(2011) 07 DEL CK 0425

Delhi High Court

Case No: Criminal A. 801 of 2010 and Criminal M.A. No. 955 of 2010 (Bail)

Roshan Lal		APPELLANT
	Vs	
State Govt. of NCT of Delhi		RESPONDENT

Date of Decision: July 6, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 138, 146, 8
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 19, 20, 7

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Yogesh Kumar Dahiya, for the Appellant; Pawan Bahl, APP, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

Briefly the prosecution case is that the Complainant Satish Kumar took the file, relating to the appointment of his sister Mamta on compassionate ground as her husband Sanjay who was working as safai karamchari with the MCD expired on 14th August, 2007, to the Appellant who was looking after the work of Dak Clerk. On seeing the file the Appellant/Roshan Lal took the Complainant Satish Kumar PW3 on one side and stated that he would get his work done and he would not have to spend much if he gave him Rs. 2,000/-, he will get rest of the work done. The Complainant showed inability and stated that he could only give Rs. 1,000/-. As he did not want to pay the bribe he gave a written complaint to the Anti Corruption Branch on 23rd November, 2007 Ex.PW3/A. On the basis of the complaint a raiding party was constituted and the PW3 along with PW4 Rajinder Singh Rana, the panch witness with the treated GC notes went to meet the Appellant. The Appellant asked for the money to which PW3 and PW4 replied in the affirmative. Thereafter the Appellant took them to the varanda and demanded the money which was given to him by PW3. On the signal being given by PW4 the raiding team

caught hold of the Appellant. His hand wash solution turned pink and gave positive test of phenolphthalein. On the basis of this trap, the Appellant was arrested. After investigation the charge sheet was filed along with the sanction u/s 19 of the Prevention of Corruption Act, 1988 (in short " the PC Act"). On examination of the prosecution witnesses, the Appellant u/s 313 Code of Criminal Procedure and the defence witness, the learned Trial Court convicted the Appellant for offences punishable u/s 7 and 13(1)(d) read with Section 13(2) of the PC Act and awarded the sentence of Rigorous Imprisonment for a period of three years and a fine of Rs. 5,000/- and in default of payment of fine to further undergo Simple Imprisonment for a period of three months on both the counts that is u/s 7 and 13(2) of the PC Act. This judgment of conviction dated 4th June, 2010 and the order on sentence dated 5th June, 2010 is impugned in the present appeal.

2. Learned Counsel for the Appellant contends that PW3 Satish Kumar in his statement before the Court has made material improvements. Though in the complaint it is alleged that the Appellant demanded Rs. 2,000/- however, before the Court it is stated that Rs. 5,000/- was demanded from him. The version of PW3 that he had gone to move an application is also incorrect as the report regarding the compassionate appointment of the PW2 Smt. Mamta had already being prepared by Inspector Mohan and the Appellant was only a dispatch clerk and thus, was incompetent to take any action in the matter. Moreover, even as per the evidence on record the file had already been put up to the competent authority vide endorsement Ex.PW3/H1 and Ex.PW3/H2, which shows that the file was received on 16th November and dispatched on 19th November and thereafter on 23rd November as well. PW3 has not given any specific date of the initial demand made by the Appellant. No independent witness has been associated with the initial demand. There are contradictions in the testimony of the witnesses as to the time for which they stayed at the office of the Appellant at the time of raid. PW3 states that they remained at the sport for about an hour. Raiding inspector PW15 Hira Lal states that it took them around 2 hours to complete pre-raid proceedings whereas PW4 Shri Rajinder Singh stated that they remained at the spot only for ten minutes. This version of PW4 corroborates the defence of the Appellant which he has taken in his statement u/s 313 Code of Criminal Procedure that he has been falsely implicated and on that date one person came to his seat and told him that three four persons are standing on the ground floor and they had called him. Thereafter he went down stairs and those persons disclosed their identity as police officials and stated that he had taken money from the Complainant Satish Kumar and on his denial, they slapped the Appellant and took him to the Anti Corruption Branch in Gypsy where the money was planted in the pocket and thereafter the washes were taken. The learned Trial Court has convicted the Appellant merely on the ground that no suggestion of false implication has been given to the prosecution witnesses. The call records used against the Appellant are of no consequence as no conversation between the complainant and the Appellant have been recorded. The defence of the Appellant has been totally ignored by the learned Trial Court. It is thus, prayed that the impugned judgment be set aside and the Appellant be acquitted of the charges framed.

3. Per contra learned APP for the State submits that from the testimony of PW3 the initial demand has been proved. Mere variations in amount of money demanded will not discredit the version of the PW3 Satish Kumar. PW3 and PW4 have proved the demand at the time of the trap and the acceptance of bribe amount by the Appellant. Once the acceptance has been proved by the prosecution the Court is duty bound to raise the presumption u/s 20 of the PC Act. The defence of the Appellant has not been put to the witnesses as no such suggestion has been given and in the absence of any explanation for false implication being sought from the prosecution witness their testimony cannot be discredited merely because the Appellant in his statement u/s 313 Code of Criminal Procedure has taken a particular defence. The call details of the Complainant were proved by PW11 M.N. Vijyan vide Ex.PW11/A and that of the Appellant Roshan Lal vide Ex. PW11/C show that the Appellant was in constant touch with the Complainant from 16th to 23rd November, and thus, an inference has to be drawn that he demanded the money as alleged because the Complainant and the Appellant were otherwise strangers to each other. Mere contradictions in regard to the time spent on the spot will not belie the otherwise credible and cogent testimony of the prosecution witnesses. Thus, there being no merit in the appeal the same deserves to be dismissed.

4. I have heard learned Counsel for the parties and perused the records. From the perusal of the evidence on record it is apparent that the prosecution has been able to prove beyond reasonable doubt the initial demand, the demand at the time of the trap, the acceptance of the bribe of Rs. 1,000/- and the motive for the demand. PW3 has stated that four days prior to the raid, he had met the Appellant. PW3 met the Appellant in his office, who was working as diary dispatch clerk, on his seat and was told that he would arrange the job for his sister and demanded Rs. 5000/- from the Complainant. He told him that at that time, he could only arrange Rs. 1000/- to which he agreed and asked him to pay the balance amount after the work was done. He was asked to bring Rs. 1000/- on 23rd November, 2007 in the office of the Appellant. In his cross-examination, this witness has stated that the Appellant met him about 4 days prior to the raid in his office on his seat. He further stated that he did not know whether he put the dispatch number on the file however, he kept the file with him. When PW3 handed over the file to the Appellant he told him that this work cannot not be done without spending money and while coming out of his office, the Appellant demanded the bribe of Rs. 5,000/-. When PW3 stated that he could not pay that much amount in lump sum, the Appellant asked him to pay an amount of Rs. 1,000/- initially. Thus, there is no merit in the contention that PW3 in his testimony has not stated the date of initial demand. The testimony of PW3 clearly proves the initial demand due to which he was constrained to file the complaint Ex. PW3/A before the Anti Corruption Branch. There is no merit even in the contention that there is no independent witness to the initial demand. Only after the initial demand, the complaint is lodged. No complainant can comprehend a demand and thus, take a person along.

5. The demand and acceptance at the time of trap has also been proved by the testimony of PW3 and PW4. PW3 in his testimony has stated that on 23rd November, 2007 when

he went with the panch witnesses to the MCD office, Rohini inside the room of the Appellant, the Appellant inquired from him whether he had brought the bribe amount to which he replied in the affirmative. Thereafter he along with the Appellant and with one panch witness went to downstairs where the Appellant demanded money from him. PW3 Satish Kumar took out the treated GC notes from his pocket and handed over the same to the Appellant, who took them with his right hand and kept them in the left pocket of his shirt. On the pre determined signal given by the panch witness the raiding party came there and the raid officer disclosed his identity and challenged the Appellant on acceptance of bribe. On this, the Appellant became perplexed. This conduct of the Appellant is relevant u/s 8 of the Evidence Act being post event conduct. On the search of the Appellant the GC notes were recovered from the left pocket of the shirt. The numbers tallied with those mentioned in the pre raid report. They were taken into possession vide seizure memo Ex.PW3/C. The hand wash and the pocket wash was taken which turned the solution into pink colour.

6. This testimony of PW3 is corroborated by PW4 Rajinder Singh Rana, the panch witness who had joined the pre-raiding proceedings and accompanied PW3 to the room No. 316 where the Appellant was present. The Complainant inquired from the Appellant about the work of his sister on which the Appellant told that he would get his work done and asked the Complainant to pay Rs. 5,000/- the amount settled earlier. The Complainant told that his sister was very poor and she has arranged only Rs. 1,000/- as per the talks which took place between the Complainant and the Appellant. Thereafter the Appellant took the Complainant out and he followed them. There the Appellant demanded the bribe from the Complainant who thereafter gave the treated GC notes from his pocket on his shirt. The Appellant took the notes in the right hand and kept them in his left side pocket. On this he gave the pre-determined signal and immediately the raiding party came and the raid officer enquired from him about the incident on this the Appellant became perplexed. Thereafter PW4 took the search of the Appellant and the treated GC notes were recovered. The wash of the right hand and the left pocket of the Appellant turned the solution into pink which was thereafter converted to bottles and sealed. The shirt converted into the Pulanda and the bottles were taken into possession vide seizure memo Ex.PW3/D besides diary registers Ex. PW3/H1 and another register Ex.PW3/H2. All these documents bear the signature of PW4. Thus, the testimony of these two witnesses proves the demand and acceptance at the time of raid and also the post event conduct of the Appellant.

7. Since the prosecution has proved the demand and acceptance of the bribe amount, this Court is duty bound u/s 20 of the PC Act to raise statutory presumption for commission of offence u/s 7 of the PC Act as held by the Hon"ble Supreme Court in M. Narsinga Rao Vs. State of Andhra Pradesh,

14. When the Sub-section deals with legal presumption it is to be understood as in terrarium i.e. in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if

the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption u/s 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

8. Learned Counsel for the Appellant has laid great emphasis on certain contradictions like the fact that in the complaint Rs. 2,000/- have been mentioned whereas both the witnesses PW3 Satish Kumar and PW4 Rajinder Singh Rana in their testimony, that is, in their examination in chief and cross examination have stated that Rs. 5,000/- was demanded. Thus, these witnesses are not reliable witnesses. This contention of the Appellant cannot be considered as PW3 has not been confronted with his previous statement recorded vide Ex.PW3/A wherein demand of Rs. 2,000/- has been mentioned, nor has PW4 been confronted that this document was written down in his presence and he had identified the said complaint. In State of Uttar Pradesh Vs. Nahar Singh (Dead) and Others, it was held:

13. It may be noted here that part of the statement of PW-1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence PW-1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(1) to test his veracity.

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

14. The oft quoted observation of Lord Herschell, L.C. in Browne v. Dunn (1893) 6. The Reports 67 clearly elucidates the principle underlying those provisions. It reads thus:

I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I

have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses. This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.

9. Similarly, the Appellant has taken the defence in his statement recorded u/s 313 Code of Criminal Procedure that on 23rd November, 2007 one person came to his seat and told him that three four persons were standing on the ground floor and they had called him. When he went down stairs those persons disclosed their identity as police officers and further told him that he had taken money from the Complainant Satish Kumar. On his denying the same he was slapped and taken to the Anti Corruption Branch and the money was planted in his pocket whereafter the wash was taken. When he was being taken from his office at about 4.20 P.M. one Shyam Lal and one Rajesh of his office were standing on the gate and saw the police officials taking him. The Appellant has examined Shyam Lal, who was working as a Bill Clerk, Rohini Zone, MCD as DW1. This witness in his testimony does not say that on 23rd November, 2007 the Appellant was taken away by the police officials while he was standing at the gate at about 4.20 p.m. According to this witness he came to know through the newspaper that the Appellant Roshal Lal was trapped in a bribe case. Secondly no such suggestion has been given to the prosecution witnesses witness especially the Trap Officer PW15 ACP Hira Lal and PW6 nor to any member of the raiding party nor to the Investigating Officer PW7 ACP Jagdish Chand nor even to PW3 complainant and PW4 panch witness, who all have clearly deposed against the Appellant by narrating the events as they unfolded. Thirdly the prosecution has proved by the testimony of PW11 M.N. Vijyan, the call details of PW3 and the Appellant. From the call details it is clear that from 16th to 23rd November phone calls were made by the Appellant to the complainant. Also the Complainant made phone call to the Appellant at around 1.30 p.m. on 23rd November which he had also deposed in his testimony informing the Appellant that he was coming to the office to deliver money. This testimony of this witness has gone unchallenged and there is no denial to the fact that the Appellant had made phone calls to the PW3. The contention of the Appellant that there is no intercepted version is of no consequence as even though there is no intercepted conversation, admittedly PW3 was not known to the Appellant as per his defence prior to the incidents. Nobody would call up a stranger, a number of times and talk for few minutes. Moreover, no explanation has been rendered by the Appellant in his statement u/s 313 Code of Criminal Procedure regarding these phone call details.

10. I also do not find any merit in the contention of learned Counsel for the Appellant that the Appellant was under no authority to influence the decision in the file and thus there was no motive. The Appellant was though under no authority to influence the decision but was definitely responsible for moving the file of the Complainant''s sister for appointment to the various departments and thus his having kept the file and not moving the same

even as per the record which has been seized shows the motive. Much emphasis has been laid on the contradictions between the statements of the various witnesses as to the time which has been spent at the spot. I do not find any merit because these variations in the timings spent at the spot are minor variations, because each witness has described the entire sequence of events which has taken place at the spot. Merely because PW4 stated that they stayed at the spot for ten minutes would not belie the testimony of all other witnesses who have given detailed sequence of events relating to the actions taken on the spot. Moreover PW4 has also stated about the entire sequence of events and the actions which took place at the spot. Learned Counsel has laid emphasis on the fact that PW4 has planted witnesses and he was not present at the spot because he had arrived after 5.45 PM. PW13 SI K.L. Meena who was the duty officer has stated that he was working as duty officer from 5.45 PM to 8 P.M. on that date. It may be noted that PW13 has clearly stated that he recorded the DD No. 8 Ex. PW13/A regarding the arrival of the panch witness in Anti Corruption Branch at 9.45 A.M. and thus inference sought to be drawn from the fact that his duty hours of the work were from 5.45 to 8.00P.M. and PW 4 came thereafter is incorrect. Moreover, even this witness has not been cross-examined and his testimony has, thus, gone unchallenged.

11. I do not find any merit in the present appeal. The appeal and the application are accordingly dismissed. The sentence of the Appellant was suspended by the learned Trial Court for filing the present appeal, which order was extended by this Court, which stands vacated. The Appellant be taken into custody to undergo the remaining sentence. His bail bond and the surety bond are discharged. The Appellant be taken into custody to undergo the remaining sentence.