

L.V.Bhaskaran Vs. State Represented.

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Court : Chennai

Decided On : Apr-18-2012

Judge : S.Palanivelu, J.

Acts : [Prevention of Corruption Act, 1988](#) - Section 7, 13(2), 13(1)(d); Indian Penal Code (IPC) - Sections 34; Code of Criminal Procedure (CPC) - Section 313

Appeal No. : CRL.A (MD) No.559 of 2005

Appellant : L.V.Bhaskaran.

Respondent : State Represented.

Advocate for Pet/Ap. : Mr.C. Muthusaravanan, Adv.

Judgement :

JUDGMENT

1. This appeal challenges the order of conviction convicting the accused under Section 7 of P.C. Act 1988 r/w 34 IPC and under Section 13(2) r/w 13(1)(d) of P.C. Act r/w 34 IPC and sentencing both the accused to undergo R.I. for two years and to pay a fine of Rs.4000/- in default to undergo R.I. for three months each for each of the charges [Total fine Rs.8000/- + Rs.8000/- = Rs.16,000/-] in Calendar Case No.21/2004 on the file of the Principal Special Judge for CBI cases at Madurai dated 15.11.2005.

2.Following is the brief account of the prosecution case :- [a] P.W.2 is owning rubber estate at Cithironcode, in Kanniyakumari District. The building bearing Door No.6/118 in Verkilambi Town Panchayat originally belonged to his father by name I.Gnanaprakasam. He leased to the said building to the Telephone Department for Manakkavilai Telephone Exchange for monthly rent of Rs.3000/- from 15.01.1999. Gnanaprakasam died in November 2002. By virtue of a registered Will dated 18.10.2000 executed by him, P.W.2 became the absolute owner of the said property and there was arrears of rent of Rs.36,000/-. Hence, P.W.2 contacted Divisional Engineer, BSNL, who asked him to produce the documents to show his ownership of the property. Accordingly, P.W.2 produced documents such as Death Certificate, Will, etc., Again, P.W.2 contacted the Divisional Engineer, who informed him that all the documents were handed over to the second accused who is SDE (Building). P.W.2 met A2 at his office at Tower Junction, Nagercoil. He asked him to produce the original documents and tax receipts. Accordingly, he produced the records. A1 was also present at that time.

[b] Both of them sent a letter requiring P.W.2 to furnish details regarding probate of the Will. Hence, P.W.2 contacted his advocate Annaraj, who informed that a Christian Will need not be probated. Then, P.W.2 met A.G.M. and gave a letter of detail and copy of the Act. At that time, A1 was present. A.G.M. handed over the papers to A1 and asked him to process the file. Thereafter, the first accused took him to the chamber of A2. First accused demanded P.W.2 Rs.1000/- for him and another Rs.1000/- for A2 for processing the file and issuance of cheque. Since P.W.2 did not want to give bribe to A1 and A2, he met P.W.10, Deputy Superintendent of Police, Vigilance and Anti Corruption, Nagercoil. P.W.10 told him that he had no authority to deal with the matter since A1 and A2 are Central Government servants and that CBI has to take action. He also gave phone number of S.P., CBI, Chennai and asked to contact him. On 27.10.2003 P.W.2 contacted A1 over phone and he informed that he and A2 were busy and asked him to meet them on the next day at 10.00 a.m. with the bribe amount of Rs.1,000/- each.

[c] P.W.2 contacted S.P., CBI over phone and informed the matter to him. The S.P., CBI directed P.W.12 D.S.P., CBI/ACB, Chennai to initiate necessary action.

He gave the telephone number of P.W.2. P.W.12 asked the Inspector of Police Roy Alexandar to meet him at SBI, Nagercoil, with two constables and trap kit on the next day. He also telephonically contacted P.W.2 and informed him of his visit and asked him to meet him for verification of the complaint. He reached Nagercoil at about 8.00 a.m. on 27.10.2003. He verified the complaint through his sources which revealed that A1 and A2 were enjoying the bad reputation and the complaint was a genuine one.

[d] P.W.13 the Inspector by name Suresh Kumar received the complaint Ex.P.6, faxed the same to the Superintendent of Police, CBI at Chennai and on his instructions he registered a case on 28.10.2003 and lodged F.I.R., Ex.P.28. He sent the original F.I.R along with fax copy of the complaint with a forwarding letter to the Court.

[e] P.W.12 availed the services of P.W.4 who was working as Deputy Manager State Bank of Indian, Zonal Office, Madurai and one Sankarasubbu, Assistant Manager, State Bank of India, Nagercoil. P.W.12 directed P.W.2 to be present at State Bank of India, Nagercoil with a written complaint and also a sum of Rs.2000/- as demanded by both accused. The witnesses were asked to read the complaint. P.W.12 asked the constable to prepare Sodium Carbonate solution in a glass of water and asked P.W.4 to dip his right fingers and on doing so, there was no change of colour. P.W.2 asked P.W.2 to produce the amount. He produced two 500 rupees notes and ten 100 rupees notes. P.W.12 asked the police constable to smear phenolphthalein powder over the currency notes and P.W.12 asked him to dip his right hand fingers into the sodium carbonate solution. On doing so, the solution immediately turned to pink. It was collected in a bottle, sealed and labelled, wherein the witnesses, complainant and P.W.12 signed. The bottle is M.O.3. Entrustment Mahazar with the narration of the above said events in Ex.P.5 was prepared, in which all of them signed. P.W.12 instructed P.W.2 to keep the currency notes in his left side shirt pocket and not to touch them unless it was demanded by the accused. All the events happened in A.G.M. cabin of State Bank of India.

[f] Thereafter, at about 10.25 a.m., P.W.12, witnesses, P.W.2, the Inspector of Police and constables proceeded to the office of BSNL situated at Tower Junction, Nagercoil. They reached there at 10.30 a.m. P.W.2 was already instructed by P.W.12 to show the signal of wiping his face if the accused received the money. The vehicles had stopped at the distance of 500 Meters away from BSNL office alone. Since the accused had asked P.W.2 to come alone he went to the office. P.W.2 went to the chamber of A2 where A1 was also present. A2 asked him whether he brought the amount, for which P.W.2 enquired him whether the cheque towards rent arrears was ready and the reply was that it would be ready. P.W.2 gave Rs.1000/- consisting of two 500 rupees notes to A2, and a sum of Rs.1000/- consisting of ten 100 rupees currency notes to A1. Then he came out of the room reached the down stairs and showed pre-arranged signal to P.W.12. On seeing it, P.W.12, constables and witnesses rushed into the office along with P.W.2. They went into the cabin of A2. P.W.2 also followed them. P.W.12 revealed his identity to both of the accused. They got nervous. P.W.12 asked two constables to catch hold the hands of the accused. He asked them whether they received the amount and their answer was in affirmative. Then P.W.12 secured the presence of one Haridas Pavalar who was D.E. P.W.12 directed preparation of Sodium Carbonate Solution and asked A1 to dip his left hand fingers and on doing so it turned into pink. It was collected in a bottle. Likewise, the right and left hand fingers of A2 were also subjected to the Sodium Carbonate Solution test and the solution turned to pink colour and they were collected in bottles. A1 handed over the tainted currency notes kept in his shirt pocket and A2 handed over the tainted notes kept in his pant pocket, which are M.O.1 series and M.O.2 series respectively. The shirt pocket of A1 and pant pocket of A2 were also subjected to the similar phenolphthalein test and the solution turned into pink colour and they were collected in separate bottles. The samples of solutions collected at the time of trap are M.O.4 to M.O.9 and shirt and pants are M.Os.10 and 11 respectively.

[f] P.W.12 seized Ex.P.15 the file containing the correspondences regarding payment of arrears of rent produced by A2. Specimen seal of the respondent in M.O.12 was affixed on all the labels of M.Os.3 to 11. P.W.12 prepared a sketch relating to the scene of crime in Ex.P.16 and the same was signed by the independent witnesses.

[g] P.W.13 the Inspector of police who is investigating officer got the Mahazars and the material objects and sent them to the Court. He also gave a request to the Court to send the solutions for scientific examination. As per the orders of SP, CBI/ACP, he handed over the case file to P.W.14, Inspector of Police. He examined the witness and recorded their statements. On completion of the investigation he laid final report against the accused.

3. After the prosecution evidence were over, the learned Special Judge for CBI Cases, Madurai, questioned the accused under section 313 Cr.P.C. as regards the incriminating materials available against them in prosecution evidence. They denied complicity to the offences. Both of them have stated that they insisted the complainant to produce the relevant documents, that on 28.10.2003 morning when they were in the cabin of the second accused, the complainant followed by one Muthu Perumal and another came to the cabin and after Muthu Perumal left the cabin, the complainant placed some amount on the table and went away, that they chased the complainant and attempted to hand over the amount to him in the varandah and at that time the CBI officials prevented them, caught hold of their hands, harassed and thrust some amount into their shirt and pant pockets and that they got their signatures in some documents by force. On the side of the accused one M.N.Soman, Sub Divisional Engineer (Transmission and Planning) of BSNL was examined as D.W.1. He has deposed that the second accused was sent to Chennai for attending Railway Telecommunication Coordinating Committee meeting on 17.10.2003. Ex.D.1 is the letter dated 1.10.2003 received by the General Manager BSNL, Nagercoil from the Assistant Director (M.II) CGMT, BSNL, TN Circle, Chennai. Ex.D.2 is the minutes of the circle level RTCC meeting held on 17.10.2003 at circle office along with covering letter.

4. After analysing the evidence on record, the learned trial Judge has found both the accused guilty and convicted and sentenced them as stated above.

5. Point for Consideration:

Whether the charges framed against the appellants have been established by the prosecution beyond all reasonable doubts?

Point:

6. The learned counsel for the appellants Mr.C. Muthusaravanan would enumerate various circumstances as available in the evidence of the prosecution witnesses particularly from the oral testimony of P.W.2, which would candidly show that the alleged demand is false. He would further add that a careful scrutiny of the evidence on record would show that the alleged demand was much earlier than 27.10.2003 i.e., it was made on 17.10.2003 itself, that the other parts of evidence would show that the demand was also on 21.10.2003 which is not in accordance with the prosecution case. It is further argued that the alleged demand is farce, that the remarkable inconsistencies in the evidence of P.W.2 would weaken the case of prosecution, that the testimony of P.W.2 with regard to the demand remains uncorroborated and in the circumstances of the case no reliance can be placed upon his version, that both the appellants are not competent authorities to sanction the request of P.W.2, that the sanction for payment of rent was already ordered on 21.10.2003 itself by the A.G.M. and that the prosecution has miserably failed to prove the charges beyond all reasonable doubt and in this regard interference with the lower court judgment is warranted.

7. Mr. Rozario Sundarraaj, the learned Standing Counsel for CBI would contend that there are cogent evidence on record to establish the demand on the part of the accused, that as far as corroboration for the evidence of P.W.2 is concerned, it can be by way of circumstantial evidence also and in this case it is available, that the conduct of the accused has to be seen in keeping the money in his pocket after the affairs which is inconsistent with their defence and in this context it has to be concluded that there is some illegal gratification voluntarily.

As to demand:

8. In the complaint Ex.P.6, P.W.2 states that on 21.10.2003 he met Haridasa Pavalar, AGM, BSNL, in his chamber, that at that time A1 was also sitting there and the AGM directed A1 to take steps to pay the amount and afterwards A1 took P.W.2 to A2 and A1 demanded Rs.1000/- for him and another Rs.1000/- for A2. It is a definite case in the complaint that the demand was made on 21.10.2003 and it was not before that date nor after that date. But P.W.2 in his evidence would say

that he met both the accused on the date of advocate Annaraj's letter, thereafter he did not meet the accused, that he met AGM last on the date when he produced the xerox copy of the Act, thereafter he did not meet AGM for any purpose, that the letter he gave to the accused given by Annaraj was dated 17.10.2003 and on that date only he met the accused last. The above said part of oral evidence as revealed by P.W.2 would clearly show that the demand was made by the appellants on 17.10.2003 i.e., on the date of letter given by advocate Annaraj and that meeting of P.W.2 with AGM was also on the same date.

9. In this juncture, the evidence of D.W.1 who was working as Sub Divisional Engineer (Transmission and Planning), BSNL office, Nagercoil comes to play. He would depose that he received the letter from BSNL Circle Office, Chennai on 1.10.2003 intimating that RTCC (Railway Telecommunication Coordination Committee) Meeting was scheduled to be held on 17.10.2003 at Chennai and the letter is Ex.D1. As per the direction, A2 Murugan has been sent to Chennai to attend the meeting. Ex.D.2 is minutes of the meeting in which the list of the officers who have attended the meeting is available, wherein S.No.19 shows the name of A2 as one of the participants in the meeting at Chennai on 17.10.2003 at 11.00 hours. Exs.D1 and D2 and the evidence of D.W.1 crucifies the case of the prosecution since it is the version of P.W.2 that on 17.10.2003 A1 took him to A2 and demanded Rs.1000/- for each.

10. In the chief examination of P.W.2 he also says that on 27.10.2003 when he contacted A1 over phone he informed that he and A2 were busy and asked him to meet them on the next day at 10.00 hours with bribe amount. But it is pertinent to note that this demand of bribe on 27.10.2003 has not been specifically mentioned in Ex.P.6 complaint.

11. P.W.2 met P.W.10 Deputy Superintendent of Police, Vigilance and Anti Corruption, Nagercoil, on 25.10.2003 evening and informed him that A1 and A2 demanded Rs.1000/- each from him for the release of rental arrears of Rs.36,000/- , as per the evidence of P.W.10. In the cross examination, P.W.10 has confirmed the version with reference to the date. On 25.10.2003 around 4.00 p.m. P.W.2 came and met him in his office. But P.W.2 has stated in his chief examination that

after the demand by the accused, he met P.W.10 and informed him. In the cross examination, P.W.2 would state that on the date of demand itself he met the local Vigilance DSP P.W.10 and on the day itself he told him that he has no jurisdiction and Chennai CBI alone have jurisdiction. P.W.2's evidence shows that on the date of demand i.e., on 21.10.2003 itself, as mentioned in the complaint, P.W.2 met the D.S.P., P.W.10. But P.W.10 has stated that P.W.2 came and informed him about the demand on 25.10.2003.

12. In view of the above said evidence from the prosecution witnesses it comes to light that P.W.2 is not definite about the date of demand. As per his version the original demand was on 17.10.2003. But it was not alleged in the complaint. A2 was away at Chennai on 17.10.2003. Even though P.W.2 says that he met P.W.10 on 21.10.2003 itself P.W.10 says that he met him on 25.10.2003 only. Hence, as per the evidence of P.W.10 the demand was made on 25.10.2003. The above said features pave way to conclude that there was no demand of bribe at all on the part of the appellants.

As to the corroboration of evidence of P.W.2

13. There is no supporting piece of evidence to strengthen the stand of P.W.2 as regards demand. It is stated by him that he was instructed by the accused to come alone for security reasons. But this aspect is not available in the complaint. Hence, no shadow witness was directed to accompany P.W.2 to the cabin of accused. P.W.12 also says that for security reasons P.W.2 was asked by the accused to come alone. Only at the time of recording of evidence this factum enters into the record.

14. It is interesting to note that P.W.2 in his cross examination would say that on 28.10.2003 when he went to CBI office, they gave him one tape and put it in his pocket, that at the time of preparing Ex.P.7 Nandakumar P.W.12 took that tape from his pocket and he also asked P.W.12 for what purpose he gave the tape and put the tape in his pocket and that he did not request them to record this fact in Ex.P.7. The tape recorder allegedly put into the pocket of P.W.2 was not produced by the prosecution before the Court. For what reason it was not recorded in Ex.P.7 is also not known. The suppression of tape also makes the prosecution case

doubtful. The above said evidence available on record would show that the evidence of P.W.2 is not corroborated in any way as to the demand of bribe.

15. Concededly, both the appellants are not the authority for sanctioning the payment of arrears of rent and it is also available in the evidence as early as 21.10.2003 the sanction was ordered by A.G.M.

16. It is the defence put forth by the appellants that they did not demand nor accept any money from P.W.2, that they insisted P.W.2 to produce relevant documents as per procedure, that on 28.10.2003 P.W.2 rushed into the cabin of A2 and at that time A1 was also present and P.W.2 put Rs.1000/- each in front of them and immediately he came out from the cabin, that on seeing it, both the accused took the money and chased P.W.2 to give the money to them and in the varandah they were caught and harassed and CBI personnel thrust some anyuguhold caught hold of their hands, harassed and thrust some amount into their shirt and pant pockets.

17. The evidence available on record probablise the defence. First of all the allegation of demand is remaining without proof. Nextly, the appellants are not the authorities to sanction the demand of rent arrears. P.W.2 would say that after he gave signal, P.W.12 and others came, DSP and others went into the cabin of A1 and he (P.W.2) also followed them. But P.W.12 says that he questioned both the accused in the varandah itself and at the time of confronting both accused in the varandah, P.W.2 was not present there. The above stated evidence shows there are some discrepancies in the oral evidence.

18. The learned counsel for the appellants in support of his contention would place reliance upon the decisions of the Supreme Court and this Court. In AIR 1979 SC 1408 [Suraj Mal v. The State (Delhi Administration)] it is held by the Supreme Court that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The same principle has been reiterated in (2011) 2 SCC (Cri.) 1010 = (2011) 6 SCC 450 [State of Kerala and another v. C.P.Rao] and also in (2009) 2 SCC (Cri) 1 [C.M.Girish Babu v. CBI, Cochin, High Court of Kerala].

19. In 2000 SCC (Cri) 878 [Meena v. State of Maharashtra] a Full Bench of the Apex Court has observed that mere recovery of the currency note and positive result of the phenolphthalein test are not enough to establish guilt of the accused.

20. In (2005) 12 SCC 576 [Union of India v. Purnandu Biswas] it is held that there must be proof for the allegation of demand of bribe.

21. In 2007 (1) MLJ (Cri.) 430 [Ramakrishnan v. State] this Court has observed that mere proof of receipt of the money by an accused in the absence of proof of demand and acceptance of money as illegal gratification will not be sufficient to establish the guilt of the accused in a corruption case.

22. In (2011) 1 MLJ (Cri) 173 [R.Damodaran v. State] this Court has held that presumption of acceptance of illegal gratification can be raised only on proof of demand.

23. In 2004 SCC (Cri.) 1130 [Punjab Rao v. State of Maharashtra] Their Lordships have held that if the explanation offered by the accused under Section 313 Cr.P.C. is found to be reasonable, then it cannot be thrown away when merely amount was seized.

24. The learned standing counsel for CBI would cite a decision of the Supreme Court reported in 1995 (3) SCC 351 [M.O.Shamsudhin v. State of Kerala] wherein Their Lordships have elaborately dealt with the guidelines which have to be followed by the Courts in the matter of requiring corroboration to the evidence of a particular witness as regards demand. The principles are laid down in the following paragraphs:-

22. Where bribe has already been demanded from a man and if without giving the bribe he goes to the police or magistrate and brings them to witness the payment it will be a legitimate trap and in such cases at the most he can be treated as an interested witness and whether corroboration is necessary or not will be within the discretion of the court depending upon the facts and circumstances of each case. However as a rule of prudence, the court has to scrutinise the evidence of such interested witnesses carefully.

23. Now coming to the nature of corroborating evidence that is required, it is well settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe-giver has to be scrutinised very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon or not in those given circumstances.

25. When this Court follows the guidelines and principles set out in the above said decision, it is of the view that in the circumstances prevailing in this case some corroboration from other evidence is needed for the evidence of P.W.2. As regards demand of bribe is concerned the prosecution is not able to establish the alleged demand on even a single date.

26. The learned counsel for the respondent also garners support from a decision of single judge of Orissa High Court in 1998 CrI.L.J.1971 [Md.Tafazul Rahman v. State of Orissa] in which it is observed when the conduct of the accused in keeping money (bribe) in his pocket, it is inconsistent with his plea and it has to be presumed that he wantonly received illegal gratification.

27. Adverted to the facts of the present case, it is the defence of the appellants that at the time the appellants chased the complainant and attempted to handover

the amount to him in the varandah, CBI officials prevented them, caught hold of their hands, harassed and thrust some amount into their shirt and pant pockets. But even if the tainted money is take from possession of the accused, in the absence of proof of demand, the acceptance of alleged bribe is of no avail. When the demand goes, naturally the alleged acceptance would also go.

28. This Court has taken an indepth study of the evidence and other materials available in this case and also referred and followed the dictums laid down by the Honourable Supreme Court. The demand of bribe as alleged by P.W.2 is not proved and hence there could be no acceptance of bribe also. The demand of bribe as put forth by P.W.2 does not receive any corroboration from any other material. The prosecution case is doubtful. The prosecution has failed to bring home the guilt of the accused under the charges. In such a view of this matter, the judgment of conviction and sentence passed by the trial Court is liable to be set aside and it is accordingly set aside. The appeal deserves to be allowed. I answer this point as indicated above.

29. In fine the appeal is allowed acquitting the appellants from the charges. Fine amount, if any paid shall be refunded to the appellants. Bail bonds executed by the Appellants shall stand discharged. The disposal of the material objects shall be in accordance with the directions of the trial Court.

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