

State By: Vs. R.Parthasarathy

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Court : Chennai

Decided On : Apr-07-2015

Judge : S.Nagamuthu

Appellant : State By:

Respondent : R.Parthasarathy

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 07.04.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Criminal Appeal (MD)No.260 of 2004 State by: Deputy Superintendent of Police, Vigilance & Anti Corruption, Dindigul.

Rep.

by Public Prosecutor, High Court, Madras ..Appellant/ Complainant versus R.Parthasarathy ..Respondent/ Accused Prayer : Appeal filed under Section 378 of the Code of Criminal Procedure, against the judgment dated 16.02.2001 passed in Spl.C.C..No.1 of 1999 on the file of the FiRs.Additional District and Sessions Court cum Chief Judicial Magistrate-Special Judge, Vigilance & Anti Corruption, Madurai.

!For Appellant : Mr.C.Mayil Vahana Rajendran, Additional Public Prosecutor.

^For Respondent : Mr.R.Maheswaran :

JUDGMENT

This is an appeal against acquittal, filed by the State.

The respondent is the sole accused in Spl.C.C.No.1 of 1999, on the file of the FiRs.Additional District and Sessions Court cum Chief Judicial Magistrate- Special Judge under the Prevention of Corruption Act, Madurai.

He stood charged for offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

The trial Court, by Judgment, dated 16.02.2001, acquitted the respondent.

Challenging the same, the State is before this Court, with this appeal.

2.The case of the prosecution in brief is as follows: Between 15.02.1995 and 25.07.1995, the respondent was the Principal Revenue Officer in Madurai Corporation and between 26.07.1995 to 05.07.1996, he was the Municipal Executive Joint Director of the said Corporation.

Thus, admittedly, he is a public servant, in terms of the Prevention of Corruption Act.

3.P.W.2, Mr.Antonyraj, wanted to erect a sign board, for which he was in need of licence from the Madurai Corporation.

The respondent was the officer in charge of the said job.

According to the case of the prosecution, for the purpose of issuing such licence, on 05.07.1996, at about 08.00 a.m., when P.W.2 met him at his house near Gandhi Museum at Madurai, he demanded Rs.3,000/- as illegal gratification.

P.W.2 was not inclined to pay the same.

Thereafter, on the same day at 10.45 a.m.he went to the office of the Deputy Superintendent of Police, Vigilance and Anti-corruption, Madurai and made a complaint under Ex.P.4.

Based on the same, P.W.8, the then Deputy Superintendent of Police, Vigilance and Anti Corruption, Madurai registered a case in Crime No.1 of 1996, under Section 7 of the Prevention of Corruption Act, 1988.

Ex.P.5 is the FiRs.Information Report.

Then, he forwarded Exs.P.4 and P.5 to the Court and took up the case for investigation.

4.He requested P.W.2 to remain in the office for a while.

Then, he had made a request to Joint Director of Veterinary Science, Madurai to depute an officer to be a witness for the trap, to be arranged.

Accordingly, P.W.3 and yet another officer, by name, Periyalagan appeared before him.

He introduced P.W.2 to them.

Thereafter, he demonstrated to P.W.2 about the phenolphthalein test.

Then, P.W.2 gave Rs.2,000/- i.e., 20 notes of Rs.100/- denomination.

P.W.8 prepared a mahazar for the same, mentioning even the numbers of the currency notes.

Then, he stained the notes with phenolphthalein powder and prepared a mahazar for that and he handed over the same to P.W.2 and sent P.W.3 to go with P.W.2 to the house of the accused and to give the same as demanded.

Accordingly, P.Ws.2 and 3 went to the house of the accused near Gandhi Museum.

P.W.8 and the other police officials were hiding elsewhere near that place.

5.On entering into the house of the accused, it was 02.40 p.m.The accused was sitting in a chair on the verandah.

On entering into the said house, P.W.2 introduced P.W.3 to the accused.

At that time, P.W.3 enquired the accused as to what had happened to his matter.

He further requested the accused to reduce the demand from Rs.3,000/- to a lesser amount.

But, the accused declined to reduce the same.

Then, P.W.2 told the accused that he had brought Rs.2,000/-.

The accused wanted him to give.

Then, P.W.2 took out the currency notes stained with phenolphthalein powder and gave the same to the accused.

The accused received the same with his right hand and kept it inside the table drawer by his left hand.

Then, the accused wanted P.W.2 to come on the next Monday, for receiving the order. Since the above prosecution was over, P.W.2, who had been instructed earlier, changed his watch from his left hand to right hand.

This was the pre-arranged signal.

On receiving the said signal, P.W.8, alongwith other officials, barged into the house of the accused.

7. Then, phenolphthalein test was conducted, which turned the Sodium Carbonate solution into pink colour.

Then, the accused was arrested and brought to the police station.

8. The relevant records were recovered, witnesses were examined and after getting sanction, charge sheet was laid.

(I omit to narrate about the rest of the evidence, because they are not necessary for the disposal of the appeal). 9. Based on the above materials, the Trial Court

framed appropriate charges.

When the accused was questioned in respect of the charges, he pleaded innocence.

10. In order to prove the case, on the side of the prosecution, nine witnesses were examined.

P.W.1 is the officer, who gave sanction for prosecution, as required, under Section 19 of the Prevention of Corruption Act, 1988.

P.W.2 is the complainant and P.W.3 is the accompanying witness, who have spoken to about the entire occurrence.

P.Ws.4,5 and 6 are all officials of Madurai Corporation, who have spoken to about the relevant file relating to the licence.

P.W.7 is the officer, who has given opinion, regarding the chemical analysis conducted by him.

According to him, in the Sodium Carbonate solution, which was sent to him for examination, phenolphthalein was found.

P.W.8 is the officer, who registered the case and laid the trap.

P.W.9 is the officer, who investigated the case and filed final report.

11. When the accused was questioned under Section 313 Cr.P.C. in respect of the incriminating materials, he took the plea that P.W.1 and P.W.3 were known to him previously and as a matter of fact, P.W.2 borrowed a sum of Rs.2,000/- from him.

He has further stated that P.W.2 returned only that money.

He has also stated that because of some misunderstanding between them, this case has been falsely foisted against him.

12. Having considered all the above materials, the Trial Court had acquitted the respondent.

Against the order of acquittal, the State has come up with this appeal.

13. The learned Additional Public Prosecutor has taken me through the entire records including the oral evidence of the witnesses.

He would submit that by giving much weightage for the trivial contradictions and less important improbabilities, the lower Court has acquitted the accused.

The learned Additional Public Prosecutor further submitted that, P.W.2, though during his cross-examination has admitted that he had borrowed a sum of Rs.2,000/-, he was duly treated as hostile and he was cross-examined, thus, according to him, the trial Court ought not to have given much weightage for this part of his evidence.

So far as P.W.3 is concerned, the learned Additional Public Prosecutor would submit that during cross-examination, P.W.3 has admitted that he knew the accused for a long time and as a matter of fact, on one occasion he had a talk with the accused about the file relating to licence, for which, P.W.2 had applied for.

The learned Additional Public Prosecutor would submit that though this witness has not been treated as hostile, this part of the evidence ought not to have been given much weightage.

The learned Additional Public Prosecutor would further submit that according to P.W.2, he introduced P.W.3 to the accused at the time of trap, whereas, according to P.W.3, he knew the accused for a long time and P.W.2 is also his friend.

The learned Additional Public Prosecutor would submit that this is an immaterial transaction, for which the lower Court ought not to have given any weightage at all.

He would further submit that the evidence of P.W.2 both in the chief examination as well as in the cross-examination, would clearly go to show that the accused had demanded illegal gratification and he received the same.

The learned Additional Public Prosecutor would further submit that there is a legal presumption under Section 20 of the Act to the effect that the amount received is nothing, but an illegal gratification.

The learned Additional Public Prosecutor would further submit that the said presumption has not been rebutted at all by the accused.

Thus, according to him, the acquittal of the accused, is not at all sustainable.

14. But the learned counsel appearing for the respondent/accused would vehemently oppose this appeal.

At the outset, he would submit that the power of this Court while dealing with an appeal against acquittal is not as broader as when dealing with an appeal against conviction.

In other words, according to him, when the acquittal of the accused is possible, the view taken by the trial Court cannot be substituted by the contrary view, which may be possible for this Court to take.

The learned counsel appearing for the respondent/accused would further submit that P.W.2 has admitted during cross-examination that he had borrowed Rs.2,000/- from the accused and there is no reason to reject this part of the evidence of P.W.2.

The learned counsel appearing for the respondent/accused would further submit that P.W.3 is also not a stranger.

He has admitted during cross-examination that he had seen the accused and had acquaintance with him for a long time.

He further admitted that he spoke to the accused regarding the above licence matter, for which, P.W.1 had applied for.

The learned counsel appearing for the respondent/ accused would further submit that these are all vital points in favour of the accused, which falsify the case of the prosecution.

The learned counsel appearing for the respondent/accused would further submit that all the other contradictions noticed, are also vital, in favour of the accused.

Thus, according to him, there are no grounds to interfere with the acquittal of the accused.

15.I have considered the above submissions.

16.As rightly submitted by the learned counsel appearing for the respondent/accused, in a mechanical fashion, this Court cannot reverse the order of acquittal recorded by the trial Court.

When there are two views possible, as rightly pointed out by the learned counsel appearing for the respondent/accused, the view taken in favour of the accused, by the trial Court, cannot be substituted by a contrary view, which may be possible, for this Court, to take.

17.Applying the said settled principle of law to the facts of the case, if we look into the evidence given by P.W.2 and P.W.3, it is crystal clear that the lower Court has given much weightage for the admission made by these two witnesses to the effect that P.W.2 had borrowed Rs.2,000/- from the accused prior to the registration of the present case.

Though, P.W.2 was cross-examined by the prosecutor after treating him as hostile, nothing fruitful has been elicited to falsify this part of the evidence.

Except making a simple suggestion that he had not borrowed Rs.2,000/- from the accused, nothing else has been elicited from him, so as to disbelieve this part of the evidence.

The lower Court has given weightage for this evidence and has taken the view that the money, which was paid at the time of trap, was towards only the above said loan amount.

There is another view, which is also possible, namely, the amount would have been received as an illegal gratification.

This view is possible, if only the above referred to admission is discarded by the Court.

When there is no reason to discard that part of the evidence, the later view is not at all possible.

Thus, there can be only one view, as rightly taken by the lower Court that the money paid to P.W.2, was only towards the loan amount.

18. Similarly, the evidence given by P.W.3 also goes to falsify the case of the prosecution.

According to the prosecution case, as an official, for the fiRs.time, he was drawn into picture only to be a witness for the trap.

But during cross-examination, he has stated that he knew the accused for quite some time and he had acquaintance with him also.

Not stopping with that, he has further admitted that on one or two occasions, he had spoken to about the licence matter, for which, P.W.2 had made application.

It shows that P.W.2 and P.W.3 were very close.

But, for such an acquaintance, there would have been no occasion for P.W.3 to know that P.W.2 had made an application and also to speak to the accused to pass a favourable order in favour of P.W.2.

Thus P.W.3 cannot be stated to be an independent witness.

At any rate, his evidence does not improve the case of the prosecution in any manner.

Admittedly, he is only a witness to the trap proceedings.

At the time, when money was given, he was present.

Even now, the accused does not deny the fact that he received the amount.

Therefore, in my considered opinion, the above admission made by P.W.3, to be taken note of and the trial Court has appreciated the same properly.

As rightly pointed out by the learned counsel appearing for the respondent/accused, this witness has not been treated as hostile at all.

Therefore, there is no reason to reject this part of the evidence, which is in favour of the accused.

19. According to the prosecution, at the time of trap proceedings, P.W.2 had the necessity of introducing P.W.3 to the accused.

But, P.W.3 has admitted during the cross-examination that he knew the accused for a long time and he had acquaintance with him and he even made a request on behalf of P.W.2.

This part of the evidence has also been considered and given weightage by the trial Court.

20. From the above narration of facts, it is crystal clear that the prosecution has not proved the case beyond reasonable doubts and the trial Court, by giving the benefit arising out all these doubts, has acquitted the accused and since the acquittal is not perverse and since I do not find any infirmity in the acquittal of the accused, I do not find any reason to interfere with the same.

Thus, I do not find any merit in this appeal.

21. In the result, the Criminal Appeal fails and the same is accordingly dismissed.

07.04.2015 Index :Yes Internet :Yes smn To 1. The FiRs. Additional District and Sessions Court cum Chief Judicial Magistrate-Special Judge, Vigilance & Anti Corruption, Madurai.

2. The Deputy Superintendent of Police, Vigilance & Anti Corruption, Dindigul.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

S.NAGAMUTHU,J.

smn

JUDGMENT

MADE IN Criminal Appeal (MD)No.260 of 2004 07.04.2015

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