, there appears no corroboration on this material aspect of the case to the evidence of the complainant from

independent witness.

13. Similarly, from the post trap panchanama (Exh. 34) it is revealed that details of conversation is stated therein. There is no corroboration to the contents of panchanama from P.W.2 Yuvraj. The relevant contents of panchanama are as follows :

"Complainant : Saheb, will you supply me the extract of 7/12 and the Khate-Pustak?

Talathi: Have you brought the amount as asked?

Complainant : I have brought an amount of Rs.450/- as told by you.

Talathi: Give the amount.

Complainant : Saheb, first of all, let my work be done.

Talathi: Have you obtained the signatures on the notices given to you earlier?

Complainant : Yes, Saheb.

Talathi: Show me the said notices.

Complainant : The complainant handed over two white papers, i.e. notices to Talathi. Then, the Talathi saw the said notices and handed over one of the notices to the complainant and asked him to put the signature thereon. After putting the signature, the complainant again handed over the said notice to Talathi, who, in turn, kept the same with the papers.

Talathi: Where are the notices sent with Kotwal?

Complainant : The same are with me only.

Talathi: Hand over the same also.

Complainant : The complainant took out the said notices and handed over the same to Talathi.

Talathi: Now, give the amount. I will send to your home the extract of 7/12 and Khatepustika pertaining to you. After having said so, he (Talathi) kept in the pocket of his shirt the notices given by the complainant.

With the help of right hand, the complainant took out the powder-applied currency from the pocket of his shirt and held the same before Talathi.

Talathi, with the help of right hand, took the said currency notes, counted the same with both hands and kept it in the left side pocket of the Pyjama worn by him."

Considering above contents of panchanama, together with the oral evidence of P.W.2 Yuvraj, said contents do not find corroboration by this witness.

14. Even otherwise, case of the prosecution does not inspire confidence as it fails even on the aspect of recovery of tainted notes as, according to the complainant, appellant accepted the bribe amount and on counting the notes, kept in his pocket. Thereafter the complainant came out and gave out the proposed signal. He further stated that on obtaining personal search of the appellant, Rs.450/- were recovered from him. Similar are the contents of post trap panchanama and evidence of P.W.2 Yuvraj about appellant keeping the tainted money in his pyjama pocket, while according to P.W.9 Prabhakar Rahane, Investigating Officer, tainted money was suo motu produced by P.W.10 Manohar, who was present at the scene of offence and was detained by the raiding party when he was about to leave the office of the appellant as he had informed the raiding team officials that the appellant had handed over the amount to him. In that view of the matter, reference can be usefully made to the case of State of Punjab vs. Madan Mohan Lal Verma {(2013 (4) Crimes 41 (SC)} wherein in para 7 of the judgment, it is observed thus :

"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the

burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain, how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person."

In view of the above settled proposition of law, evidence of neither complainant nor P.W.2 Yuvraj appears to be convincing and reliable having no corroboration to the evidence of complainant from independent witness P.W.2 Yuvraj.

15. It is material to note that prosecution has examined P.W.10 Manohar, who, as per prosecution case, has arrived on the spot to inform the appellant not to accept any amount from anyone on that day and accordingly appears to be present on the spot as revealed from the evidence of P.W.9 Prabhakar Rahane, Investigating Officer and in fact, is found detained by the members of the raiding team and had suo motu produced the tainted notes from his possession. In the light of this case of prosecution, P.W.10 Manohar has stated that on the day of incident, i.e on 10/4/1991, one Mahadeo Maharaj, who runs a grocery shop in a portion of room where office of appellant was situated, had instructed him to go and inform the appellant not to accept money from anyone and had accordingly visited the appellant, who gave him one paper packet, which he kept in his pocket when the raiding team members arrived. P.W.10 Manohar has further stated that during the course of investigation, his statement was recorded by the Magistrate.

In the cross-examination, P.W.10 Manohar has admitted that at the time of incident, he was on bail as he was involved in the crime of murder of his wife. He has also admitted that the appellant had given him one packet, which he kept in his pocket and remained present in the office of the appellant. He has further admitted that he was arrested in the same crime by the ACB officials, though this witness has subsequently denied to have been arrested in this crime by the ACB officials and has admitted that he was attending the Court on each date as an accused and has admitted that he was produced before the Court by Police. He further admitted that in his statement recorded by the Magistrate (Exh. 64), he is mentioned as accused Manohar, who was produced by Head Constable, Buckle No.2370 Prabhakar. Rest of his evidence is about his statement recorded by the Magistrate, contradictions and omissions thereof. However, further evidence of this witness does not appear to be material as against evidence of P.W.12 Mustaq Ahmed, Special Judicial Magistrate, who had recorded the statement of P.W.10 Manohar when he had stated that Manohar was produced by Head Constable Prabhakar and he was shown as an accused in this crime, whose statement came to be recorded by this witness.

16. From the above evidence on record, it can thus safely be said that P.W.10 Manohar was in fact made an accused in this crime along with appellant and has been examined by the prosecution as its witness No.10. Admittedly, there is nothing on record to establish strict compliance by prosecution of scheme of Sections 306 and 307 of Code of Criminal Procedure before P.W.10 Manohar came to be examined.

17. In the light of the above facts, I find it useful to refer to the decision in the case of State of Maharashtra vs. Pappu Suresh Salve @ Sunil Bharat Jadhav (2010 ALL MR (Cri) 1755). It was a confirmation case wherein accused no.2 while recording her statement under Section 313 of Criminal Procedure Code had stated that "I had killed Nikita. It was me, who had thrown Nikita into the well. I had stated this fact to Advocate more than many times." Consequent to this statement, it appears that the defence Counsel, who was representing said accused, prayed for his discharge, which prayer was allowed. Thereafter, on the further date of hearing, the trial Court asked accused no.2 in the witness box when she requested

for defence Advocate to be appointed at the cost of Government. Her request was allowed and she was provided Advocate to defend herself on 10/10/2008. However, prior to that, on 1/10/2008 itself, the learned trial Court proceeded to record deposition of accused no.2 and she was cross-examined by the learned Special Public Prosecutor. The depositions of accused no.2 were substantially relied by the trial Court as evidence to corroborate the prosecution witnesses.

The Division Bench of our High Court in the similar set of circumstances in para 14 of its judgment has observed as under :

"14) .. The trial Court allowed accused No.2 to be a prosecution witness on the basis of her statement recorded under Section 313 of Cr.P.C. It is well settled that the statement of the accused recorded by the Court under Section 313 of the Code is not evidence. There is nothing wrong if an accused steps in the witness box to defend his/her case."

"At this stage, we do not wish to comment on the cross-examination conducted by the learned Special Public Prosecutor but the fact remains that he kept quiet when the trial Court proceeded to record the evidence of the accused as a prosecution witness, when she was not assisted by any Advocate. The depositions made by accused no.2 in cross-examination have been discarded by the trial Court in toto, but surprisingly, the learned Judge proceeded to accept this evidence as corroboration for the evidence of P.W.2, P.W.3 and P.W.4 so as to hold that it was accused No.1, who had kidnapped Nikita, killed her and thrown her dead body in the well on 31/10/2003. An application under Section 307 of the Code was not moved by the Special Public Prosecutor at any time before the trial Court and if such an application was moved, the accused No.2 would be required to be granted a pardon by following the procedure under Section 306 of the Code and unless this procedure was undergone, she could not have been examined as a prosecution witness, which is a well settled position in law. ..."

The Division Bench in para (16) of its judgment has further observed thus :

"16) We have also noted that at the initial stage the investigation had suffered major infirmities and it was sloppy. The trial before the learned Additional Sessions

Judge could not be said to be fair and transparent. Article 21 of the Constitution guarantees, as a matter of right, to the accused of fair and transparent trial. Article 20(3) of the Constitution of India states that no person accused for any offence shall be compelled as a witness against himself and exception to this is a scheme of Sections 306 and 307 of the Code. The prosecution did not follow this procedure despite the fact that accused no.2 did not step in the witness box to defend her case and she acted as a prosecution witness at a stage after her statement under Section 313 of Code was recorded. When any public prosecutor appears before the trial Court, he is duty-bound to assist the Court in ensuring that the trial is conducted in a fair and transparent manner. .."

18. In the present case also, by examining P.W.10 Manohar without invoking statutory provisions of Sections 306 and 307 of Code of Criminal Procedure as aforesaid, in fact, the Public Prosecutor appears to have failed to assist the trial Court so as to ensure that the trial was conducted in a fair and transparent manner. As such, P.W.10 Manohar should not have been examined as a prosecution witness nor his evidence should have been relied upon unless he was examined as a prosecution witness on his turning as an approver, for which compliance of Sections 306 and 307 of Code of Criminal Procedure is a pre-condition.

19. In the premises, the prosecution is said to have miserably failed to establish the charge levelled against the appellant. The criminal appeal is thus liable to be allowed.

20. In the result, the criminal appeal is allowed. The judgment and order dated 30th of November 2001 passed by the Special Judge, A.C.B., Nagpur in Special Case No.30 of 1991 thereby convicting the appellant for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside. The appellant is acquitted of the offences for which he was charged and convicted. His bail bonds stand cancelled. Fine amount, if any paid, be refunded back to the appellant.