

## M. Balaram and M. Anand Kumar Vs The State of A.P.

**Court:** Andhra Pradesh High Court

**Date of Decision:** July 25, 2012

**Acts Referred:** Penal Code, 1860 (IPC) " Section 161  
Prevention of Corruption Act, 1988 " Section 11, 12, 13(1)(d), 13(2), 20

**Citation:** (2013) 1 ALD(Cri) 245 : (2013) 2 ALT(Cri) 327

**Hon'ble Judges:** R. Kantha Rao, J

**Bench:** Single Bench

**Advocate:** A. Tulasi Raj, for the Appellant; R. Ramachandra Reddy SC for ACB, for the Respondent

**Final Decision:** Allowed

### Judgement

R. Kantha Rao

1. This Criminal Appeal arises out of the judgment in C.C.No. 10 of 1995 dated 30.06.2005 passed by the Principal Special Judge for SPE &

ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad. The first appellant-A.1 is the father of the second appellant-A.2. The

first appellant was a Senior Checking Inspector in the Civil Supplies Department at the relevant time. PW. 1 was a fair price shop dealer. The

indictment was that A.1 demanded PW. 1 an amount of Rs. 300/- for doing official favour, received the same and was caught by the DSP, ACB

and his team when a trap was laid against him. A case under Sections 7, 11, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988

(for short "the Act") against A.1 and u/s 12 of the Act against A.2 was filed. On being tried for the aforesaid offences, A.1 was convicted for the

offences under Sections 7 and 13(1)(d) of the Act. He was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine

of Rs. 1,000/-, and further sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/-, respectively for the said

offences. Whereas A.2 was convicted for an offence u/s 12 of the Act and sentenced to undergo rigorous imprisonment for six months and to pay

a fine of Rs. 500/-. The substantive sentences were directed to run concurrently. Challenging the said order of conviction and sentence, the

appellants-A.1 and A.2 preferred the present Criminal Appeal.

2. Brief facts essential for considering the present appeal are as follows:

PW. 1, Mr. T.R. Venkat, was a fair price shop dealer of shop No. 908 situated at Padmaraonagar, Secunderabad and Mr. L. Veeroji (LW.2)

was a dealer in kerosene shop No. 9010 located at Venkatapuram Colony Padmaraonagar, Secunderabad. According to the prosecution, A.1

while working as a Senior Checking Inspector in the Civil Supplies Department, Hyderabad, who had jurisdiction over the fair price shop of PW.

1, demanded an amount of Rs. 300/- from him on the morning of 29.11.1993 at the fair price shop bearing No. 908 situated at Padmaraonagar,

Secunderabad as a gratification other than legal remuneration for showing official favour which was said to be for allowing the fair price shop to run

smoothly and for not writing any adverse reports against PW. 1. It is stated that PW. 1, who was not willing to pay the bribe amount to A.1,

approached PW. 5, the then DSP, A.C.B., City range, Hyderabad, submitted a written complaint against A.1. After making discrete enquiries

against A.1 and after obtaining permission from the DG, A.C.B., PW. 5 registered a case in Rc. No. 17/ACB-CR/93 under Sections 7, 11, 13(2)

read with 13(1)(d) and 12 of the Act and took up investigation. Along with PW. 2 and other mediators, he laid a trap on 01.12.1993 at 7.00

A.M. with his team during the course of which it was said to have been revealed that, on the instructions of A.1, A.2 received an amount of Rs.

300/- from PW. 1 in the presence of PW. 2, the mediator. Thereafter, on receiving the prearranged signal from PW. 2, the trap party rushed to the

venue of the trap and when questioned by PW. 5, A.1 allegedly stated that PW. 1 forcibly thrust the amount into the shirt pocket of A.2: A.2

handed over the amount of Rs. 400/- to PW. 5 and the phenolphthalein-Sodium Carbonate reaction test was found to be positive in respect of an

amount of Rs. 300/-. After completing the formalities regarding the trap proceedings, PW. 5 handed over the investigation to PW. 6, the then

Inspector of Police, City Range, Hyderabad who conducted the remaining part of investigation and filed the charge sheet against A.1 and A.2.

3. In the course of trial before the Special Judge for ACB Cases, the prosecution, in order to establish the guilt of the appellants, examined PWs.1

to 6, marked Exs. P.1 to P.13 and MOs.1 to 11. On behalf of the defence, no witnesses were examined and Exs. D.1 to D.6 were marked.

4. PW. 1, Mr. T.R. Venkat, is the complainant. PW. 2, Mr. M. Dayakar, is the mediator picked up by the DSP, A.C.B. PW. 3, Mr. Mohd

Omer, is the Assistant Secretary in Food and Civil Supplies Department, who was examined to speak about the sanction accorded by the

authority concerned to prosecute A.1. PW. 4, Mr. Roop Reddy, is the Assistant Supply Officer in the Civil Supplies Department. PW. 5, Mr.

Rajagopal Chetty is the then DSP A.C.B., City Range, Hyderabad who conducted trap proceedings, PW. 6, Mr. M. Diwakar, is the Inspector of

Police, A.C.B. City Range, Hyderabad who took over investigation from PW. 5, completed investigation and filed charge sheet. The learned Trial

Court, on consideration of the entire evidence on record, convicted the appellants and, thereafter, sentenced them (A.1 and A.2) to punishment as

mentioned above.

5. The question for consideration in the present appeal is whether the order of conviction and sentence passed by the learned Trial Court can be

sustained or whether the accused are entitled for benefit of doubt.

6. Sri Poorna Chandra Reddy representing Smt D. Sangeetha Reddy, learned Counsel for the appellants, contended that, in the instant case,

absolutely there is no evidence showing that A.1 demanded legal gratification from PW. 1 and, on his instructions, A.2 received bribe amount from

PW. 1 but the Trial Court erroneously recorded conviction against appellants without there being any legal evidence. Learned Counsel submits that

the conviction and sentence are liable to be set aside.

7. On behalf of the State, learned Special Public Prosecutor for ACB would contend that the factum of receiving bribe amount was proved by the

prosecution and the appellants having failed to discharge the burden that they received the amount for some other purpose, the conviction and

sentence passed by the Trial Court are proper which need no interference in the present appeal.

8. Heard the submissions made by both the learned counsel and perused the judgment passed by the Trial Court, depositions of the witnesses and

all the material papers available on record.

9. PW. 1, the dealer of the fair price shop, who gave the written complaint against A.1 and A.2 deposed before the Trial Court that on the day of

laying trap against A.1, he (PW. 1) on the instructions of PW. 5, DSP A.C.B., went to his shop along with PW. 2, the mediator, that after

sometime, appellant Nos. 1 and 2 came on scooter to the shop, that A.1 made a noting in the register and took him to the kerosene shop of Mr. L.

Veeroji (LW.2) and then A.2 stayed back at his shop. He further stated that A.2 noted in the stock statement register and told LW.2 to give an

amount of Rs. 100/- and LW.2 gave an amount of Rs. 100/- and PW. 1, on the instructions of A.1, received the said amount and thereafter he

(PW. 1) and A.1 came to his fair price shop. Subsequently, he (PW. 1) says that A.1 asked him to give an amount of Rs. 300/- and also Rs.

100/- which was taken by him from LW.2 and, at the instance of A.1, he gave the amount to A.2. Later on, according to PW. 1, PW. 2 went out

and gave prearranged signal to the trap party and PW. 5 held post trap proceedings complying with the requisite formalities during the course of

which phenolphthalein test proved positive in respect of currency notes of Rs. 300/-.

10. PW. 2, the mediator, supported the prosecution version and his version is that after PW. 1 and A.1 came back to the shop of PW. 1, PW. 1

offered Rs. 400/- to A.1 and, on the instructions of A.1, PW. 1 gave the amount to A.2 who received the amount and kept the amount in his shirt

pocket. It is relevant to note that PW. 2 did not state in his deposition that A.1 demanded any amount from PW. 1 in his fair price shop either

initially when he came there or subsequently when he returned from the shop of LW.2.

11. The defence version is that on the date when the trap was laid, an amount of Rs. 329/- was due from PW. 1 to the Government and the said

amount was said to be the differential cost of sugar. According to the defence, A.1 had been insisting upon payment of the said amount and also

the margin money of Rs. 5,000/- which was due from PW. 1 to S.C. Corporation in connection with the loan of Rs. 25,000/- which PW. 1

obtained from the bank of Maharashtra.

12. In this context, the evidence of PW. 1 in the cross-examination assumes importance. He stated in the cross-examination that he received a

notice from Assistant Supply Officer, Circle-I, Secunderbad to repay the margin money to the S.C. Corporation which sanctioned the loan and

that A.1 was also demanding the margin money as well as an amount of Rs. 329/- which was the differential cost of sugar as part of his duties. He

also stated in the cross-examination that one Subash was the predecessor of A.1 but Subash never demanded the amount and only after A.1

assuming the charge, he started insisting upon him for clearing of the said dues.

13. PW. 2 also admitted in the cross-examination that before PW. 1 and A.1 went to the shop of LW.2, there was no demand and acceptance of

amount by A.1 at PW. 1's shop. He also stated that he did not know what happened in the shop of LW.2. PW. 4, the Assistant Supply Officer in

Civil Supplies Department, stated in his evidence before the trial Court that the fair price shop of PW. 1 was under the jurisdiction of A.1, that he

issued memo to the concerned inspectors including A.1 to collect the differential cost of sugar within a week and remit the amount in the shape of

demand drafts. He specifically stated in his evidence that the fair price shop No. 908 in Padmaraonagar belonging to PW. 1 also fell due in respect

of the differential cost of sugar. This witness further stated in the cross-examination that he issued instructions to endorse good service certificate to

the Inspectors who collected the dues. He admitted that Ex. D.4 was the memo issued by him to all the Inspectors to collect the differential cost of

sugar within seven days along with the statement of differential cost to be collected from 32 fair price shop dealers. As per the said memo and

endorsement, he says that shop No. 908 of PW. 1 was due an amount of Rs. 329/-. There was also an endorsement on the memo that A.1

received it on 25.11.1993. The said endorsement was marked as Ex. D.5. Ex. D.6 is the demand draft for Rs. 329/- issued in favour of the Senior

Regional Manager, Food Corporation of India, Hyderabad on 14.03.1994. Ex. D.6 shows that after the trap proceedings, PW. 1 paid the amount

to the department.

14. In support of his contention, the appellants counsel relied on a decision in Banarsi Dass Vs. State of Haryana, wherein the Supreme Court held

as under:

It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be

proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events

is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials

of a complete chain duly supported by appropriate evidence.

To constitute an offence u/s 161 IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily

accepted by the accused. Similarly, in terms of Section 5(1)(d) of the Act, the demand and acceptance of the money for doing a favour in

discharge of his official duties is sine qua non to the conviction of the accused.

15. Learned Counsel also relied on Shiv Kumar Mishra Vs. State of Goa through Home Secretary, , wherein the Supreme Court held as follows:

It is well settled that the presumption to be drawn u/s 20 is not an inviolable one. The accused charged with the offence could rebut it either

through the cross-examination of the witnesses cited against him or by adducing reliable evidence. If the accused fails to disprove the presumption

the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards

gratification.

It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused

person to prove his case beyond a reasonable doubt or in default to incur verdict of guilt. As soon as he succeeds in doing so, the burden shifts to

prosecution which still has to discharge its original onus that never shifts, i.e.; that of establishing on the whole case the guilt of the accused beyond

a reasonable doubt. ( V.D. Jhangan Vs. State of Uttar Pradesh, .

(Emphasis supplied)

16. Now turning to the facts of the present case, absolutely there was no official favour which was pending with A.1 to exercise the same in favour

of PW. 1. PW. 1 though mentioned, in his written complaint, that A.1 was asking bribe for the purpose of not sending any adverse reports against

his fair price shop, it has not been specifically spoken to by PW. 1 in his evidence and only there was a vague allegation that, as a routine, A.1 was

asking bribe. Admittedly, the differential amount of Rs. 329/- was due to be paid to the department by PW. 1 and the evidence on record clearly

indicates that A.1 was insisting upon PW. 1 to pay the amount. The defence version seems to be that as A.1 was persuading upon PW. 1 to pay

the differential amount of sugar and margin amount in connection with the loan sanctioned by the S.C. Corporation to PW. 1, PW. 1 became

infuriated and got the appellants involved in a false charge of trap by approaching A.C.B. Even, on the date of trap, no action was proposed

against PW. 1, the fair price shop dealer. Even if he pays the amount of Rs. 400/- to A.1 as bribe, he will not be relieved of paying the said amount

to the department which was due from him (PW. 1) to be paid towards the differential amount relating to the price of sugar. Therefore, in my view,

there was no occasion for A.1 to demand any bribe and for PW. 1 to pay the same. The defence taken by the appellants is that the amount was

forcibly thrust into the pocket of A.2 by PW. 1 after arranging the trap. In view of the fact that the phenolphthalein test yielding positive result,

even if it is considered that the prosecution proved that on the instructions of A.1, A.2 received the amount, A.1 could be able to rebut the

prosecution against him by bringing on record the uncontroverted circumstances relating to the differential amount due from PW. 1 to the

department and also the margin amount of Rs. 5,000/- which was due from PW. 1 to be paid to the S.C. Corporation.

17. From the evidence forthcoming in this case which has been discussed hereinbefore, it has to be necessarily presumed that since A.1 was

insisting upon PW. 1 to pay the differential amount of sugar and as he was entitled to collect the same from PW. 1 directly, the inevitable

conclusion which emerges is that A.2 received the said amount on the instructions of A.1 considering it to be the differential amount of sugar which

was to be ultimately paid to the Department. The Trial Court lost sight of the circumstances in favour of the appellants, had it considered the said

circumstances, it would have recorded a finding that the appellants could successfully rebut the presumption u/s 20 of the Act against them. In view

of the law laid down by the Apex Court in the judgments which were relied upon by the learned Counsel appearing for the appellants, the

appellants are entitled for benefit of doubt and the conviction and sentence passed against them by the Trial Court have to be set aside.

Accordingly they are set aside and the appellants are acquitted. The Criminal Appeal is allowed.