

A. Krishnamoorthy Vs State**Crl. A. Nos. 313 and 341/2014**

Court: Madras High Court**Date of Decision:** April 23, 2014**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) " Section 248(2), 313#Prevention of Corruption Act, 1988 " Section 13(1)(d), 13(2), 20, 7

Citation: (2014) 2 LW(Cri) 197**Hon'ble Judges:** Aruna Jagadeesan, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Aruna Jagadeesan, J.

These Criminal Appeals are filed against the judgement dated 17.4.2008 made in Special Case No. 3/2000 by the

learned Special Judge and Chief Judicial Magistrate, Cuddalore, in and by which, (a) A1 was convicted u/s 248(2) of Cr.PC and sentenced to

undergo Rigorous Imprisonment for six months and to pay a fine of Rs. 500/-, in default to undergo Rigorous Imprisonment for three months u/s 7

of the Prevention of Corruption Act, 1988 and convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.

500/- in default to undergo Rigorous Imprisonment for three months u/s 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, (2)

A2 was convicted u/s 248(2) of Cr.PC and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 500/-, in default to

undergo Rigorous Imprisonment for three months u/s 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and (c) the sentence

was ordered to run concurrently.

2. The case of the Prosecution is as follows:-

a. PW.2 is the resident of Kizhoor Village, Villupuram Taluk. A1 is the Village Administrative Officer of the said Village and A2 is the Village

Assistant. The husband of PW.2 Sanyasi died on 8.6.1998. After cremation, PW.2 received information that Government provides relief fund and

she went to the office of A1. A1 informed that Government provides Rs. 500/- for cremation expenses and he signed in the application and asked

her to submit it before the Village President. A1 gave it to the President and in turn, he gave a cheque for Rs. 500/-. PW.2 used the above money

for the funeral expenses. On 15.6.1998, PW.2, PW.4 and PW.5 went to the Office of A1 and enquired him about the relief fund of Rs. 9,500/-

provided by the Government. A1 demanded Rs. 2500/- as bribe for forwarding the application and asked her to meet him on the next day. On the

same day, PW.2, PW.4 and PW.5 went to the house of PW.8, her employer and informed about the demand of A1. PW.8 told them to meet A1

in order to get complete details. On 16.6.1998 they again went to the office of A1 and met him. A1 asked them to come on the next day. On the

same day PW.2, PW.4 and PW.5 at about 8.00 p.m. went to the office of A1 and met him. Again A1 demanded the money and since PW.2

requested to reduce the amount and the demand was reduced to Rs. 1500/-. A1 wrote an application and obtained the signature of PW.2 and he

also signed in it. A1 also informed that after fulfilment of demand only, the application will be forwarded.

b. Again when on 19.6.1998, PW.2, PW.4 and PW.5 went to the office of A1 and met him, A1 demanded the money. PW.2 went to the house

of PW.8 her employer, narrated the incident and requested for Rs. 1500/-. PW.8 gave Rs. 1500/- (15 currency notes of Rs. 100 denomination).

On the same day, PW.2 decided to lodge a complaint. PW.2 narrated the complaint in her house and it was reduced into writing by PW.4. On

20.6.1998, PW.2, PW.4 and PW.5 went to the office of the Vigilance and Anti-Corruption Wing, Villupuram at 8.00 a.m. and PW.2 lodged the

written complaint Ex.P2 written by PW.4. Based on the complaint, PW.14, the Inspector of Police, VAC, Cuddalore, registered a case in

Cr.No.3/1998 u/s 7 of the Prevention of Corruption Act, 1988.

c. PW.14 prepared printed First Information Report Ex.P14 and summoned for official witnesses from the HR & CE Department, Cuddalore for

trap proceedings. After the arrival of PW.3 and another witness, PW.14 demonstrated the trap proceedings and explained the significance of the

phenolphthalein test and prepared entrustment mahazar Ex.P4. The trap party proceeded to the office of A1. PW.2, PW.3, PW.4 and PW.5 went

to the office of A1 and A1 was not there. They found A1 sitting in the new building along with four others. The Prosecution witnesses went inside

the new building. A1 asked PW.2 whether she has brought the money. PW.3 introduced himself to be the nephew of PW.4. A1 took the

witnesses to the old office and A2 accompanied them. At that time, A1 asked A2 to receive the money. In the old building, A2 received the

money. A1 asked A2 to keep the money in his shirt pocket and went outside in his motorcycle. PW.2 came out of office of A1 and gave the

prearranged signal to the trap party.

d. On seeing the prearranged signal, PW.14 immediately entered into the office of A1 and PW.2 narrated the facts. PW.14 arrested A2 and

seized the tainted money from A2 under Ex.P5 seizure mahazar and subjected the hands and shirt pocket of A2 to phenolphthalein test, which

proved positive. Thereafter, PW.14 went to the house of A1 and made a search and arrested A1. Then, PW.14 seized the requisition letter of

PW.2 Ex.P3, death certificate of Sanyasi Ex.P6 and the death register Ex.P10 and prepared Ex.P7 rough sketch in the presence of the witnesses

and examined the witnesses and recorded their statements and prepared draft report and the same was sent to PW.15, Inspector of Police as per

the direction of the Superintendent of Police for further investigation. PW.15 took up the case for further investigation and after completing

investigation, the final report against the accused under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 on

2.3.2000.

3. The case was taken on file in Special Case No. 3/2000 by the learned Special Judge and Chief Judicial Magistrate, Cuddalore and necessary

charges were framed. In order to bring home the charges against the accused, the prosecution examined as many as 15 witnesses (PW.1 to

PW.15) and also marked Exs.P1 to P17 and five material objects (Mos.1 to 5). On completion of the evidence on the side of the prosecution, the

accused were questioned u/s 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused

have come with the version of total denial and stated that they have been falsely implicated in this case. The court below, after hearing the

arguments advanced on either side and looking into the materials available on record, found the accused/appellants guilty and awarded

punishments as referred to above, which is challenged in these Criminal Appeals.

4. Mr. V. Gopinathan, the learned senior counsel appearing for the Appellants contended that no conviction can be recorded on the basis of

uncorroborated testimony of PW.2, as all the witnesses, namely PW.4 and PW.5 examined to substantiate the allegation, did not support the

Prosecution case and they do not speak about the demand alleged to have been made on three occasions. Even regarding the demand on the date

of trap, there is contradictory evidence as PW.15 has categorically stated that PW.3 has not stated during investigation that A1 asked PW.2

whether she has brought Rs. 1500/-. Hence, the learned counsel for the Appellants would submit that demand prior to the trap and at the time of

trap has not been proved by the Prosecution by reliable evidence.

5. The learned senior counsel for the Appellants contended that the presence of PW.3 at the time of preparation of seizure mahazar Ex.P5 from

A2 and the conduct of phenolphthalein test is highly doubtful inasmuch as the evidence of PW.2 indicated that all the four witnesses, namely,

PW.2, PW.3, PW.4 and PW.5 came out of the room after payment of the amount to A2 and the Police came out one hour later with A2. The

learned counsel contended that when the statement of PW.2, the complainant herein contradicted by his own trap witness, the defence story

appears to be plausible and it is clear that the Appellants were made victim to the complainant's grudge against them more particularly A1. The

learned counsel pointed out that the evidence of PW.4 disclosed that on the date of his marriage, the husband of PW.2 died committing suicide in

his house and A1 as Village Administrative Officer refused to oblige to the request of PW.2 and informed her that she is not eligible for the welfare

fund as it is a case of suicide. Thus, PW.2 had a motive to falsely implicate A1.

6. Even regarding the genuineness of the First Information Report, the learned senior counsel for the Appellants submitted that the evidence of

PW.2 is self contradictory, as she has stated that only after reaching Cuddalore, PW.4 and PW.5 came to know about lodging of the complaint,

whereas at the earliest part of her evidence, she has stated that after receiving money, she decided to lodge the complaint and went home, narrated

the alleged demand to PW.4. Thereafter, the complaint was prepared and on the next day, she went to the Office of VAC and lodged the

complaint. Therefore, he would contend that PW.2 is not a truthful witness and it will not be safe to accept the interested and uncorroborated

testimony of the complainant.

7. Lastly, the learned senior counsel for the Appellants submitted that there is serious doubt regarding the credibility of PW.3, trap witness as

admittedly there is no material to show that he was authorized by his higher official to be a witness for the trap. In fact, the date of trap i.e.

20.6.2008 was a Saturday, it being a holiday, he would not have been authorized by his higher official. There is no record available in his office to

prove that he participated in the trap.

8. It was contended that there is absolutely no allegation of demand of bribe by A2 and mere recovery of tainted notes, by itself cannot be held to

be proper or sufficient proof of demand and acceptance of bribe. The learned senior counsel appearing for A2 contended that when the evidence

produced by the Prosecution has neither quality nor credibility, it would be unsafe to rest conviction of the Appellants upon such evidence.

9. Per contra, Mr.A.N.Thambidurai, the learned Additional Public Prosecutor for the State contended that the Prosecution has proved its case by

adducing clear and cogent evidence. It is further contended that although the demand made by the accused earlier to the trap was spoken to by

PW.2 and the same is not corroborated by PW.4 and PW.5, on that ground alone the evidence of PW.2 cannot be disbelieved. It is also

submitted that in respect of demand made by the accused on the date of trap, PW.3 has stated about the same and the phenolphthalein test also

proved positive. Therefore, he would submit that the motive put forth by the accused is unacceptable and the Trial Court has rightly recorded

conviction of the Appellants.

10. I have given my careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly

scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

11. The Prosecution case rests upon the evidence of PW.2, the complainant herein, PW.4, the son in law of PW.2 and PW.5 the cousin brother of

PW.2 to prove the demand of bribe by the 1st Appellant prior to the trap. As per the case of the Prosecution, the demand was made on three

occasions, that is, on different dates, namely on 15.6.1998, 17.6.1998 and 19.6.1998. It is the specific case of the Prosecution that on all the

aforesaid dates PW.4 and PW.5 accompanied PW.2 to the office of A1. But, PW.4 and PW.5 did not support the Prosecution and in spite of

detailed examination in cross reminding those witnesses of the statements made to the Investigating Officer during investigation, nothing was

brought out to support the case of the Prosecution regarding demand of bribe by A1. Hence, the evidence of PW.2 remains uncorroborated. The

complainant is interested witness and so, her evidence will have to be considered with great caution and it will not be safe to accept her interested

testimony unless there is corroboration found in other evidence adduced by the Prosecution. In appreciating her oral evidence, the question to be

considered is as to whether the said witness is a truthful witness and whether there is anything to doubt her veracity in any particular matter about

which she deposes. The evidence of PW.1 in this case is found to be untruthful on material facts.

12. At the outset, there is no corroboration of her testimony regarding the demand of bribe by the 1st Appellant as PW.4 and PW.5 did not

support her version. In fact, they are her close relatives and their testimony does not suggest any motive for their hostility to the Prosecution. There

is contradictory evidence regarding lodging of complaint by PW.2. She has stated in her evidence that after receiving money from PW.8, her

Employer, she decided to lodge the complaint to the Vigilance Police. She has further stated that she went home and narrated the demand of bribe

made by A1 to PW.4 her son in law who wrote the complaint. On the next day, she went and lodged the complaint to the Office of VAC. But, her

later part of evidence is self contradictory, inasmuch she has stated that after reaching Cuddalore only PW.4 and PW.5 came to know about

lodging of the complaint by PW.2. It is the version of PW.4 that after reaching VAC Office PW.4 signed and PW.2 affixed her thumb impression

in an already written paper. There is no acceptable reason for not giving any complaint immediately after the first demand or even after the second

demand when PW.2 had decided to report the matter to the Vigilance Police. Therefore, the genuineness of the complaint itself becomes doubtful.

13. It has come in evidence that the husband of the complainant PW.2 committed suicide and A2 did not heed to the request of PW.8, the

employer of PW.2 to get welfare fund for PW.2 and further A1 also informed them that suicide cases are not eligible for the fund. It has also come

in evidence that for providing wrong information, action was taken against one Palani and an enquiry was conducted by Tahsildar. It also appears

from the evidence of PW.2 that she was summoned for enquiry. Further in the register, the date of death of her husband was wrongly mentioned.

PW.2's evidence further disclosed that in the enquiry conducted by the Tahsildar, it was revealed that her husband died by committing suicide.

However, PW.2 tried to suppress the said fact and deposed that he died of heart attack. PW.4, the son in law of PW.2 has clearly stated that on

the date of his marriage, Sanyasi (husband of PW.2) died by committing suicide by hanging in his house and he saw the dead body.

14. The accused during his examination u/s 313 of Cr.PC has stated that since PW.2 gave wrong information in respect of the death of her

husband, A1 took steps to take action against her and due to that enmity she had given a false complaint against him. Thus, the accused had taken

the plea that a false case has been foisted against him, since he was trying to take action against the complainant for giving false information.

Therefore, it is seen that the complainant had grievance or motive against A1 to implicate him.

15. The argument advanced by the learned counsel for the Appellants is that this is a case where the accused had been sought to be implicated in a

total false case and that there was neither a demand nor receipt of bribe and that the complainant had deliberately in order to implicate the accused

handed over the tainted notes to A2. It appears to me that the case put up by the defence is plausible and the accused herein have been made a

victim of the complainant's grudge against him to prevent the accused from taking action against her for giving false information. It would be

dangerous to convict the Appellant on the basis of material placed on record, since the explanation rendered by A1 finds corroboration in the

evidence of the prosecution itself and there is a ring of truth in it.

16. In the instant case, the Prosecution has miserably failed to prove the demand of illegal gratification said to have been made by the accused

prior to the trap and at the time of trap proceedings conducted by PW.14. This court is constrained to point out to the serious infirmities and

inherent improbabilities in the trap proceedings as hereunder:-

(i) It is the version of PW.2 that PW.2, PW.3, PW.4 and PW.5 entered into the room and money was given to A2. After the money was paid,

prearranged signal was given. The Vigilance Police came after, entered into the room and at that time, A1 was not present. Police also did not

enquire as to whom money was given. PW.2 was asked to sit outside and along with her PW.3, PW.4 and PW.5 also came out of the office.

Thereafter, one hour later, Police came out with A2. So, the evidence of PW.2 clearly indicated that PW.3 was not present at the time of trap and

recovery of money from A2 and also when phenolphthalein test was conducted. Therefore, presence of PW.3 at the time of trap proceedings is

highly doubtful. On the basis of PW.2's evidence by no stretch of imagination, it could be said that the accused demanded money from PW.2 at

the time of trap and as such, the Prosecution has also miserably failed to prove its version of the alleged demand of illegal gratification said to have

been made by the accused even at the time of trap. In the chief examination, there is no explanation from PW.14 as to whether there was any

delay in coming out after trap and if so, the reason for the said delay.

(ii) It is elicited from PW.3 that many material statements have not been made to the Investigating Officer during investigation and he has come

forward with those statements for the first time in the court. It is elicited in his cross examination that A1 never asked PW.2 about the money and

the same has been confronted to the Investigating Officer wherein he has admitted omissions of those material statements of PW.3 during

investigation. The sum and substance of the aforesaid evidence unequivocally suggests that he is not a witness of sterling quality and no reliance can

be placed on his oral testimony.

(iii) In the instant case, PW.2's evidence clearly indicated that she along with other witnesses namely PW.3, PW.4 and PW.5 came out of the

room, thus indicating that they were not present at the time of trap and post recovery mahazar and also when phenolphthalein test was conducted.

The above said aspect creates serious doubt on the credibility of this witness.

(iv) PW.3 is working in HR&CE Department at Cuddalore as Office Assistant. According to him, he was directed by his Superintendent to

participate in the trap proceedings as a trap witness. It is not in dispute that 20.6.2008 the date of trap was Saturday and it is a Holiday for

Government Departments. PW.14, Trap Laying Officer has stated that he gave a written requisition to the higher officials of Trap witnesses and

only based on that letter they were permitted to participate in the trap proceedings. Since it is a Holiday, PW.3 would not have signed in the

attendance register. But, there is absolutely no material to indicate any letter or memo was sent from VAC Office to the HR&CE Department

where PW.3 was working. Had PW.3 attended the trap proceedings at the instance of his higher officials on the Holiday, then PW.3 would have

given a report regarding the trap to his office so as to enable him to claim allowance. PW.14 admitted in his evidence that he did not provide any

certificate to PW.3 for having attended the trap proceedings as a witness. This creates suspicion with regard to the veracity of the case of the

Prosecution. That apart, it has been brought into evidence during cross examination of PW.3 the material omissions to the effect that he did state as

to the accused asking PW.2 whether she had brought the money and handing over the money to A2 Ganesan to the Investigating Officer while

recording his statement. The said omission is material and this is all the more so, when his evidence is contradictory to and inconsistent with the

statement of PW.2. Hence, there is no clear evidence as to what transpired between PW.2 and the accused immediately before trap and the

Prosecution case becomes doubtful.

(v) A decoy witness may to an extent be considered to be interested inasmuch as they be inclined to see that their trap succeeds in the final analysis

and in this case, I am fully convinced that on the evidence and material on record, the testimony of PW.3 cannot be accepted as a reliable

evidence. The Prosecution evidence is clouded with such circumstances, then a reasonable doubt arises and would be unsafe to act on that part of

the Prosecution evidence.

(vi). The sum and substance of the above reasonings go to show that there is no acceptable and clinching evidence proving that there was demand

of bribe and that the A2 accepted the amount in question as bribe.

17. In Panalal Damodar Rathi Vs. State of Maharashtra, the Honourable Supreme Court held that in the absence of corroboration of the evidence

of the complainant regarding the demand by the Village Administrative Officer, his evidence alone cannot be accepted. The Honourable Supreme

Court had considered this aspect in paragraphs 9 and 10 of the judgement and held that it is unsafe to base conviction on the sole testimony of the

panch witness as PW.3. In the said case, there was no mention about the Appellants asking the complainant whether he had brought the money

asked for.

18. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court in State of Maharashtra Vs. Daayaneshwar Laxman

Rao Wankhade (2009 CrI. LJ 4425) wherein it is held as follows:-

Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the

conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been

satisfied or not, the Court must take into consideration the facts and circumstances brought on record in their entirety. For the said purpose,

indisputably the presumptive evidence, as is laid down in S. 20 of the Act, must also be taken into consideration but then in respect thereof it is

trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the Prosecution would differ. Before, however,

the accused is called upon to explain as to how the amount in question was found in his possession, the foundation facts must be established by the

Prosecution. Even while invoking the provisions of S. 20 of the Act, the Court is required to consider the explanation offered by the accused, if

any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

19. In the instant case, the foundation of the Prosecution case of the demand made by the Appellants for bribe has, as observed already, been

shaken to a great extent. In any event, it casts a grave doubt on the subsequent event that was alleged to have taken place in the matter of giving

bribe to the accused and recovery of bribe money from A2. In my opinion, therefore, the Prosecution has not been able to prove the guilt of the

Appellants beyond all doubts. Hence, the Appellants are entitled to be acquitted.

20. In the result, these criminal appeals are allowed. The impugned judgement of conviction and sentence are set aside. The Appellants are

acquitted of the charges levelled against them. The bail bond if any executed by them shall stand cancelled and the fine amount if any paid by them

shall be refunded to them.