
(2014) 09 DEL CK 0099

Delhi High Court

Case No: Criminal Appeal No. 660 of 2008

Vijay Narain

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Sept. 29, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 20, 7

Hon'ble Judges: S. Muralidhar, J

Bench: Single Bench

Advocate: N. Hariharan, Senior Advocate, Varun Deswal, Amit Singh Chauhan, Vaibhav Sharma, Siddharth Yadav and Sahil Paul, Advocate for the Appellant; Isha Khanna, APP, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Dr. S. Muralidhar, J.

This appeal is directed against the impugned judgment dated 19th July 2008 passed by the learned Special Judge, Tis Hazari Courts, Delhi in CC No. 144/07/01 in the case arising out of FIR No. 5 of 2001 registered at Police Station (PS) Anti-Corruption Branch ("ACB") convicting the Appellant, Vijay Narain, for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("PC Act") and also against the impugned order on sentence dated 25th July 2008 sentencing the Appellant to undergo rigorous imprisonment ("RI") for one year and with fine of Rs. 2,000 and in default to further undergo simple imprisonment ("SI") for two months for the offence u/s 7 PC Act. The Appellant had further been sentenced to undergo RI for 1-1/2 years and fine of Rs. 3,000 and in default to further undergo SI for three months for the offence u/s 13(1)(d) read with Section 13(2) PC Act. Both the sentences were directed to run concurrently.

2. This Court by an order dated 20th August 2008 suspended the sentence of the Appellant during the pendency of the present appeal.

3. The case of the prosecution is that on 16th February 2001, Raj Kumar (PW-4) lodged a complaint at ACB in the presence of the panch witness, Tajinder Ahlawat (PW-6) stating that he was selling books on pavement near the Recruitment Office, Red Fort for about last five years. He was physically handicapped. For some days, the Appellant, Constable Vijay Narain, posted at Police Post Red Fort, PS Kotwali had been demanding Rs. 500 per month from him. PW-4 expressed his inability to pay such a huge sum. In his complaint, PW-4 stated that on 16th January 2001 at about 11 am, the Appellant came to his shop and asked him to remove his books from there. When PW-4 requested him not to do so, the Appellant is stated to have asked him to pay the complete arrears till then and further demanded monthly amount of Rs. 1,000. At the request of PW-4, the Appellant is stated to have reduced the amount of Rs. 500 per month and stated that he would come to his shop between 2 pm to 5 pm to collect a sum of Rs. 500. PW-4 assured the Appellant that he would make the said payment.

4. PW-4 then went to ACB and made a complaint which was exhibited as PW-4/A. PW-4 produced five Government Currency ("GC") notes of Rs. 100 each amounting to Rs. 500 to the Raid Officer ("RO") Inspector Veer Singh Tyagi (PW-9), who recorded the serial numbers of the said GC notes in the pre-raid report (Ex. PW-4/B). PW-9 treated the GC notes with phenolphthalein powder and gave a demonstration to PW-4 in the presence of panch witness PW-6. PW-6 was instructed to remain close to PW-4 to overhear and observe the transaction between PW-4 and the Appellant and to give a signal to the raiding party by moving his hand on his head.

5. At around 2 pm, PW-9 along with PW-4, PW-6 and Inspector Ranvir Singh (PW-8) left the ACB and reached near the Recruitment Office opposite Lajpat Rai Market at around 2.10 pm. On the instructions of PW-9, PW-4 and PW-6 went towards the shop of PW-4. The other members took their suitable positions.

6. At about 3.20 pm, the Appellant came to PW-4 and started talking with him. According to the prosecution, the Appellant asked PW-4 as to whether he had brought the bribe money. PW-4 asked the Appellant to reduce the amount, but the Appellant remained adamant on his demand of Rs. 500. Thereafter the treated GC notes were given by PW-4 to the Appellant who accepted the same. At about 3.25 pm, PW-6 gave the pre-assigned signal and the raiding party reached there. PW-9 introduced himself to the Appellant and challenged him as having accepted the bribe of Rs. 500 from PW-4. The Appellant was carrying bribe money in his right hand and at that time he kept the bribe money in his left hand. PW-9 directed PW-6 to recover the bribe money from the left hand of the Appellant. The serial numbers of the recovered GC notes were tallied with the serial numbers recorded in the pre-raid report. The right and left hand of the Appellant were washed in sodium carbonate solution and both washes turned pink. They were stored in separate

bottles, labelled and sealed with the seal of VST. PW-9 prepared the post-raid proceedings and they were signed by PW-4 and PW-6. The Appellant was arrested and his personal search was conducted.

7. The prosecution examined 9 witnesses. In his statement u/s 313 Cr PC, the Appellant denied having demanded or accepted the bribe amount. According to him, on the date of the incident when he was coming from his beat duty, PW-4 enquired from him about the Sub-Inspector posted in the Police Post and asked the Appellant to hand over some money to him but the Appellant refused stating that PW-4 should himself hand over the money to the concerned person. PW-4 then forcefully tried to thrust the money into his hand to which the Appellant resisted and the money fell down on the ground. Meanwhile, he was apprehended by the raiding party. The Appellant claimed that he was falsely implicated in the case.

8. During the trial PW-4 did not support the prosecution on some of the material facts. In particular he did not identify the Appellant to be the person who demanded money. According to him, Rs. 1,000 was demanded by the senior police official. He, however, confirmed the pre-raid proceedings and also the recovery of the treated GC notes from the Appellant. According to PW-4, the treated GC notes were meant for a "Thanedar" and when the said "Thanedar" did not come to the spot, he handed over the GC notes to the Appellant on the instructions of PW-9. PW-4 also confirmed that the hand washes of the Appellant turned pink.

9. The trial Court found that PW-6 fully supported the case of the prosecution and in particular, the Appellant having received the treated GC notes from PW-4. PW-6 spoke about a scuffle taking place once the raiding party reached the spot and some of the GC notes falling down on the ground as a result thereof. According to PW-6, some of the GC notes still lying in the hand of the Appellant, were recovered by the police. PW-6 also confirmed that both hand washes of the Appellant turned pink. The FSL report (Ex.PW-8/C) further corroborated the version of the prosecution witnesses. In the circumstances, the trial Court held that the prosecution has proved the case against the Appellant regarding acceptance and demand of the bribe amount beyond reasonable doubt and proceeded to sentence him in the manner indicated hereinabove.

10. This Court has heard the submissions of Mr. N. Hariharan, learned Senior counsel for the Appellant and Ms. Isha Khanna, learned Additional Public Prosecutor for the State.

11. The evidence of PW-4 requires to be dealt with at some length because it is not as if he has turned completely hostile. There is no doubt that in the trial Court PW-4 stated that the Appellant did not demand any bribe amount from him. He confirmed that one "Thanedar" used to come to him and collected money from him on two or three occasions and thereafter demanded Rs. 1,000 which he was unable to afford. He further stated that the bribe amount was arranged by ACB officials. The raiding

party after reaching there waited for a long time but the "Thanedar" did not come. In the meantime, the Appellant came there and the ACB officials asked PW-4 to pay the amount to the Appellant. PW-4 stated that "I gave those GC notes to the accused which were later on recovered from his possession and some proceedings were conducted at the spot regarding hand wash of the accused. Accused Vijay Narain did not demand any bribe from me and I had given those GC notes to the accused on the direction of Raid Officer." Significantly in this part of the testimony, PW-4 did not state that he had forcibly thrust the money into the hands of the Appellant and the Appellant had thrown the money on the ground.

12. When confronted by learned APP with the complaint (EX.PW-4/A), PW-4 denied having said that the Appellant had demanded any bribe amount from him. However, what is significant is that he completely supported the pre-raid proceedings to the extent of his producing the GC notes before PW-9, their serial numbers being noted in the pre-raid proceedings and instructions given by PW-9 to him and PW-6. The most significant statement in the cross-examination of PW-4 by the learned APP is follows: "It is correct that the pre-raid proceedings Ex.PW4/B were drawn by the Raid Officer bearing my signature at point A."

13. A careful perusal of the pre-raid proceedings (Ex.PW-4/B) show that at one more than one place it mentions that the Appellant (and not a Thanedar) had demanded the bribe from PW-4. The pre-raid proceedings have been signed at various places both by PW-4 and PW-6.

14. It was urged by Mr. Hariharan that PW-4 in his deposition has stated that he had signed some blank papers and that the complaint given by him against the "Thanedar" was somehow not placed on the judicial file. It was sought to be suggested that the blank paper signed by PW-4 was later used by ACB to draw up the pre-raid proceedings.

15. The Court is unable to accept the above submission. When PW-4 was being cross-examined by the learned APP, he was shown the pre-raid proceedings (Ex.PW-4/B). PW-4 did not state that the said pre-raid proceedings were written up on a blank paper that he had signed. This argument, therefore, appears to be an afterthought. The pre-raid proceedings have been confirmed by PW-4 and it clearly mentions that it is the Appellant who demanded the bribe amount from PW-4. Therefore, this part of the testimony of PW-4 corroborates the version of PW-6, panch witness who clearly states that the pre-raid proceedings were drawn up on the narration of PW-4.

16. Turning to the evidence of PW-6, it is seen that he has fully supported the case of the prosecution. Nevertheless, on the strength of the decision in *B. Jayaraj v. State of Andhra Pradesh* 2014 (4) Scale 81 it was urged by Mr. Hariharan that the evidence of PW-4 only showed that the demand was made by some "Thanedar" and not by the Appellant. He further submitted that even the evidence of PW-6 did not support the

case of the prosecution that there was "conscious acceptance" of the bribe amount by the Appellant.

17. Before discussing the evidence further, it is important to extract the relevant paragraph of the Supreme Court judgement in B. Jayaraj (supra) where it was held as under:

"In so far as the offence u/s 7 is concerned, it is 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 u/s 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in [C.M. Sharma Vs. State of A.P. Th. I.P.,](#) and [C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala,](#)."

(emphasis supplied)

18. The critical line in the above paragraph is that for the purpose of attracting the offence u/s 7 of the PC Act, it had to be proved beyond all reasonable doubt "the accused voluntarily accepted the money knowing it to be a bribe." In other words, even if the prosecution has been able to show that the accused consciously accepted the money knowing it to be a bribe, the offence u/s 7 PC Act is attracted.

19. Turning to the evidence of PW-6, it is seen that in the first place he clearly stated that the complaint given by PW-4 was drawn up in his presence and PW-6 had also signed the said complaint. He also confirmed the pre-raid proceedings and recognized his signature thereon. The critical portion of his evidence as to what happened during the pre-raid proceedings reads as under:

"At around 2 pm I, Complainant and the member of the raiding team departed from AC Branch in a government vehicle. We reached near Red Fort Delhi within 15/20 minutes. The government vehicle was parked at a distance. The members of the raiding team took their respective position. I and the Complainant were present at the stall of the Complainant which he was running on the pavement. I picked up a newspaper from the Complainant's book stall and started reading the same and also kept an eye on the Complainant. Around 3/3.15 pm accused present in Court came over there and received some money from the Complainant. I could not hear the conversation between the accused and the Complainant. It happened suddenly that I could not hear the conversation. Accused perhaps took the money in his right hand and then shifted in his left and kept in his left hand. Again said I cannot confirm it was the right hand or the left hand in which he took the money first. I gave the pre-determined signal to the raiding party which arrived there. Police caught hold the accused present in Court today. Some of the GC notes were fallen on the ground from the hand of the accused. Police collected those GC notes from the ground. The GC notes were fallen on the ground at there was a scuffle took

place between the accused and the police party as the accused tried to run away from the clutches of the AC Branch. Some of the GC notes were still left in the fist of the accused which the police recovered. The numbers of the GC notes were got tallied from me with the pre-raid report and I found the numbers same. The hand wash of the accused was taken in a clear solution which turned pink but I do not remember if both hands of the accused were washed in one solution or in different solution and I also do not recollect if both hands or one of the hand of accused was washed."

20. The above deposition shows that PW-6 saw the Appellant accepting the bribe amount from PW-4. If this is read together with the pre-raid proceedings, the genuineness of which has been affirmed by PW-4 himself, the irresistible conclusion is that there was a conscious acceptance of the bribe amount by the Appellant.

21. Mr. Hariharan urged that there were contradictions in the version of PWs 4, 6 and 9 (Raid Officer) as to what transpired at the spot. While PWs 4 and 9 did not speak of any scuffle, PW-6 did speak of the scuffle. According to Mr. Hariharan, the evidence of PW-6 supported the version of the Appellant that the money was thrust in his hand.

22. The Court is unable to accept the above submission of Mr. Hariharan. It requires to be noticed that PW-4 was recalled for cross-examination. This happened on 4th January 2007. In his statement he stated as under:

"In fact I made a complaint of demand of bribe against one Sub Inspector who did not turn up on that day at my shop and at the time accused present in Court was seen coming towards Azad Hind Market, Red Fort and a member of the raiding party, finding that its trap would fail, forced me to handover the bribe amount to Const. Vijay Narain, the accused present in the Court and for this reason I handed over the bribe amount to him without any demand from his side or on behalf of anyone.

Accused refused to accept the amount by saying that he should hand over the money to the person who have demanded the same."

23. The above statement has to be read along with what PW-4 initially stated in his examination-in-chief. He stated that "I gave those GC notes to the accused which were later on recovered from his possession....." At no point in time, has PW-4 stated that he had forcibly thrust the money into the hands of the Appellant or the Appellant had thrown those GC notes on the ground.

24. The scuffle is spoken of by PW-6. The scuffle did not take place when PW-4 handed over the money to the Appellant, but the scuffle took place when the raiding team reached the spot and challenged the Appellant. Therefore, the scuffle, according to PW-6, took place after conscious acceptance of the bribe money by the Appellant and not prior thereto.

25. In that view of the matter, the Court is satisfied that the evidence of PW-6, corroborated on important aspects by PW-4 as well as by PW-9 (Raid Officer), proved beyond reasonable doubt the voluntary acceptance of the bribe money by the Appellant from PW-4 knowing it to be a bribe amount.

26. The Court, therefore, concurs with the view expressed by the trial Court. Mr. Hariharan then made elaborate submissions on the issue of preservation of the hand washes and their being tested by FSL. He pointed out the evidence of PW-8 who stated that samples were received back from the CFSL and not FSL. He further submitted that the samples were kept with the Constable for several days and not kept in the malkhana. According to him, no scientific expert who actually tested the samples was examined. In other words, it was submitted that the authenticity of hand washes was not proved in accordance with law. As rightly pointed out by Ms. Isha Khanna, learned APP for the State, the Appellant himself in his statement u/s 313 Cr PC, when confronted with the evidence, admitted that his hand washes turned pink. Further, both PW-4 and PW-6 also stated that the hand washes of the Appellant turned pink at the spot. The FSL reports are only corroborative in nature. There is no manner of doubt that hand washes of the Appellant did turn pink in the instant case.

27. In light of the fact that the hand washes of the Appellant turned pink, the burden u/s 20 of the PC Act for the purpose of Section 7 thereof, shifted to the Appellant to show that he did not consciously accept the bribe amount. The Appellant clearly failed to do so in the instant case.

28. For all the aforementioned reasons, the Court is satisfied that no error has been committed by the learned trial Court in convicting the Appellant for the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act.

29. Turning to the question of sentence, it is seen that what has been awarded by the trial Court to the Appellant, i.e., one year for the offence u/s 7 PC Act and one and half year for the offence u/s 13(1)(d) read with Section 13(2) of the PC Act, can hardly be said to be excessive or disproportionate. It must be recalled that the Appellant was a policeman and was expected to discharge the solemn duty of enforcement of law and order. In the circumstances, there is no scope for interference with the sentence awarded by the trial Court..

30. The bail bonds of the Appellant are hereby cancelled. The Appellant is directed to surrender forthwith to serve out his remaining sentence.

31. The appeal is dismissed with no orders as to costs. The trial Court record along with a certified copy of this order be sent back forthwith.