

(2012) 12 AP CK 0007

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1451 of 2005

The State of Andhra Pradesh

APPELLANT

Vs

T. Satyanarayana

RESPONDENT

Date of Decision: Dec. 6, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 239
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 7

Citation: (2013) 1 ALD(Cri) 323 : (2013) 2 ALT(Cri) 121

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: Gani-a-Musa, Spl. PP for ACB Cases, for the Appellant; M. Venkatanarayana, for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble Sri R. Kantha Rao, J.

This criminal appeal at the instance of Anti-Corruption Bureau is filed against the judgment dated 26-2-2005 passed by the Special Judge for Special Police Establishment and Anti-Corruption Bureau Cases, Nellore In CC. No. 6 of 1999 acquitting the respondent-accused of the offence punishable u/s 7, 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988. The brief facts of the case as per the prosecution are the following:

The respondent was working as Junior Assistant in District Youth Welfare Office [SETNEL] Nellore on the date of alleged offence. PW-1 Kasaram Parthasarathy and some others formed an Association and submitted an application on 26-9-1998 in the office of MPDO Balayapally for financial assistance to establish a poultry farm. Subsequently the said application was forwarded to SETNEL, Nellore on 12-10-1998. PW-1 approached the respondent, who was working as Junior Assistant and inquired about the application. It is said that in that connection the respondent asked him to

pay bribe amount of Rs. 500/- along with a copy of nativity certificate for the purpose of taking favourable action about financial assistance to the Association of PW-1. PW-1 was not willing to pay the bribe amount approached PW-8 Deputy Superintendent of Police, Anti-Corruption Bureau on 13-10-1998 and presented a report requesting him to take action against the respondent for demanding illegal gratification. On the strength of the said report, PW-8 registered a case in Crime No. 18/ACB/NLR/98 on 14-10-1998 and laid a trap with his team on the same day. According to the prosecution in the course of the trap the respondent received an amount of Rs. 500/- from PW-1 at the staircase of their office and was caught by the raiding party, the amount of Rs. 500/- was stated to be recovered from his shirt pocket and the chemical test conducted on the fingers of the respondent yielded positive result. After filing of the charge sheet before the learned Special Judge, the respondent was tried for the offences u/s 7 and 13 (2) read with section 13 (1) (d) of Prevention of Corruption Act, 1988. In the course of trial, the prosecution in order to prove its case examined PWs 1 to 9 and marked Exs.P1 to P-19 besides marking MOs 1 to 8. Whereas the respondent examined DW-1 and marked Exs.D-1 and D-2 on his behalf.

2. The learned trial court on consideration of the entire material on record held that the prosecution failed to prove the aforementioned charges against the respondent and accordingly acquitted him of the said charges.

3. Feeling aggrieved, the Anti-Corruption Bureau preferred the present appeal.

4. Heard Sri Gania Musa, the learned Special Public Prosecutor for the appellant-Anti-Corruption Bureau and Sri M. Venkatanarayana, the learned counsel appearing for the respondent-accused.

5. It is contended by the learned Special Public Prosecutor for ACB Cases that even though there is enough legal evidence warranting conviction of the respondent, the trial court taking erroneous view of the matter acquitted the respondent and the said order of acquittal is liable to be set aside in the present appeal.

6. On the other hand, Sri M. Venkatanarayana, the learned counsel appearing for the respondent-accused submitted that the trial court on careful examination of the entire evidence on record noticed several material inconsistencies and improbabilities in the version of the prosecution witnesses and rightly acquitted the respondent-accused and therefore there are no valid grounds to interfere with the order of acquittal passed by the learned trial court.

7. The defence version of the respondent is that on the date of alleged trap DW-1 and Senior Assistant in his Office came out of their Office and were proceeding to have a tea, PW-1 came there and in an open place in the presence of all others thrust some currency notes in to his pocket, thereafter, he was caught by the raiding party. According to him, he never demanded or accepted the bribe amount but was falsely involved in this case by PW-1 who is an unscrupulous element, filed

several petitions against so many public servants.

8. DW-1 an Attender working in the SETNEL Office, Nellore at the relevant time supported the version of the respondent, He had categorically stated before the trial court that while he, the respondent and the Senior Assistant were proceeding to have tea PW-1 came and thrusting currency notes into the shirt pocket of the respondent forcibly in an open place. The version of this witness was believed by the learned trial court taking into consideration the facts and circumstances of the case. The learned Special Public Prosecutor for ACB Cases would contend that when the respondent was examined u/s 239 Cr.P.C., in response to the charges framed against him, he did not state about the presence of DW-1 and therefore the version of DW-1 ought not to have been believed by the trial court. I absolutely see no force in the contention. The respondent specifically denied the charge and receiving any amount from PW-1 and he stated before the learned trial court that PW-1 thrusting the currency notes into his shirt pocket. A formal denial of the charges is enough in an examination u/s 239 Cr.P.C. and the respondent is not expected to give details of the persons, who were present at that time of PW-1 thrusting currency notes into his pocket, while answering the charges framed against him.

9. This apart, there are so many inconsistencies and improbabilities, which are material in character in the prosecution story and the evidence of the prosecution witnesses. As could be seen from the pre-trap proceedings, PW-8 the Deputy Superintendent of Police, ACB directed PW-1 to pay the tainted amount on demand made by the respondent-accused and directed him to give pre-arranged signal when the respondent receives the amount. He also deputed Head Constable along with him as an accompanying witness and directed the Head Constable to follow PW-1. But the version of PW-1 before the Court is that he went to the Office of the respondent, the respondent asked him whether he brought the amount when he replied positively the respondent asked him to come along with him and while both of them came near the staircase he paid the amount to the respondent and respondent received the same counted it and kept in his shirt pocket. PW-1 claims that he relayed the pre-arranged signal after the respondent received the amount from him. Whereas PW-3 stated in his evidence that the Head Constable relayed the prearranged signal.

10. According to the evidence of PW-1 as well as DW-1 the incident took place in an open place. Though PW-1 stated in his evidence that no body was present at the time when he paid the amount, he did not deny the fact that the place where the respondent allegedly received the amount is a place within public view and there is possibility for several others to witness the incident. DW-1's evidence shows that apart from him, the respondent, Senior Assistant and several other people were present when PW-1 thrusting currency notes into the shirt pocket of the respondent. In any event it is not understandable as to why the respondent received the amount in an open place without secretly receiving the same from PW-1. Thus, in my view

there is a serious flaw in the prosecution story on this basic point.

11. Another anomaly in the prosecution case is that the prosecution did not take any steps to examine the Head Constable, who was the accompanying witness. Since the entire incident took place in an open place. If really the Head Constable followed PW-1, he must have witnessed the incident of receiving the amount by the respondent and he could have been the best witness to testify the said fact. But the prosecution for the reasons best known to it withheld the evidence of the Head Constable. In the facts and circumstances of the present case, according to me withholding the evidence of the Head Constable is fatal to the prosecution case since an inference can be drawn by his non-examination to the effect that had he been examined he would not have supported the prosecution version of the respondent receiving the tainted amount from PW-1.

12. In view of the aforesaid material inconsistencies and improbabilities in the basic version of the prosecution as well as in the testimony of the prosecution witnesses, the defence theory seems to be more probable and the learned trial court did not commit any error in acquitting the respondent for the graft charge. In an appeal against acquittal, the appellate court will interfere with the findings recorded by the trial court only when they are perverse and are not based on evidence. In the instant case, the findings have been recorded by the trial court in accordance with the evidence and they are supported by adequate reasons, require no interference in this appeal. In the result, the appeal filed by the Anti-Corruption Bureau fails and the same is dismissed, confirming the order of acquittal passed by the trial court.