

(2024) 05 CHH CK 0018

Chhattisgarh High Court

Case No: Criminal Appeal No. 1524, 1511 Of 2017

Dr. Ashok Kumar Soni

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: May 8, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313, 374(2), 437A
- Indian Penal Code, 1860 - Section 21(a), 165A
- Prevention of Corruption Act, 1988 - Section 7, 13(1)(d), 13(2), 20
- Evidence Act, 1872 - Section 65B

Hon'ble Judges: Arvind Kumar Verma, J

Bench: Single Bench

Advocate: Ashutosh Trivedi, A.K. Prasad, Rishikant Mahobia, B.D. Guru

Final Decision: Allowed

Judgement

Conviction,Sentence

U/s 7 of the Prevention of Corruption Act, 1988", "Rigorous imprisonment for 03 years with fine of Rs.

10,000/-, with default stipulation.

U/s 13 (1) (D) read with 13 (2) of the Prevention of

Corruption Act, 1988", "Rigorous imprisonment for 04 years with fine of Rs.

10,000/-, with default stipulation.

All the sentences were directed to run concurrently.,

11. Before analyzing the evidence, led by the prosecution as well as by the appellants and various circumstances, it would be essential to take it to",

consideration the principles which have been laid down by the Supreme Court in the matter of appreciation of evidence of complainant in a bribery, case and the need for corroboration.,

12. In the case of Panalal Damodar Rathi Vs. State of Maharashtra, AIR 1979 SC 1191 the Supreme Court observed as under:-",

8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of",

Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment bribery, the complainant cannot be placed",

on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be,

insisted upon.".....",

The status of person offering bribe and the caution required while assessing his evidence implicating a Govt. servant was examined by the Supreme,

Court in its subsequent decision in the case of M.O. Shamsudhin v. State of Kerala, 1995 SCC (3) 351, wherein, it was held as under:",

â€œ12. Now confining ourselves to the case of bribery it is generally accepted that the person offering a bribe to a public officer is in the,

nature of an accomplice in the offence of accepting illegal gratification but the nature of corroboration required in such a case should not,

be subjected to the same rigorous test which are generally applied to a case of an approver. Though bribe givers are generally treated to,

be in the nature of accomplices but among them there are various types and gradation. In cases under the Prevention of Corruption Act the,

complainant is the person who gives the bribe in a technical and legal sense because in every trap case wherever the complaint is filed there,

must be -a person who has to give money to the accused which in fact is the bribe money which is demanded and without such a giving die,

trap cannot succeed. When there is such a demand by the public servant from person who is unwilling and if to do public good approaches,

the authorities and lodges complaint then in order that the trap succeeds he has to give the money. There could be another type of bribe,

giver who is always willing to give money in order to get his work done and having got the work done he may send a complaint. Here he is,

a particeps criminis in respect of the crime committed and thus is an accomplice. Thus there are grades and grades of accomplices and, therefore a distinction could as well be drawn between cases where a person offers a bribe to achieve his own purpose and where one is, forced to offer bribe under a threat of loss or harm that is to say under coercion. A person who falls in this category and who becomes a, party for laying a trap stands on a different footing because he is only a victim of threat or coercion to which he was subjected to. Where, such witnesses fall under the category of ""accomplices"" by reason of their being bribe givers, in the first instance the court has to consider", the degree of complicity and then look for corroboration if necessary as a rule of prudence. The extent and nature of corroboration that, may be needed in a case may vary having regard to the facts and circumstances.""", What therefore, emerges from the principles enunciated by the Supreme Court is that the complainant's evidence has to be scrutinized carefully and", the Court has to consider the degree of complicity and then look for corroboration, if necessary, as a rule of prudence. The extent and nature of", corroboration that may be needed in a case, may vary, having regard to the facts and circumstances",

13. In the matter of M.R. Purshotham v. State of Karnataka, (2015) 3 SCC 247, the Honâ€™ble Supreme Court has held that when demand of bribe", is not proved by the prosecution, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home", the offence under Section 13(1) (d) of the Act.,

14. In B. Jaiyaraj v. State of Andhra Pradesh (2014) 13 SCC 5, it has been held by the Honâ€™ble Supreme Court that it is a settled position in law", that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence, under Section 7 of the Act unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe.,

Presumption against public servant under Section 20 of the Act can be drawn only if demand for acceptance of illegal gratification is proved.,

15. Similar view has been taken in the matter of A. Subair v. State of Kerala, 2010 AIR SCC 1115 and Subhash Parbat Sonvane v. State of Gujarat",

AIR 2003 SC 2169.,

16. Evidence on record led by the prosecution, as also by the defence, therefore, is required to be scrutinized in order to find out as to whether the",

prosecution has been able to prove beyond reasonable doubt the demand, acceptance and recovery.",

17. The first question arises whether the appellants are Public servant or not?.,

18. It comes out in the statement of the complainant and other witnesses that appellant Dharamsai is "Sand Parichalak", IVth class employee in",

Veterinary Dispensary and appellant Dr. A.K. Soni, is a Assistant Veterinary Doctor. Further, Letter (Ex.P/28) dated 10/01/2014 written by Deputy",

Director Veterinary, District Surajpur, shows that appellant Dharamsai is Veterinary Parichalak and Dr. A.K. Soni is Assistant Veterinary Doctor.",

Thus, it is established that the appellants are Govt. Employee/Officer. Hence, they are public servant as defined in Section 21 (a) of the IPC.",

19. Now second question comes whether the appellants has power to issue the alleged "Work Completion Certificate" of construction of building,

or part of process to issue completion certificate?.,

20. Ramakant Sahu (DSP) (IUCAW) (PW13) has admitted in para 18 of his statement that Dr. Soni was not authorized for any financial power. He,

also admitted that Deputy Director, Veterinary Services had neither authorized Dr. Soni for inspection of newly constructed building, veterinary",

dispensary nor authorized him for issuance of completion certificate. He also admitted that Dr. Parihar was Deputy Director, Veterinary Services",

Surajpur and he had not recorded statement of Dr. Parihar.,

21. Ex.D/3 is an official document issued by Deputy Director, Veterinary Services, Surajpur, which shows that Dr. Soni was not authorized with",

administrative power, financial right and any right to inspect newly constructed building or for issuance of any completion certificate. The power to",

issue utility and completion certificate was with Deputy Director, Veterinary Services, Surajpur.",

22. It is also pertinent to mention that Dr. R.S. Tiwari (DW1) has specifically stated that the authorization to issue Work Completion Certificate is with,

Deputy Director, Veterinary Services, District Surajpur and there has been no right or authorization with any doctor or peon to issue such certificate.",

23. Mr. Anil Kumar, Incharge Executive (DW2), Agriculture Board, Surajpur has deposed that the building was constructed on the basis of tender and",
worker order issued by Agricultural Vipan Board/Krishi Upaj Mandi, Surajpur (C.G) and the completion certificate is to be issued by Deputy",
Director, Veterinary Services not to any individual person even not to any construction company."

24. From the above evidence, it comes out that neither the appellants were carrying the right to issue the Work Completion Certificate, nor the",
complainant was ever directed to collect the Work Completion Certificate from Deputy Director, Veterinary Services, District Surajpur. Thus, in",
absence of any authorization letter that the appellants were authorized to issue such certificate, it cannot be held that the appellants were carrying right",
or authorization to issue such certificate. Therefore, it does not prove that the appellants were the persons to issue such certificate. Further that the",
appellants had no role in part and process to issue completion certificate.,

25. Third question comes for consideration that whether the appellants have demanded illegal gratification from the complainant?,

26. In the complaint (Ex.P/3), the Complainant has alleged that when he went to Dr. A.K. Soni for collecting the Completion Certificate in the month",
of November, 2012, he demanded Rs. 30,000/-, but when he said that the amount is higher side, then the matter was finalized in 25,000/-. He alleged",
that at that time appellant Dharmsai was also present. He alleged that he had recorded the said conversation in his phone and subsequently made a,
CD of the same. In the complaint, he alleged that since he wanted to arrest Dr. Soni as red handed, therefore, he made complaint to ACB",
Department.,

27. The prosecution has brought on record Ex.P/4, which is a CD of conversation between the complainant and Dr. A.K. Soni wherein alleged bribe",
was demanded. The Complainant (PW6) in his examination-in-chief though has narrated the demand of gratification, but in cross-examination at para",
10, he has specifically deposed that Dr. A.K. Soni had not demanded Rs. 30,000/- in lieu of Completion Certificate. He further admitted at para 11 in",
cross-examination that he had not recorded any conversation in his mobile and had not made any CD of the same. He admitted that he had not given,

the said CD to the ACB Department.,

28. Ramakant Sharma, DSP (IUCAW) (PW13) has deposed in examination-in-chief at para 4 the complainant had given the CD of conversation",

made by him through computer. At para 18, he has admitted that the CD which was made by the appellant was not given on 30/12/2013 along with",

complaint by the Complainant, however, that was given by 08/01/2014. He also deposed that he had not listened the CD of conversation before",

08/01/2014. He also admitted that he had not seized the mobile or SIM card by which the alleged recording of voice was made by the Complainant.,

He also admitted that there is no mention of mobile number of appellant Dr. A.K. Soni in the case. He Deposed at para 23 that all the names which,

have been mentioned in Transcription Panchnama Ex.P/25 have been written after asking the Complainant. He deposed that there is no mention of,

names in that CD that S.R. Jaiswal, D.S. Singh, Rampukar or Dr. Soni are speaking. He deposed that the FSL test has not been conducted for voice",

identification on the basis of CD, nor have voice samples of the said persons been taken. He deposed that the transcription of Ex.P/26 has been",

prepared in Bilaspur on 13.01.2014. he deposed that in the transcribed Panchnama Ex.P/26, the name of the accused has been written as Dr. AK",

Soni, but the name of Dr. Ashok Soni is not mentioned anywhere in the transcription discussion. On the contrary, the complainant has specifically",

mention in cross-examination that he had not recorded any conversation on his mobile or even made any CD of such conversation.,

29. Section 65 (B) of the Evidence Act reads as under;-,

65B. Admissibility of electronic records.-,

(1) Notwithstanding anything contained in this Act, any records. information contained in an electronic record which is printed on a paper",

stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be",

deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in",

question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the",

original or of any fact stated therein of which direct evidence would be admissible.,

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:-",

(a) the computer output containing the information was produced by the computer during the period over which the computer was used,

regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having,

lawful control over the use of the computer;,,

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained",

is derived was regularly fed into the computer in the ordinary course of the said activities;,,

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it",

was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the",

accuracy of its contents; and,

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary,

course of the said activities.,

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over",

that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-",

(a) by a combination of computers operating over that period; or,

(b) by different computers operating in succession over that period; or,

(c) by different combinations of computers operating in succession over that period; or,

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more",

combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer;,,

and references in this section to a computer shall be construed accordingly.,

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following",

things, that is to say,-",

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;,,

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of,

showing that the electronic record was produced by a computer;,,

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person",

occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities,

(whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be,

sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.,

(5) For the purposes of this section,-",

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied,

directly or (with or without human intervention) by means of any appropriate equipment;,,

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the",

purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that",

computer, shall be taken to be supplied to it in the course of those activities;,,

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human,

intervention) by means of any appropriate equipment.,

30. In the instant case, the FSL test has not been conducted for voice identification on the basis of CD, nor have voice samples of the said persons",

been taken. The CD was prepared through computer but there is non-compliance of Section 65 B of the Evidence Act. Thus, it is very hard to believe",

such evidence in light of provisions of Section 65 B of the Evidence Act.,

31. Dablu Sahu (PW1) has deposed that on the date of incident the complainant and one Jaiswal had gone with him to village Ketka. In village Ketka,"

the Complainant and the said Jaiswal had talked to the appellant Dharamsai. The witness himself says that he does not know what conversation took,

place between complainant , Jaiswal and accused Dharamsai.",

32. Panch witness i.e. B.R. Sao (PW2) has deposed that he had not read the complaint or even seen the CD. In para 12, he deposed that he has no",

information about seizure of CD.,

33. From perusal of above evidence, it comes out the complainant in cross-examination has admitted that the appellants had not demanded any money.",

Apart from this, the recording of conversation which the complainant alleged in complaint has also been denied by him. No FSL regarding test",

identification of CD as well as voice has been done. Further PW13 has deposed there is every chances of tempering like such kind of CD can be,

made anywhere. Therefore, in view of the above evidence, this Court finds that the prosecution has not been able to prove that any demand of",

gratification has been made by the appellants.,

34. Now the question comes whether the appellants have accepted the illegal gratification from the Complainant or not and whether the bribe money,

was recovered from the appellants?,

35. The statements of Complainant (PW6) though shows that appellant Dharamsai after taking the bribe notes were counting, in the cross-examination",

this witness has categorically admitted that he had not given any bribe to any of the appellants. The Panch witnesses i.e. B.R. Sao, SDO (PW2) and",

H.C. Verma, SDO (PW7) have categorically stated that they have not seen the Complainant that he was giving bribe amount. Instead PW2 has",

deposed that when he was asked by the ACB officers inside Veterinary Dispensary, appellant Dharamsai was sitting carrying the bundle of notes and",

he had taken the bundle of notes from appellant Dharamsai as per instruction of Inspector Sharma. He further deposed that after this procedure, it",

came in his knowledge that the persons which was supposed to trap, was not this person. He further deposed that when they reached to Veterinary",

Dispensary, Surajpur, he was stopped 1 km outside. He further deposed when he was called inside as per instruction, he did not see anything in the",

hands of appellant Dr. Soni and Inspector Sharma was threatening him at that time as to whether the appellant has kept money. Subsequently, the",

money was taken out from the floor of room. He deposed that he felt that the money was collected from ground. He had not deposed that who had,

picked up the money. He further deposed that the appellant Dr. Soni was threatened for about 3-4 minutes by Inspector Sharma.,

36. H.C. Verma (PW7) has deposed in his examination-in-chief that on the date of incident, he was informed to appear as witness on the instructions",

of Protocol section, Bilaspur. Subsequently, he went to Udaipur along with the officers of ACB Department. At that time, he was not informed the",

name of the person whom was supposed to be trapped. Subsequently, he had come to office of Sand Parichalak, Dharamsai, where only officers of",

ACB Department had gone inside and he along with some other persons were staying outside. ACB Department had instructed them to come inside,

after receiving the information. After some time, they went inside. He deposed that he saw that the officers of ACB Department were holding the",

hands of appellant Dharamsai and they were scolding and threatening him. He has categorically deposed that he had not seen anything in the hand of,

appellant Dharamsai. He deposed that after 10-15 minutes, they came back to Surajpur. On reaching Surajpur, they were stopped outside the gate of",

the veterinary hospital and some ACB officers had gone inside and instructed that you all would come inside after we gave the information. After,

some time, he had informed by the ACB department, then he also went inside and saw that an ACB officer was holding the hand of accused Ashok",

Kumar Soni and was reprimanding him. He had searched the accused Ashok Soni on the instructions of the ACB officer. He did not find any money,

in his pants and shirt and he did not find any money in his hand either. While the officers were searching, some five hundred rupees notes were lying",

near the feet of accused Ashok Soni. He deposed that he did not know how much money it was. He deposed that he picked up the money as per the,

instructions of ACB. and he dipped it in the solution as per the instructions of the ACB. The color of the money became light red. Then the ACB,

officials kept the said money and took action to seal it.,

37. PW13 has deposed at para 28 that he has not seized anything from appellant Dharamsai.,

38. On minute perusal of the statements of these witnesses shows that none of the Panch witnesses have seen that any of the appellants were,

accepting the bribe money. Though they had seen the bundle of note, but it was already in hand of appellant Dharamsai. They have not seen the",

acceptance of bribe gratification. Further these witnesses have also deposed that when the ACB team reached to Dr. A.K. Soni, he was not carrying",

any money and the money was collected from floor of the dispensary. It has come in evidence that Dr. A.K. Soni was threatened to collect the,

money from ground. It is quite natural if the appellants would collect the money because of threatening, the Phenolphthalein test would definitely come",

positive. PW 13 has also deposed in his evidence that nothing was sized from appellant Dharamsai. Thus, in absence of any witness seeing the",

appellants accepting the bribe from complainant and in light of statement of PW13 that nothing has been seized from appellant Dharamsai, it cannot be",

held that the appellant has accepted any gratification money or any money has been recovered from their possession.,

39. Considering the over all factual scenario of the matter, it is found that there are many discrepancies in the statement of the complainant as well as",

PW13. Further in absence of any evidence regarding demand as well as in absence of any evidence acceptance as none of the witness has seen the,

appellant accepting the money, presumption under Section 20 of the PC Act cannot be drawn against the appellants.",

40. Thus, the learned trial Court has wrongly appreciated the evidence in its true perspective because the Complainant himself has not supported the",

prosecution version, Panch witnesses i.e. B.R. Sao (PW2) and H.C. Verma (PW7) also have not supported the prosecution story on material point;",

witness of demand i.e. Dablu (PW1) also did not support the prosecution case; and recovery of currency notes is made from the floor of dispensary,

not from the pockets or hands of the appellants. Therefore, in considered opinion of this Court when demand and acceptance of illegal gratification is",

not proved and recovery of currency notes is from the floor of the dispensary, the conviction of the appellants cannot be held.",

41. For the foregoing reasons, the appeals are allowed. The impugned judgment and order of sentence is set-aside. The appellants are acquitted of the", charges framed against them.,

42. It is reported that the appellants are on bail. Their bail bonds shall remain operative for a further period of six months in light of Section 437-A of, the Cr.P.C.,

43. The trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary, action.,