

Yashpal Raghav Vs. State

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Court : Delhi

Decided On : May-31-2013

Judge : Siddharth Mridul

Appellant : Yashpal Raghav

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

02. 05.2013 Judgment pronounced on:

31. 05.2013 CRIMINAL APPEAL No.222/2009 YASHPAL RAGHAV Through: Appellant Mr. Dhruv Gupta, Advocate. Through: Respondent Mr. Mukesh Gupta, APP. versus STATE CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL JUDGMENT SIDDHARTH MRIDUL, J.

1. The appellant herein has preferred this appeal against his conviction by the impugned judgment dated 17.03.09 under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988. Vide order dated 18.03.09, the appellant has been sentenced to undergo rigorous imprisonment for a period of one year and a fine of Rs. 3000/- for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and in default of payment of fine, simple imprisonment for a period of three months. For the offence under Section 13(2), the appellant has been sentenced to rigorous imprisonment for a period of one year and a fine of Rs.

3000/- and in default in payment of fine, simple imprisonment for a period of three months. Both sentences are to run concurrently.

2. The case of the prosecution is that the complainant, Anil Kumar (PW-3) was employed as a safaikaramchari on daily wages in Circle No. 78 S.P Zone. The appellant herein was employed in the capacity of an Asst Sanitary Inspector and had demanded a bribe of Rs. 1000/- from the complainant for marking his attendance for a period of two months. The appellant instructed the complainant to come with the bribe money on 19.04.06 at 9:00 a.m. Thereafter the complainant went to the Anti Corruption Branch and got his complaint Ex. PW3/A recorded in the presence of panch witness Sudhanshu Kumar. A demonstration was given by the raid officer of the phenolphthalein treatment of GC notes brought by the complainant and the raid proceedings were carried out.

3. On 19.04.06, the raiding team went to Ward No. 78 SP Zone. Panch witness and the complainant were sent inside the office and the Raid Officer along with members of raiding team followed them and took suitable positions in front of the office. The Raid Officer saw that the complainant, panch witness and the appellant stood near the gate and were talking and he saw the complainant take out the treated GC notes from his pocket shirt and handed them over to the appellant.

4. Thereafter, the Raid Officer received pre determined signal and he along with raiding team rushed to the spot and challenged the appellant. On the directions of Raid Officer panch witness recovered those GC notes from the left pocket shirt of the appellant. The number of those GC notes were tallied which were found to be the same. Post raid proceedings were carried and after completion of investigation the charge sheet was filed.

5. PW1 Parimal Rai, Chairman, NDMC who accorded sanction for prosecuting the appellant on the basis of a report received from AntiCorruption Branch has proved Sanction order Ex.PW1/B. He has deposed that he granted the sanction after perusing the documents of this case received from Anti-Corruption Branch and after satisfying himself and applying his mind to these documents.

6. Sudhanshu Kumar, PW-7 is the panch witness in the instant case. He has deposed that on 19.04.06 he was on duty as panch witness in the Anti Corruption Branch and at about 7 a.m the statement of complainant Anil was recorded in his presence. After necessary formalities, he accompanied PW-3 to Ward No. 78 Sadar Paharganj Zone, MCD Delhi. Other members of the raiding party took their positions outside the office. In the office he saw the appellant (correctly identified) sitting with three other people. The appellant inquired about him and he was introduced as a person who wished to make a complaint about opening of a sewer. To this the appellant replied that he should lodge a complaint in some other office. Thereafter, the appellant and PW-3 moved towards the door and PW-7 followed them. The appellant then asked PW-3 whether he had brought the money and PW-3 replied in the affirmative. PW-3 then took out the treated GC notes and gave them in the right hand of the appellant. The appellant kept them in the left side pocket of his shirt. Thereafter, the appellant assured PW-3 that his attendance would be marked and advised him to give money on a monthly basis. In his cross examination PW-7 has stated that he had visited the Anti Corruption Branch on 18.04.06 and was asked to come on the next day at about 7 a.m.

7. Anil, the complainant was examined as PW-3 and has deposed that in the year 2006, he was working as a safaikaramchari in Paharganj as a temporary employee. He has correctly identified the appellant and has stated that the appellant used to demand Rs.500/- as monthly bribe from him to mark his attendance. This was done on two occasions after which the appellant asked PW-3 to come up with the bribe money on 19.04.06. On the date of the incident, he went to his office along with the panch witness who was introduced as a person who wanted to lodge a complaint for his sewer line. The appellant was present there. The appellant took him near the gate of the office and inquired whether he had brought the money. He replied in the affirmative and touched the feet of the appellant. Thereafter, he took out the treated GC notes and placed them in the right hand of the appellant, who in turn kept them in the left side pocket of his shirt. In his cross examination, PW-3 has stated that he was working at Siddharth Nagar Patti of the said ward and that the appellant was his supervisor. He has also stated that one Mr.Randhir was the sanitary guide. He has affirmatively stated that his attendance used to be marked by the appellant and the said register was

maintained by the appellant. He has denied a specific suggestion that the attendance used to be marked by Mr.Randhir Singh.

8. Inspector Mehar Chand who was examined as PW-9 has deposed that on 19.04.06 he was posted as Inspector in the Anti Corruption Branch. Complaint was received from PW-3 which was recorded vide Ex PW-3/A in the presence of one Sudhanshu Kumar panch witness and it was decided to lay a trap. He deposed about the pre- trap formalities carried out on 19.04.06.

9. Deposing as to what happened in Ward No. 78 near Police Station Nabi Karim, he stated that the members of the raiding team along with PW-3 and the panch witness PW-7 went in a government vehicle which was parked near the mosque. Inspector Hari Chand (PW-8) remained in the vehicle and PW-3 and PW-7 were sent inside the office. At about 9:20 a.m. he is stated to have seen the appellant accepting the GC notes that PW-3 took out of his pocket. Pre-determined signal was received from PW-7 after which the appellant was apprehended. The GC notes recovered from the appellants left side pocket were tallied and taken into possession vide seizure memo Ex PW-3/C. The right hand wash of the appellant was taken in a colourless solution of sodium carbonate which turned pink. The said solution was transferred in two bottles marked as RHW- I & II and the same were sealed with the seal of MC. Thereafter, the shirt of the appellant Yash Pal Raghav was taken off and the wash of inner side left pocket was taken in the solution of sodium carbonate and that solution was also transferred in two bottles marked LSSPW-I & II and the same also sealed with the seal of MC. Thereafter, PW-8 was called at the spot and the Raid Officer handed over the custody of the appellant along with exhibits, GC notes, sample seal etc. The site plan Ex. PW8/A was prepared and the appellant was arrested vide memo Ex. PW7/A and his personal search was conducted vide memo Ex.PW3/F. Appellant was medically examined in ArunaAsaf Ali Hospital and thereafter he was put up in lock up of PS Civil Lines and case property was deposited by the Raid Officer with MHCM PS Civil Lines.

10. Rattan Lal, Retd as Sanitary Superintendent was examined as PW-4 and has deposed that in the year 2006 he was posted as Sanitary Superintendent, SP

Zone, MCD. He had prepared the service bio data of the appellant and had presented the original attendance register in court. In his cross examination, he states that the Sanitary Inspector used to be the overall incharge. The Assistant Sanitary Inspector or the sanitary guide used to take the attendance of sweepers. In Ward No. 78 there were three supervisors and one inspector. The complainant Anil used to work under one Randhir Singh Sanitary Guide and his attendance used to be marked by Randhir Singh. On 19.04.06 the complainant was present and his attendance was marked in the register. Even after 19.04.06 the attendance of complainant was marked by Sanitary Guide Randhir Singh. Apart from attendance register, the muster roll sheets are maintained separately by the sanitary guide. First the attendance is marked in the attendance register and thereafter the same is entered into muster roll sheet and payment is made according to muster roll sheets.

11. The incriminating evidence was put to the appellant for his explanation under Section 313 Cr PC. The appellant admitted that he was posted as an Assistant Sanitary Inspector in Circle No. 78 MCD SP Zone. He also admitted to having received a sum of Rs 1000/- from the complainant. However, he states that this sum of Rs. 1000/- was given to him by PW-3 saying that this money has been returned by Randhir Singh, who is supervisor of PW-3. He stated that he had advanced Rs.1000/- to Randhir Singh on 16.04.06 as his daughter was hospitalized and he was in urgent need of money and had promised to return it within 2-3 days. He has denied that the complainant was working with him and that the said sum was a bribe. He denied having seen the panch witness with the complainant on the date of the incident. He has admitted the proceedings that took place once he received the money from the complainant.

12. According to the appellant the instant case is a conspiracy hatched by some union leaders and some supervisors belonging to a particular community whose interests were jeopardised on inspection of the attendance of their relatives who were found to be absent from duty. This matter was reported by Sanitary Inspector of the ward to the area counsellor as well as to the Magistrate MCD.

13. The appellant examined himself in defence as DW-1 and has deposed that he was posted in Ward No. 78 and that his posting was made on tail mill road patti. He states that the complainant was working in Sidharth Basti Patti under the supervision of Randhir Singh Sanitary guide. On 19.04.06, he was sitting in his office when the complainant entered the office and gave him Rs. 1000/- saying that the said amount was sent by Randhir Singh. He admits to having taken the money from the complainant and subsequently enquired about the well being of the daughter of Randhir Singh. Thereafter, he was apprehended and taken to the Anti Corruption Branch where he was introduced to one Mr Sudhanshu.

14. On being cross examined he admitted to not having brought any documentary proof to the effect that he was indeed a supervisor at tail mill patti. He also admitted to not having any documentary proof to establish that the complainant was working at Siddharth Basti patti. He further admitted that it is the duty of every Assistant Sanitary Inspector to supervise the work of safaikaramchari and to mark their attendance.

15. Learned Counsel for the appellant has argued that the complainant was not under the supervision of the appellant and there was therefore, no occasion for the appellant to make a demand for bribe. The complainant was in fact working under the supervision of one Randhir Singh as evinced through the testimony of PW-4.

16. It was contended that before the legal presumption embodied under Section 20 of the Act is raised, the prosecution has to establish two essential ingredients with reference to the accused: i) That the accused had the occasion to demand bribe from the complainant pursuant to his official capacity vis a vis the complainant ii) CRL.A.222/2009 17. It was further contended that even if the presumption under Section 20 were to be raised in the instant case, the same stood rebutted when the appellant got himself examined as a witness under Section 315. Arguing that the statement of the appellant under Section 315 is evidence, learned counsel seeks to establish that the appellant has proved his defence in the instant case.

18. Learned counsel for the appellant has relied on a case reported as Delhi Administration v. Satish Chand Sharma 1986 (10) DRJ 30.to fortify the aforesaid

contention. In this case it was observed: (13) Wherein a case the specific allegation against the accused person in that he demanded illegal gratification to do a favors in his official capacity, it is absolutely necessary for the prosecution to show that the accused was in a position to do such favor. In a case such as this, it was in fact, for the prosecution to bring these procedures to the notice of the court We have made a reference to the procedure that was in vogue in the enterprise in this regard, with a view to indicate that it was none of the duties of the accused, either to prepare or to disburse the cheques. This was very much within the knowledge of the complainant who had dealings with the enterprise. In fact the respondent in this case was not even a verifying authority of the bills, a job which was essentially the function of the Maintenance Engineer. Even the complainant has admitted that on all previous occasions, he used to collect cheques from the cashier and that even on 17th he was told by the cashier on telephone that the cheque was ready. Ought we to know under such circumstances as to where was the occasion for the complainant to approach the respondent particularly, when the cheque was ready with the cashier and he had to disburse it after getting receipt for the same.

19. Combating the aforesaid submission of learned Counsel for the appellant, learned Additional Public Prosecutor for the State, has argued that it is proved that the appellant who was a public servant made a demand of illegal gratification from the complainant and also accepted the same. According to learned Additional Public Prosecutor, the demand of bribe and its acceptance has been proved from a conjoint reading of the evidence of complaint (Ex PW-3/A), and the testimonies of panch witness (PW-9) and the complainant (PW-3) and consequently, the presumption under Section 20 is raised.

20. In order to consider the above said contention it is necessary to refer to the relevant provision of the Prevention of Corruption Act, 1988. Section 20 of the Act reads hereunder: Section 20 - Presumption where public servant accepts gratification other than legal remuneration (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) or sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person,

any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate. (3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

21. A reading of the aforesaid section clarifies that the section contemplates acceptance of any gratification (other than legal remuneration) from any person. The intent of legislature in this regard is abundantly clear. If we were to assume that the presumption under Section 20 could be raised only when acceptance of gratification (other than legal remuneration) is by a public servant who was in a position to facilitate the person who gives the bribe, it would immensely narrow down the scope of the section and lead to catastrophic results. It would lead to organised corruption in the public sector, where a public servant would instruct that bribes be paid to him through persons he is not in a position to facilitate in any manner. Such an interpretation would render the very purpose of Section 20 otiose and the presumption would be restricted to very limited cases of corruption.

22. The Supreme Court in the case reported as *State of Andhra Pradesh v. C Uma Maheshwara Rao and Anr* (2004) 4 SCC 39 has observed:

26. The evidence of PW-1 cannot be ignored on the ground that he had earlier made grievances against some, other officials. The Trial Court had carefully analysed his evidence and found the same to be credible. Even if PW-2 did not support the prosecution version on some aspects yet his evidence also proved giving of money. The evidence of PW-1 coupled with those of PWs 3 and 5 is sufficient to bring home the accusations. Further, the High Court seems to have made out a new case about the alleged date of complaint. A bare reading of the contents of the complaint and the date put in the complaint is evident from Exts. P-3 and P-3A clearly show that the High Court was not correct in saying that the date of the document is 20.12.1991. Additionally, this plea was not raised before the Trial Court. There was even no suggestion about that aspect. Learned counsel for A-1 and A-2 submitted that suggestions were there, which is not so. What was suggested was the documents were not prepared at the time they were claimed to be. There is a gulf of difference between "time" and "date". In any event such a plea has not been taken before the courts below. It being essentially a question of fact, the High Court could not have made out a new case regarding correctness of the date. As noted above, the views of the High Court were also not correct when the document is itself looked at. Much stress was laid on the accused persons not being the final authority in the tender matter. As noted in *Chaturdas Bhagwandas Patel v. The State of Gujarat* :

1976. Cri LJ 118. the question whether a person has authority to do the act for which bribe is accepted is of no consequence. (emphasis supplied) 23. In another case reported as *Gopal Singh v. CBI* ILR (2005) II Delhi 35 it was observed: It has to be added that in cases under Prevention of Corruption Act, the prosecution is under no obligation to prove that a public servant demanding bribe was in a position to help the person from whom the bribe was being demanded. The prosecution succeeds the moment it is shown that a public servant had accepted some money from someone, which was not legal remuneration, the presumption under Section 20 of the Act comes into play shifting the burden upon the public servant to explain as to why he had received the money. A public servant may misguide, mislead or befool his victim to pay him illegal gratification knowing fully well that he is not in a position to help him and as such, it can be no defence for him to say that since he was not in a position to help the complainant/victim, the

money received by him does not amount to illegal gratification. Explanations (d) and (e) to Section 7 of the Prevention of Corruption Act squarely cover such cases. In this case, however, the appellant being Local Health Authority under P.F.A. Act and the complainant's son being an accused, the appellant could have easily created an impression that he was in a position to help the complainant's son in the matter. It is shown on record that he was demanding bribe from the time of lifting of sample but the complainant and his son were not parting with any money. When their sample got cleared from the public analyst at Delhi, the appellant proposed re-testing of the sample and thereafter, once again started demanding bribe from the complainant and his son.

24. Section 20 raises a statutory legal presumption in a situation where a public servant has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person. Once the prosecution has established through cogent and reliable evidence, the factum of this condition, the legal presumption comes into existence.

25. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.

26. In this regard, observations of the Supreme Court in the case reported as *M. Narsinga Rao v. State of Andhra Pradesh* (2001)1SCC691 are noteworthy:

13. Before proceeding further, we may point out that the expressions "may presume" and "shall presume" are defined in Section 4 of the Evidence Act. The presumptions falling under the former category are compendiously known as "factual presumptions" or "discretionary presumptions" and those falling under the latter as "legal presumptions" or "compulsory presumptions". When the expression

"shall be presumed" is employed in Section 20(1) of the Act it must have the same import of compulsion.

14. When the sub-section deals with legal presumption it is to be understood as in terrarium i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

15. The word "proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word "proved" in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J.

in *Hawkins v. Powells Tillery Steam Coal Company, Ltd.* 1911 (1) K.B. 988 observed like this: Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to

presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act. (emphasis supplied) 27. It is now established that the quantum or degree of proof required to displace the presumption under Section 20 is not understood to be beyond all reasonable doubt. The burden of such a presumption may be proved by evidence put forth by the accused which satisfies the court of the probability of its truthfulness.

28. The appellant has admitted to the recovery of the treated GC notes at the time when he was apprehended. His defence is however that such notes were given to him on the pretext that they were from Randhir Singh who was returning the loan advanced by the appellant. The necessary ingredients of Section 20 are therefore satisfied and a presumption is raised against the appellant that he accepted such money in furtherance of illegal gratification. Therefore, the contention of the Learned Counsel for the appellant that presumption under Section 20 cannot be raised is without merit and liable to be rejected.

29. Once the presumption is raised the appellant is thereafter, required to rebut this presumption through cogent evidence.

30. Coming to the facts of the instant case, the testimony of the complainant PW-3 coupled with the complaint filed by him has been consistent. PW-3 was employed as a safai karamcari and the appellant was his supervisor. His testimony could not be shaken by the defence in the cross examination also. The whole conversation which took place between the complainant and the appellant was narrated by the complainant without any deviation and is thus worthy of credence. The testimony of the panch witness PW-7 has also been consistent and has withstood the test of cross examination. PW-7 is also a witness to the complaint filed by the complainant and is therefore, a natural witness to the incident.

31. The defence put forth by the appellant is that he accepted the money on account of a loan advanced by him. The appellant did not examine Randhir Singh, who he claims was the supervisor of the complainant. He did not produce any

document to show that he was the supervisor at tail mill patti. It is further noticed that he did not give any suggestion to PW-7 regarding the conversation that took place between the appellant and the complainant regarding the well being of Randhir Singhs daughter when the money was being accepted. It is therefore, a belated defence that is not convincing and has not been established by the appellant. The contention that the appellant having examined himself has rebutted the presumption is accordingly rejected.

32. Learned Counsel for the appellant has stressed on the testimony of PW-4 who has deposed to the effect that Randhir Singh was the supervisor of PW-3. In this regard, the finding of the Learned Trial Judge is that PW-4 had simply prepared the bio data of the appellant and supplied copy of the attendance register. He was definitely not in a position to say as to who actually used to mark the attendance on the spot. He was a retired employee and could have deposed in favour of the accused. This finding of the Learned Trial Judge seems to be probable and justified. As already observed, the testimony of PW-3 to the effect that the appellant was his supervisor has been established. Regarding the attendance of the complainant being marked on the date of incident suffice it is to say that it is not sufficient evidence to doubt the presence of the complainant in the office of the appellant and is therefore, not destructive to the prosecution version.

33. In view of the foregoing discussion, I am of the view that the learned Special Judge has rightly held the appellant guilty of the offences punishable under Sections 7 and Section 13(1)(d) of the Act of 1988. Therefore, this appeal is dismissed and the appellant is ordered to be taken into custody and lodged in jail to serve out the sentence awarded to him. His bail bonds stand cancelled.
SIDDHARTH MRIDUL (JUDGE) MAY 31.2013 mk

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