

Raj Kishore Vs. State

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Court : Delhi

Decided On : May-06-2013

Judge : Mukta Gupta

Appellant : Raj Kishore

Respondent : State

Advocate for Def. : Mr. Manoj Ohri

Advocate for Pet/Ap. : Mr. Madhu Mukul Tripathi

Judgement :

R-6# \$ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 33/2003
Decided on:

6. h May, 2013 % RAJ KISHORE Through: Appellant Mr. Madhu Mukul Tripathi, Advocate with Appellant in person. versus STATE Through: Respondent Mr. Manoj Ohri, APP for the State. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J (ORAL) 1. The Appellant was working as an Inspector in Delhi Electricity Supply Undertaking, North Circle (in short the DESU) when PW2 Sachidanand Sharma, the Complainant came to the Anti Corruption Branch on 12th August, 1993. He alleged that he had purchased a House No. 540/10, Nai Basti, Kishan Ganj in the name of his wife and had applied for electric connection. In this regard he contacted Raj Kishore, the Appellant, who was the Inspector of the area. However, Raj Kishore was putting off the matter for several

days and thereafter he stated that he will not install the meter unless he was paid the bribe. On 11th August, 1993 Raj Kishore, the Appellant demanded bribe of Rs. 1,000/- from the Complainant. He installed the meter on that day and told that he would give the connection only after payment is made to him. The Complainant asked the Appellant to come to his house on the next day, that is, 12th August, 1993 at 12.00 noon when he would pay him Rs. 1,000/-. On the basis of this statement Ex. PW2/A, recorded in the presence of panch witness PW3 Lal Chand, the proceedings were initiated. Rs. 1,000/-, that is, ten currency notes of Rs.100/- were noted down and treated with phenolphthalein powder. After the pre-trap proceedings, the raiding party went to the house of the Complainant and parked at the distance. At about 12.00 noon two labourer from DESU came and told that they would give the connection and demanded money. On this the Complainant stated that he would pay the money to the Inspector only. Though the two labourer insisted that the money should be paid to them however, the Complainant refused and thus they became angry and left the place. After about 15 minutes the Appellant came on the scooter and immediately demanded the money. The Complainant took out the money and gave it to the Appellant. The Appellant took the money in his left hand. The panch witness PW3 gave the signal on which PW6 the Trap Laying Officer apprehended him. Subsequently the numbers of the currency notes Ex. P1 to P10 were tallied, memo prepared in this regard and the left hand wash of the solution of the Appellant was taken which turned pink.

2. This version of the Complainant was supported by PW3 Lal Chand, the panch witness and in view of the evidence on record the learned Trial Court convicted the Appellant under Sections 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (in short the PC Act) and directed him to undergo Rigorous Imprisonment for a period of 1 years and to pay a fine of Rs. 3,000/- on each count and in default of payment of fine to undergo further Rigorous Imprisonment for three months.

3. Learned counsel for the Appellant before this Court has addressed that his contention before the learned Trial Court was never that the money was not recovered. His contention was that PW2, the Complainant was a property broker and since the Appellant had to do emergency duty he asked him to look for a

house on rent nearby. Thus the Complainant got him a house, the rent for which was Rs.1,200/- and the security was Rs.

800. PW2/Complainant demanded Rs.1,000/- as brokerage charges. The Appellant paid Rs. 3,000/- but immediately in view of a message received from the village he was required to go back and thus he did not want the house on rent. The Appellant demanded his money back and it was this money which the Complainant was returning to the Appellant. Though the Appellant proved by the documents on record the defence of the Appellant and also examined the defence witnesses however, the learned Trial Court ignored the defence of the Appellant and convicted the Appellant as aforesaid.

4. Thus the only issue which arises in the present case is whether the defence of the Appellant is probable and he has been able to discharge the presumption by preponderance of probability. In the present case as against the evidence of PW2, the Complainant and PW3, Lal Chand, the panch witness the Appellant has produced two defence witnesses and rendered his explanation in statement under Section 313 Cr.P.C. as noted above. DW3 Anoop Kumar has stated that on 1st June, 1993 the Appellant had come to take the house on rent. He was accompanied with the Complainant who was a property broker at that time and had booked a Janta Flat bearing No. C-25, Second Floor, Sarai Rohilla, Vivekanand for purpose of letting out with the said broker. The Appellant was introduced to him as an Inspector in the DESU having a small family of himself, his wife and his child. DW3 agreed to let out his house at Rs.1,200/- per month as rent and it was also settled that he would pay Rs.2,000/- in advance as security. After four days the Appellant came along with one Suresh and paid Rs. 2,000/- with the promise that he would soon return from his village and pay Rs. 1,200/- for his room. After about 13 days the Complainant/broker of the deal came to him and requested DW3 to refund the amount of Rs. 2,000/- paid by the Appellant saying that there was a tragedy in the house of the Appellant and thus he was not interested in the flat. The Appellant later on joined the Complainant. Initially DW3 refused to return the security amount of Rs. 2,000/- however, on repeated request of the Complainant he promised to return the same after a fortnight. Accordingly he returned Rs. 2,000/- to the Complainant for returning the same to the Appellant.

5. The Appellant has also examined DW4 Brij Bhushan Kapoor in whose presence the Appellant had given Rs. 3,000/- to the Complainant for taking the house on rent. Out of the said amount the Complainant paid Rs. 2,000/- to the owner of the house. DW4 contacted the Appellant in his house in connection with the electricity connection when he told that he was no more interested in taking the house on rent for which he has paid Rs. 3,000/- to the Complainant on 10th August, 1993. The Appellant fixed an electricity meter in the premises which was taken on rent by the Complainant which was adjoining the house of DW4. The Appellant had even taken the signatures of the Complainant in this regard. When the Appellant requested the Complainant as to what had happened to his money, the Complainant promised him to return the same on 12th as 11th was holiday due to janamashtami. On 12th August, 1993 at about 11.30 a.m. when he went to the house of the Complainant he found four-five persons holding the Appellant.

6. Thus as against the prosecution version the Appellant has also examined defence witnesses who have deposed cogently and convincingly with regard to the defence of the Appellant. Besides these two defence witnesses, Ex. PW1/DA clinches the issue. PW2 the Complainant in his cross-examination has admitted signing this document on 10th August, 1993. As per this document the electricity connection on his premises has been started on 10th August, 1993 and the official meter reading was 2.6. This document has been duly signed by the Complainant and the date noted is 10th August, 1993. In view of this admission of the Complainant and the endorsements made thereon I find merit in the argument of the learned counsel for the Appellant that once the electricity was installed on 10th August, 1993 there was no occasion for the Appellant to have demanded the money.

7. There is yet another issue which calls for consideration. Admittedly as per PW2 his meter was installed on 10th August, 1993 he has admitted the signatures on Ex. PW1/DA however, in his examination-in-chief he stated that the Appellant installed the meter on 11th August, 1993 and demanded Rs. 1,000/- to which the Complainant stated that he should come on the next date. Thus there is an apparent contradiction in the case of the Complainant. Further all the eye witnesses including the Trap Laying Officer and the Investigating Officer failed to

notice as to whether at the time of trap the house of the Complainant was energized or not which could have proved the facts.

8. Presumption under Section 20 of the PC Act is a rebuttable presumption. This presumption can be rebutted by the accused not only by leading evidence but also eliciting material facts in the cross-examination. In the present case the Appellant has discharged the burden by rendering explanation under Section 313 Cr.P.C., proving his defence by brining defence witnesses and confronting the Complainant with material documents wherein it is admitted that the connection was installed on 10 th August, 1993 and the document in this regard duly signed by the Complainant. Thus the Appellant has been able to render an explanation which is probable and has proved his defence by preponderance of probability. In *M. Abbas vs. State of Kerala*, 2001 (10) SCC 10.it was held:

10. The presumption under Section 4(1) in reference to an offence under Section 161 IPC is, as already noticed, a rebuttable presumption. The only evidence led in this case to establish charge under Section 161 IPC of the appellant having received gratification other than legal reward, as a motive or reward for doing or forbearing to do any official act in the exercise of his official functions to favour the prime mover is the statement of the Contractor, PW 2.As already noticed, the Contractor has given different versions of the occurrence in his statement before the Vigilance Wing and in the court. At the trial, he has not supported the prosecution case fully. On the other hand, the explanation given by the appellant both during the cross-examination of prosecution witnesses and in his own statement recorded under Section 313 Cr PC is quite plausible. Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. On the prosecution's own showing, in this case, that onus can be said to have been duly discharged by the appellant, more particularly, when the prosecution did not lead any evidence to show as to who made the payment to Kamalasanan who had removed the bump from the road, which bump was otherwise required to be removed by PW 2 for getting refund of his earnest money and security. Maybe, the allegation that the appellant accepted the amount as bribe to process his refund application is true but the court cannot convict an

accused only on such probability or suspicion, howsoever strong it may be. Between may be true and must be true, there is a long distance to travel and in this case the prosecution has failed to travel that distance through any unimpeachable evidence. The case of the prosecution has not been established beyond a reasonable doubt.

9. In view of the aforesaid discussion the impugned judgment of conviction and the order on sentence are set aside. The appellant is acquitted of the charges framed. The bail bond and the surety bond are discharged. Appeal is disposed of. (MUKTA GUPTA) JUDGE MAY 06.2013 vn

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