

Shri Prasanta Goswami Vs State of Assam

Court: Gauhati High Court

Date of Decision: June 5, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 374(2)

Penal Code, 1860 (IPC) â€” Section 109, 120(B), 314, 354, 384

Prevention of Corruption Act, 1988 â€” Section 13(1), 13(1)(c), 13(1)(d), 13(1)(d)(ii)(iii), 13(2)

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Advocate: B.M. Choudhury, Mr. P.Kataki and Ms. K. Thakur, for the Appellant; K.Munir, Addl. P.P., Assam, for the Respondent

Final Decision: Allowed

Judgement

Hon"ble Mr. Justice, P K Musahary

1. The appellant was convicted u/s 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 and u/s 314 of the IPC and

sentenced to suffer R.I. for one year and fine of Rs. 5,000/- (Rupees five thousand), both the sentences being directed to run concurrently, vide

judgment and order dated 30.9.2005 rendered by the learned Special Judge at Guwahati in Special Case No. 5(A)/2001. Being aggrieved by the

aforesaid judgment, the appellant preferred this appeal u/s 374(2) CrPC, 1973. The short facts of the prosecution in this case are that the Deputy

SP, CID, Assam lodged a written FIR with the Special Superintendent of Police, CID Assam, Guwahati informing that having received a petition

on 21.8.1998 from one Ms. Kalyani Sarmah and having recorded it as GDE No. 125 on 21.8.1998, he made an enquiry and found that CID

Inspector Aswini Das and CID constable Prasanta Goswami, in collusion with 4/5 others attempted to extort an amount of Rs. 50,000/- (Rupees

fifty thousand) from milkmen named Kishore Chetri, Ramu and R.P. Sarmah accusing them of selling adulterated milk and threatening to take

action against them. In a trap laid by police, Prasanta Goswami, CID constable was caught red handed by a team of CID officers on 21.8.1998 at

14.20 hours when he was exhorting cash amount of Rs. 10,000/- (Rupees then thousand) from the petitioner and other milk businessmen. On the

basis of said FIR, a crime being CID PS Case No. 19/1998 was registered u/s 384 IPC read with Section 13(1) (c) and (d) (ii) (iii) of the

Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act in short). On completion of investigation, charge-sheet was submitted

against the constable Prasanta Goswami, Inspector Aswini Kumar Das and constable Dipen Gogoi under Sections 120(B)/109/384 IPC read with

Section 13(1) (d) (ii) (iii) punishable u/s 13 (ii) of the P.C. Act. On the basis of the materials collected during investigation, learned trial court

framed charges against the above named accused persons under Sections 120(B)/354 IPC and Section 13 (2) read with Section 13 (1) (d) of the

P.C. Act. The charges being read over and explained the accused persons denied the same, pleaded not guilty and claimed to be tried.

2. The prosecution, to bring home the charges, examined as many as 13 witnesses including the I.O. All the accused persons were examined u/s

313 CrPC. The accused Dipen Gogoi and Aswini Kumar Das declined to adduce any evidence in their defence. However, the accused Prasanta

Goswami, the present appellant, desired to adduce evidence in his defence and accordingly, he examined one Sri Hirananda Rai Baruah as DW 1.

The learned trial court on consideration of the materials and evidence on record convicted and sentenced the accused Prasanta Gogoi under the

aforesaid Sections of law as stated earlier. The other two accused persons, namely, Dipen Gogoi and Aswini Kumar Das were acquitted as the

prosecution failed to prove the case against them.

3. I have heard Mr. B. M. Choudhury, learned counsel for the convict appellant and Mr. K. Munir, learned Addl. P.P., Assam, for the respondent

State. I have thoroughly scanned the evidence of the prosecution witnesses and the LCRs.

4. As per the seizure list Ext. 2, the CID Inspector Garga Narayan Dutta Choudhury seized from the possession of the accused Prasanta Goswami

a cash amount of Rs. 11,000/- (Rupees eleven thousand) with another cash amount of Rs. 1584/- (Rupees one thousand five hundred eight four)

in a red colour money bag in presence of the witnesses Anjanjyoti Das, Subhadeep Bhattacharyya, Kalyani Sarmah and Kishore Chetri. The cash

amount of Rs. 11,000/- was found in two bundles of 50-rupee currency notes amounting to Rs. 10,000/- (Rupees ten thousand) and ten 100

rupee currency notes. The said amount of Rs. 1584/- contained two 500-rupee currency notes and five 100-rupee currency notes and the rest

eight in 10- rupee currency notes and two 2-rupee currency notes. Along with the said amount an identity card of the accused Prasanta Goswami

issued by Deputy SP, CID, Assam on 9.7.97 was recovered. The said CID Inspector Garga Narayan Choudhury Dutta was examined as PW 10.

He deposed that as per the instruction of the Deputy SP, CID, Assam, he laid the trap and rushed to Ulubari Bus stand accompanied by Inspector

Bolen Barman and Bimal Das and Constable D. Haloi. He met there Kishore Chetri and Kalyani Devi who were waiting with the money. In the

meantime, one scooterist came and talked to Kishore Chetri and Kalyani Devi who handed over a bundle of currency notes to the scooterist who

was none other than the accused Prasanta Goswami who accepted the money kept in a polythene bag. The said money was seized in presence of

two witnesses Kishore Chetri and Kalyani Devi.

5. The prosecution case, therefore, is that the accused Prasanta Goswami was caught red handed in a trap laid by the police on specific

information received from Ms. Kalyani Sarmah who informed the police about the matter.

6. The defence does not deny the recovery/seizure of the aforesaid amount from his possession. In his statement recorded u/s 313 CrPC, the

convict appellant admitted that CID Officer seized Rs. 12,584/- from him. He, however, explained that out of Rs. 12,584/-, Rs. 10,000/-

belonged to one Hirananda Rai Baruah (DW 1) of Nalbari who gave him to handover the same to his mother and the rest amount of Rs. 2,584/-

belonged to him. In support of his defence, he examined said Hirananda Rai Baruah as DW 1 who gave him the said amount of Rs. 10,000/- to

hand over to his mother. The evidence of DW 1 has been discarded by the learned trial court saying that the accused never informed the police

that the money seized from him belonged to DW 1 who handed over the money for being delivered to his mother.

7. In the seizure list it has not been mentioned whether the number of the currency notes recovered from the possession of the convict appellant

were noted. None of the official witnesses including PW 10 stated in their evidence that the numbers of the currency notes were noted down in the

seizure list or separately elsewhere. The record does not show that the numbers of the currency notes seized from the accused were recorded.

Since the prosecution has admitted that it was a trap case, it was the bounden duty of the police officials to note down the numbers of the currency

notes at the time of preparing the seizure list. What is important to note is that the prosecution did not examine any of the independent seizure list

witnesses, namely Anjanjyoti Das and Subhadeep Bhattacharyya. The prosecution has offered no explanation why it did not examine the aforesaid

independent seizure witnesses. It remained satisfied by examining Ms. Kalyani Sarmah and Kishore Chetri as PW 1 and PW 2 respectively. These

two prosecution witnesses were part of the police in laying the trap and so, they are obviously interested and partisan witnesses. In such

circumstances, it is difficult to accept the evidence of these two partisan witnesses. Here is a case where the trap was admittedly laid by police in

co-operation with PW 1 and PW 2 and the prosecution claims that the money was recovered/seized in presence of at least two non-partisan

independent witnesses. The prosecution, in order to prove the case, is bound to seek corroboration from those independent witnesses. The

evidence of PW 1, 2 and 10 having not been corroborated by any evidence of independent witness, the prosecution cannot justifiably claim that

the fact of recovery/seizure of the amount in question from the accused, and for that matter, the charge has been proved against him. The

prosecution proceeded on the premises that as because the amount was recovered from the accused in a trap, he could be held guilty of receiving

the gratification money. I have already discussed and found on appreciation of evidence that the charge of taking bribe/gratification could not be

proved beyond reasonable doubt inasmuch as the independent non-partisan seizure witnesses were not examined. It appears to me that the

learned trial court convicted the appellant drawing an inference only which is not at all permissible under the law.

8. I have gone through Ext. 1, the very application filed by Ms. Kalyani Sarmah on 21.8.1998 who initially informed the Addl. DGP, CID, Assam

that on 28.8.1998 in the evening at about 9.30 P.M., Ramu came to their house along with an unknown person, who introduced himself as a CID

officer and told that he has been officially authorized to conduct raid in the house of Ms. Kalyani Sarmah in connection with adulteration of milk.

The said Ramu @ Mani Kanta Sarmah is a milkman financed by her father Rabati Prasad Sarmah who is also connected with the milk supply

business at Guwahati. In her evidence also PW 1 stated the same. As per averments made in the said petition the milk supplied by the said Ramu

was found adulterated by police and sample of the milk was sent for examination. The police gave Ramu a proposal that the matter could be

settled on payment of Rs. 50,000/- only. The said Ramu, being financially weak, came to her father as his financier. The police laid the plan to

apprehend the accused persons and caught red handed with the co-operation of said Ramu and PW 1 and 2. The case of alleged demand for

payment of gratification set into motion due to the report of said Ramu before PW 1 and her father. It is to be noted that the said Ramu @

Manikanta Sarmah whose milk was found allegedly adulterated by the police and from whom the gratification amount of Rs. 50,000/- was

demand by police, has not been examined as a witness by the prosecution although he was cited as a witness in the charge-sheet. The aforesaid

person Ramu @ Manikanta Sarmah should have been examined by the prosecution as its star witness on the question of demand for payment of

gratification by police. No explanation has been offered by the prosecution for not examining such an important witness.

9. In my understanding prosecution should have first proved the allegation/fact that the accused persons particularly the present appellant came to

the house of PW 1 demanding gratification from Ramu by examining him as a witness. The prosecution has forgotten that it was originally Ramu

who made the allegation that the police demanded Rs. 50,000/- from him as gratification to settle the matter as his milk was found adulterated. The

alleged demand of gratification from Ramu has the nexus with the recovery of cash amount of Rs. 11,000/- from his possession. The prosecution is

required to establish the link or the nexus between the demand of Rs. 50,000/- as gratification from Ramu and recovery of the seized amount from

the possession of the convict appellant. The prosecution, by not examining Ramu, failed to prove that the accused persons really demanded Rs.

50,000/- as gratification money from him. The primary fact of demand for gratification money having not been proved the prosecution cannot jump

upon the convict appellant merely because some cash amount has been recovered from him at the instance of partisan and interested witness. It is

the mandate of the Apex court that prosecution has to lead cogent evidence to establish the link to prove the case against the accused beyond

reasonable doubt either by direct evidence or by circumstantial evidence. The prosecution is required to lead cogent evidence to prove the case by

circumstantial evidence evidencing existence of essentials of a complete chain duly supported by appropriate evidence. In this regard it is

appropriate to refer to and rely on the decision of the Apex Court in Banarsi Dass Vs. State of Haryana, . I am not prepared to accept the

evidence of PW 1 and 2 as they are part of the trap laid by the police and lent themselves to be tools in the hands of the police. They are nothing

but partisan witnesses and the law of evidence demands corroboration by the reliable evidence of some other witnesses to base conviction of the

accused. The High Court of Bombay in State Vs. Pundlik Bhikaji reported in AIR 59 Bom. 543 observed that the evidence of trap witnesses must

be scrutinized with great care before conviction can be based on it. It was also observed therein that the law of the land requires that certain things

should be done by the police in presence of independent respectable persons so that the presence of the said persons may put the particular

transactions beyond the pale of suspicion. In the present case the policemen in the trap party did not call any independent respectable persons of

the locality to witness the seizure of the amount from the accused persons. The police merely obtained signatures of two persons, viz., Anjanjyoti

Das and Subhadeep Bhattacharyya as seizure witnesses. There is nothing on record about the status of the aforesaid two seizure witnesses to

confirm or testify that they are independent and respectable persons of the locality. The prosecution did not even make endeavour to produce the

aforesaid two seizure witnesses to record their evidence by the learned trial court. This makes the seizure of the alleged gratification amount from

the accused quite doubtful. To remove this doubt there should have been evidence of independent witness who saw the delivery of packets/bags

containing the money delivered to the accused. In this context it is worth mentioning that the polythene bags which contained the cash amount was

not produced in the court during trial.

10. In a trap case what is usually done by police is that the police or the Investigating Agency use to mark the currency notes before using them to

trap the person/accused concerned so that it could be easily identified on being recovered from the trapped person. In the instant case, admittedly,

the police resorted to no such device although there was ample scope for them to mark the currency notes or the packet containing the bundles of

currency notes. The policemen in the trap party, as per the evidence on record, recovered the amount bearing no identification mark and they have

claimed the same as the gratification money paid by PW 1.

11. There is no doubt, rather it is admitted by the prosecution, that it is a trap case. Usually in such trap case the police is required to use the

phenolphthalein powder for the purpose of proving the charge of bribe. This is a scientific method to treat the marked currency notes which are

used for trapping the accused/person concerned. Resorting to such scientific method is full proof requiring no corroboration by oral evidence,

because when the marked currency notes are treated with phenolphthalein powder it becomes easy to detect the handling of such marked currency

notes by chemical process. On verification from record it is found that the police did not apply phenolphthalein powder to the currency notes used

in the trap in the present case. This is a disturbing aspect of the matter inasmuch as the police committed lapse in applying scientific method

although in several cases the Apex Court directed and desired the prosecution to resort to the said scientific method. It may be mentioned that

emphasis was given by the Apex Court on application of modern technological method in detecting the crime in Raghbir Singh Vs. State of Punjab,

. It will make the things clear if para 11 of the said judgment is quoted hereunder -

11. It is clear from the aforesaid discussion that the evidence led on behalf of the prosecution is not such as to inspire confidence in the mind of the

court and we must say that we are not at all satisfied that the appellant either demanded bribe of Rs. 50 from Jagdish Raj or that Jagdish Raj paid

bribe of Rs. 50 to the appellant by handing over five marked currency notes to him or that five marked currency notes to him or that five marked

currency notes of Rs. 10 each were recovered from the pocket of the appellant when his person was searched by the raiding party. We

may take this opportunity of pointing out that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked

currency notes, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency

notes by the public servant can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a

dubious character for the purpose of deciding the fate of the public servant. It is but meet that science-oriented detection of crime is made a

massive programme of police, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the sciences

as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging

liberal use of scientific research to prove guilt.

12. Following the aforesaid decision in the above case the Apex Court in Ganga Kumar Srivastava Vs. The State of Bihar, held that in a trap case

a duty is cast upon the authorities to use phenolphthalein powder for the purpose of proving the charge of bribe without relying only on the oral and

documentary evidence adduced by the prosecution. In the said case also, on facts, phenolphthalein powder was not used. In such circumstances, it

was held that the court need not depend on oral evidence which was something of a dubious character to decide the fate of the accused public

servant. In such a case, court can, as held therein, interfere, more particularly, if the evidence adduced by the prosecution falls short of the test of

reliability and acceptability inasmuch as it is always highly unsafe to act upon it.

13. The prosecution, in the present case, not to speak of applying the modern scientific method of detecting the crime by resorting to application of

phenolphthalein powder in a trap case, failed to apply even the usually accepted method of marking the currency notes in detecting the case of

acceptance of an illegal gratification by the accused. The State police is either lacking proper training in detecting such crime or they are negligent in

performing their duties honestly in detecting the case of offering and accepting of illegal gratification. In either case it is a sorry state of affairs and

the State Home Department is required to take corrective measures. The lapses committed by the police and for that matter the prosecution are

serious and if such lapses are allowed to continue by the State, it will not be possible to convict and punish the accused person charged with any

offence under the P.C. Act.

14. It is simply disgusting and distressing that the Investigating Agency did not apply the modern scientific method as directed by the Apex Court

and it did not take up the matter in a right direction right from the stage of laying the trap and collecting materials against the accused person and

proving the case. The failure of the prosecution to examine the important witnesses as discussed earlier cannot be taken so easily, for, such failure

has affected its case.

15. For the discussion and reasons underlined above, I hold that the prosecution miserably failed to establish the charge against the present convict

appellant. I do not agree with the findings and conclusions arrived at by the learned trial court convicting and sentencing the present appellant. I,

therefore, refrain from upholding the impugned judgment and order and accordingly, I set aside and quash the conviction and sentence awarded

against the present convict appellant. The convict appellant is hereby acquitted.

16. The appeal stands allowed. The bail bond(s) is/are discharged. Return the LCRs