
(2009) 07 DEL CK 0366

Delhi High Court

Case No: Criminal Appeal 164 of 2002

Manohar Lal (through
Lrs.)

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 6, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 120B
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 7

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: A.K. Singh Sonal Kumar Singh and Gitanju Suraj, for the Appellant; Ashish Kumar, for the Respondent

Final Decision: Dismissed

Judgement

S. Muralidhar, J.

This appeal is directed against the judgment dated 26th February 2002 passed by the Special Judge, convicting the appellant for the offence u/s 120B IPC read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (PC Act) and Sections 7 and 13(2) read with 13(1)(d) PCA. It is also directed against the order dated 27th February 2002 passed by the learned Special Judge convicting the appellant to rigorous imprisonment for five years with a fine of Rs. 5000/- on each count and in default to undergo a further rigorous imprisonment for three months each.

2. During the pendency of the present appeal, the appellant expired. His legal representatives (LRs) desired to contest the appeal nevertheless and were permitted to do so by an order dated 10th February 2009.

3. The submissions of Mr. A.K. Singh, the learned Advocate for the appellant through LRs and the State represented by CBI have been heard.

4. The case of the prosecution was that Rajesh Kumar (PW2) gave a complaint to the Superintendent of Police (SP) Central Bureau of Investigation (CBI) on 7th April 1995. In it he stated that his father had made an application to the Factory Licencing Department of Municipal Corporation of Delhi (MCD) for grant of a licence for running a flour mill (chakki). The appellant Manohar Lal was working as Inspector in the said Factory Licencing Department at the relevant time. The application was made on 7th July 1994. When the PW2 met the accused on 6th April 1995, accompanied by one Pradip Berry (PW8) an acquaintance of his father, the appellant demanded bribe of Rs. 10,000/- for issuing the licence. Of this he demanded that Rs. 5000/- be paid in his office between 3 and 5 p.m. on the next day, i.e. 7th April 1995. The balance was to be paid after the licence was issued. According to the complainant, the accused informed him that if the bribe was not paid, the work would not be done.

5. On the basis of the complaint made by PW2, an FIR was registered and the SP, CBI marked it to Inspector R.S. Tokas (PW7)(TLO) who decided to lay a trap. He was joined by J.C. Sharma (PW4) and Amar Singh (PW5) two employees of the Food Corporation of India (FCI). The complainant had arranged fifty currency notes of Rs. 100/- each. Their numbers were noted and they were treated with phenolphthalien powder. A demonstration was arranged and the treated notes were thereafter handed over to the complainant with instructions to pay the same to the accused on a specific demand being made. PW5 Amar Singh was a shadow witness and he was instructed to remain close to the complainant. PW8 was also allowed to accompany the complainant and the shadow witness. A trap party then went to the office of the Factory Licencing Department of MCD, Kashmere Gate. At around 3.45 p.m. on 7th April 1995, PW3 accompanied by PW5 and PW8 went to the office to contact the appellant while the other members of the trap party scattered. Five to seven minutes later the complainant with PW8 and another person later identified as Om Prakash (Accused No. 2) were seen coming out of the office and going to the scooter stand. PW-7 Inspector Tokas accompanied by other members of the trap party reached the place. The wrists of the A2 were caught hold of. It is alleged that the complainant and shadow witness were informed by A-1 when they went to his office that the complainant should go out with A-2 and hand over the entire money to him. Accordingly A2 had come out with the complainant. On A2 demanding the money to be handed over to him it was tendered by the complainant to him. A-2 accepted the money with right hand and put the money into his left hand pocket of his pant.

6. A2 was apprehended and brought to the room of the Shiv Kumar, Administrative Officer of the Factory Licencing Department. A search was made for A1 but he had slipped out and was later apprehended. PW-7 then got the washes of both hands of A2 in separate solutions of sodium carbonate which turned pink each time. The trap money was recovered and tallied with the details of the notes already noted in the handing over memo. The wash of the lining of the left side pocket of the pant of A2 was also taken in a

separate solution of Sodium Carbonate and it also turned pink. The three washes were put into separate empty clean bottles. The A2 on being arrested on the spot and personally searched was found carrying cash amount of Rs. 13,709/- besides the trap money, bunch of 25 leaves and keys of the Bajaj scooter. When the dickey of the Bajaj scooter was opened it was found to contain 16 documents which included the file containing 11 sheets pertaining to the licence applied for by the father of the complainant.

7. The Additional Commissioner (Engineering), MCD by an order dated 17th June 1995 granted sanction for prosecution of the appellant. The charge sheet was laid on 10th October 1995. Charges were framed for the aforementioned offences. Nine witnesses were examined for the prosecution. In his statement u/s 313 CrPC the appellant denied knowing A2. He denied that the complainant had met him in his office at around 3.45 p.m. on 7th April 1995 or that he had any conversation with him. He completely denied the incident. His version was that he had written a letter to the father of PW2 in March 1995 asking him to submit certain documents pursuant to which PW2's father had met him. However, when he was asked to meet certain requirements, PW2's father Laxmi Chand threatened him stating that he would see how the licence would not be issued to him. The appellant claimed that he had been falsely implicated and that the files which had been shown as having been recovered from the scooter of A2 were actually seized by the CBI by breaking open the locks of his almirah on 7th April 1995. The appellant claimed that he had not even attended office on 7th April 1995 and that although the CBI had seized the attendance register, it had not been returned to the office. A2 too denied the incident and claimed that the money had been forcibly planted in his left pocket.

8. The appellant examined DW1, a Superintendent in the MCD office and DW2, Record Keeper of the Factory Licencing Department and his elder brother Chander Prakash as DW3 respectively.

9. The learned trial judge concluded that the theory of the appellant not having been present in the office on the relevant date was not plausible. The non-production of attendance register was to no effect. PW5 had corroborated PW2 about having met the appellant in his office and then having handed over the money to A2 on the instruction of the appellant. PWs 4, 7 and 8 corroborated PW2 who spoke about PW5 having given the bribe amount to A2 and then the TLO (PW-7) with others having rushed in. The witness also spoke about the trap money being recovered at the instance of TLO by PW4 and about the washes turning pink. The FSL report confirmed the presence of phenolphthalien and sodium carbonate in the wash.

10. The trial court also discussed the evidence and rejected the defence that the Appellant was not present in the office and that the incident did not happen at all. The evidence of the defence witnesses was disbelieved on the ground that they were interested witnesses. As regards the absence of motive, the learned trial judge noted that the file did not contain any letter sent to the complainant in March 1995 as was claimed by the appellant. It in fact showed that there was no movement in the file after 24th

October 1994 when a letter was written to the complainant. The fact that it was kept pending confirmed that the dealing hand, i.e., the appellant, was awaiting some contact by the complainant's father. In the above circumstances, it was held that the guilt of the appellant stood proved beyond reasonable doubt.

11. It was submitted on behalf of the appellant that at the highest the case could be one of grave suspicion which could not take place of proof. Reliance was placed on the judgment in [State \(Delhi Administration\) Vs. Shri Gulzari Lal Tandon](#), . The prosecution witnesses according to the learned Counsel for the appellant were unreliable. Reliance was placed on the judgments in [Kali Ram Vs. State of Himachal Pradesh](#), and [State of Haryana Vs. Gurdial Singh and Another](#), to emphasise the point that there was no corroboration of the material particulars and generally of the case of the prosecution. The reliance was placed on the judgment in [Panalal Damodar Rathi Vs. State of Maharashtra](#), . In support of the proposition that the grant of sanction was not an idle formality, reliance was placed on *Madhusudan Prasad Gupta v. State* : 1981 CrIj 571.

12. On behalf of the prosecution, i.e., State through CBI, reliance was placed on the judgment in *State of U.P. v. Zakauallah* 1998 SCC (Cri) 456. Even if one were to discount the evidence of the complainant as that of an interested witness, the evidence of PW8 Pradeep Kumar Berry also accompanied the complainant supports the prosecution fully. Although it was sought to be argued that this witness in fact turned hostile, the evidence shows otherwise. It is true that at one stage the learned APP sought to cross-examine the witness as he was appearing to resile from an earlier statement when the witness had stated that he had been given one tape recorder for recording the conversation. However, during this cross-examination by the Senior APP for the CBI, the said witness made the following categorical statements:

I do remember that once I was called to CBI office. It is correct that on 6-4-95 accused Manohar Lal has demanded a bribe of Rs. 10,000/- from complainant for issuing the licence. I cannot admit or deny if the accused Manohar Lal also told the complainant to pay Rs. 5000/- in advance on 7-4-95 between 3.00 to 5.00 PM and to pay the balance of Rs. 5000/- on a later date. (Witness is confronted with Portion A to A of statement Ex. PW8/A where it is so recorded. Witness states that he does not remember whether he made such statement to CBI). We left CBI office at about 2.30 PM and reached MCD office located in Old Hindu College Building, Kashmere Gate, Myself, complainant Rajesh Kumar and Amar Singh were sent inside the office to contact the accused Manohar Lal. Remaining members of the trap party stayed outside. We all reached at the table of accused Manohar Lal present in the court. Accused Om Parkash was also sitting there. And both of them were having cold drinks. Complainant Rajesh Kumar wished ■Namaste■ to accused Manohar Lal. On this Manohar Lal enquired ■PAISE LAYE HO■. Rajesh Kumar replied ■HAI JI LAYA HUN■. On this Manohar Lal told the complainant to go outside and pay the money to accused Om Parkash, present in the court (Correctly identified). Manohar Lal also said Om Prakash was his own man. On this Rajesh Kumar asked ■MERA KAAM KAUN KAREGA■ Manohar Lal accused then

replied ■KAAM TO MAINE KARNA HAI■ ■TUMARA KAAM HO JAYEGA■. Thereafter, myself, complainant Rajesh Kumar and Amar Singh came out of the building along with accused Om Parkash in the open area at the back of the seat to accused Manohar Lal near the window. There accused Om Parkash asked ■PAISE DO JALDI KARO■. On this complainant Rajesh Kumar took out Rs. 5000/- from the pocket of his shirt and passed on to accused Om Parkash, who accepted the same with his hand. I do not remember with which hand Om Parkash accepted the money (Vol) After accepting the money accused Om Parkash kept it in the pocket of his pant).

It is correct that while handing over money to accused Om Parkash asked ■PURE TO HAIN■. And on this complainant Rajesh Kumar said ■GIN LO■. It is correct that transaction of passing off money took place in the scooter stand. It is correct that Amar Singh PW gave signal to the trap party and on this members of trap team came at the spot. It is also correct that accused Om Parkash was apprehended by CBI officials and he was taken from there to the room of Shri Shiv Lal, Administrative Officer, MCD.

13. It is not possible to agree with the counsel for the appellant that the above witness turned hostile and therefore was unreliable. The cross- examination of this witness by the counsel for the accused did not bring anything significant at all. In fact the witness kept denying all statements to the effect that the appellant had not asked the complainant about the bribe.

14. It appears to this Court that the conclusion arrived at by the trial court on the appreciation of the evidence is unassailable. The evidence of the prosecution witnesses when analyzed carefully, establishes the case of the prosecution beyond all reasonable doubt. While the case law cited by the learned Counsel for the appellant reiterates the settled position, on the facts of the present case, it cannot be said that the impugned order and judgment of the trial court suffers from any infirmity.

15. In light of the above discussion, criticism that the evidence of the complainant was not independent pales into significance. This Court finds that the evidence of PW8, who was an independent witness, accompanying the complainant fully supports the case of the prosecution.

16. In that view of the matter, this Court does not find any merit in the appeal and it is dismissed as such.