

(2012) 12 AP CK 0031

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1772 of 2005

G. Laxminarayana Murthy

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Dec. 28, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1988 - Section 11, 13(1)(d), 13(2), 20, 4(1)

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: M. Ramalingeswara Reddy, for the Appellant;

Final Decision: Allowed

Judgement

R. Kantha Rao, J.

This appeal is filed by the accused against the judgment dated 19.11.2005 passed by the Principal Special Judge for SPE and ACB Cases, Hyderabad in C.C. No. 4 of 2001. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

2. The appellant was tried by the Special Judge for ACB Cases for the charges under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "the Act") was convicted for the said charges and was sentenced to undergo rigorous imprisonment for a period of one year for the offence punishable u/s 7 of the Act and also sentenced to undergo rigorous imprisonment for a period of two years for the offence punishable u/s 13(2) of the Act. Challenging the said order of conviction and sentence, the accused preferred the present appeal.

3. Briefly stated the facts of the case are as follows:

PW.1 - D. Bhoomaiah is the resident of Balwanthpur Village in Karimnagar District. He was Chairman of the School Education Committee of his village. He was

entrusted with the contract work constructing two additional class rooms in the pre-primary school, Balwanthpur village on nomination basis. However, on the assurance given by the appellant and the other officials of Panchayat Raj Department, they laid foundation for four rooms and completed the construction work for two rooms initially. Subsequently he also proceeded with the construction work of the other two rooms. But, for passing the bills, he had to enter into an agreement with the appellant. According to the prosecution on the oral instructions of the appellant, who is the Executive Engineer in Panchayat Raj Department, Jagitial, P.W.1 proceeded with the construction of other two class rooms also and constructed them up to lintel level.

4. When P.W. 1 approached the appellant on 08.07.1999 for work order, it is said that the appellant demanded an amount of Rs. 5000/- as bribe from him for issuing the said work order and also for entering into agreement. Again on 13.07.1999 when P.W.1 approached the appellant and requested for work order and agreement, the appellant reiterated his demand for payment of bribe of Rs. 5,000/- and when P.W.1 expressed his inability to pay the said huge amount, he reduced the bribe amount to Rs. 3,000/- and directed P.W.1 to pay the said amount on 15.07.1999.

5. As P.W.1 was not willing to pay the bribe amount, he approached P.W.7 - DSP, ACB, Karimnagar and lodged a report with him against the appellant on 14.07.1999. Basing on the said report, a case in Crime No. 4/ACB-KNR/99 was registered against the appellant u/s 7 and 11 of the Prevention of Corruption Act on 15.07.1999 at 07.00 AM and the investigation was taken up.

6. In the course of investigation, DSP, ACB - P.W.7 laid a trap with his staff. In the course of which, P.W.2-M. Ramalinga Reddy asked to accompany the witnesses. According to the prosecution, in the course of the said trap laid on 15.07.1999, P.W.1 paid the bribe amount of Rs. 3,000/- and the appellant received the same as a motive and reward for doing the official favour of issuing work order and entering into agreement. The chemical test conducted on the fingers of the appellant yielded positive result and the tainted amount of Rs. 3,000/- was recovered from him at his instance by P.W.7-DSP, ACB.

7. In order to prove the aforesaid allegations, the prosecution examined PWs.1 to 7, marked Exs.P.1 to P. 12 and MOs 1 to 8. The appellant examined DWs.1 to 3 on his behalf, and marked Exs.D1 to D9 and Exs.XI to XII were also marked.

8. P.W.1, the de-facto complainant and P.W.2, the accompanying witness did not support the prosecution. They have stated in their deposition before the trial Court that P.W.2 took a hand loan of Rs. 3,000/- from the appellant earlier to the trap and on the date of trap when P.W.2 repaid the said loan amount, the appellant received the same, but, he did not either demand or accepted any bribe. Despite the said fact, the learned trial Court considering that on the alleged date of trap official

favour was pending with the appellant and that the chemical test conducted on the fingers of the appellant yielded positive result and more particularly taking into consideration the fact that he received the tainted amount and drew the presumption u/s 20 of the Act, convicted him for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Act and sentenced him to punishment as stated above.

9. Now the point for consideration in this appeal is whether the conviction and sentence passed by the trial Court against the appellant can be sustained?

10. In the instant case, since there is no dispute about the fact that the appellant received the bribe amount from P.W.1, the chemical test conducted on the fingers of the appellant yielding positive result and recovery of the tainted amount from the appellant are of no consequence. The only question to be determined in this appeal is whether the defence theory that the appellant received the amount of Rs. 3,000/- from P.W.2 as repayment of hand loan can be believed, if the said version is probable, then the appellant is entitled for benefit of doubt.

11. Thorough examination of PWs. 1 and 2 clearly shows that one K. Gangaiah of P.W.1's village advised him to go and complain to the ACB for getting his work done earlier through the appellant. On his advice, PWs.1 and 2 approached P.W.7-DSP, ACB. Both these witnesses stated in their evidence before the trial Court that P.W.7-DSP, ACB asked them whether the appellant received any bribe, they replied that he would not take the bribe and they never paid any bribe amount to him. According to these witnesses, as the P.W.7, DSP, ACB made it clear that in the course of the trap, they must make the appellant to receive the tainted amount. P.W.2, Ramalinga Reddy suggested that as previously he obtained hand loan from the appellant, he would receive the amount from him, if he gives the amount representing it to be the repayment of loan. In the course of the trap also, according to these two witnesses, when they approached the appellant, the appellant asked him as to why they came to him and P.W.2 stated that they came to repay the loan borrowed by P.W.2 and gave the amount to the appellant, the appellant received the same and kept in his shirt pocket. Thereafter, it is said that on receiving the pre-arranged signal, the raiding party came and recovered the tainted amount from the appellant. Thus, even according to P.W.1, he lodged the report with P.W.7-DSP, ACB as his work pending with the appellant was getting delayed, but the appellant never demanded bribe from him. P.W.2, the accompanying witness also gave the same version as that of P.W.1. There is no other witness who had seen the appellant either demanding the bribe or accepting the bribe. It is now well settled that merely because the chemical test conducted on the accused yielded positive result and the tainted amount was recovered from the accused, the presumption u/s 20 of the Act cannot be drawn against the appellant/accused. The presumption can be drawn against the accused only if it is proved that he demanded and accepted the bribe or agreed to accept the same. In the absence thereof, it is not proper for the Court to

draw a presumption as envisaged u/s 20 of the Act against the appellant/accused.

12. The learned counsel for the appellant in support of his contention that the learned trial Court erred in drawing presumption u/s 20 of the Act against the appellant relied on the following judgments. (1) M. Abbas Vs. State of Kerala, . In this case before the Supreme Court the plea of the accused was that the amount was received by him not as a bribe, but for making the payment to another contractor who had completed the work entrusted to him. P.W.2, who was declared hostile, supported the plea of the accused. No other witness was examined to prove the demand or acceptance of bribe by the accused. The Supreme Court held that the presumption u/s 4(1) of the Act can be said to be rebutted and the accused is entitled for acquittal. (2) In Banarsi Dass Vs. State of Haryana, the Supreme Court held as follows:

To constitute the offence u/s 161 of 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 its official duties is sine qua non to the conviction of the accused.

13. In the instant case also PWs.1 and 2 are the only persons, who are expected to speak of demand and acceptance of bribe by the appellant and did not support the prosecution story. Moreover, they stated that the appellant was not a person, who receives the bribe and they informed the same to the DSP, ACB. They also explained the circumstances under which the trap came to be laid against the appellant. To attract the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act, the prosecution has to prove that there was voluntary and conscious acceptance of money by the accused. The trial Court is not expected to draw a presumption having recourse to inference drawn from the evidence of the mediators, who have not witnessed the demand or acceptance of the bribe or from the contents of the post trap panchanama which cannot be said to be a substantive piece of evidence.

14. In the instant case, despite the fact that there was no material before the learned trial court, about demand of bribe and its voluntary acceptance, it raised a presumption against the appellant u/s 20 of the Act and the said presumption seems to have been raised basing on surmises and conjectures. PWs.1 and 2. who are the witnesses examined by the prosecution for the purpose of proving the voluntary acceptance of bribe by the appellant stated in clear and categorical terms that the appellant never demanded or accepted any bribe, but he received the tainted amount which was offered by P.W.2 as repayment of loan. Consequently, for the foregoing reasons, the conviction and sentence passed by the Principal Special Judge for SPE and ACB Cases, Hyderabad in C.C. No. 4 of 2001 against the appellant being unsustainable are set aside and the appellant is found not guilty of the charges with which he stood charged and accordingly, he is acquitted. The fine amount, if any, paid by the appellant shall be refunded to him. The appeal is

allowed.