

Panalal Damodar Rathi

Vs

State of Maharashtra

Criminal Appeal No. 252 of 1972

(Jaswant Singh, P. N. Shingal, P. S. Kailasam JJ)

24.01.1979

JUDGMENT

KAILASAM, J. –

1. This appeal by special leave is preferred by the first accused Panalal Damodar Rathi against the judgment of the High Court of Judicature at Bombay whereby it dismissed the criminal appeal filed by him and upheld the conviction and sentence imposed on him by the trial Court.
2. The appellant was a Police Prosecutor attached to the Court of Judicial Magistrate, Kopergaon in the district of Ahmednagar. He was tried jointly along with the court orderly Radhakrishna Rambhau Dalvi as second accused for offence punishable under Section 161, Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. The appellant was convicted under Section 161, Indian Penal Code, and under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and sentenced to one year's rigorous imprisonment and a fine of Rs. 1000 and in default to further rigorous imprisonment for three months. The second accused who was also convicted and sentenced by the trial Court and whose appeal to the High Court failed is not before this Court.
3. The appellant preferred criminal appeal No. 1347 of 1970 before the High Court against his conviction and sentence. The High Court confirmed the conviction and sentence and rejected the appeal. An application for leave to appeal to the Supreme Court was rejected by the High Court. The appellant applied for special leave to this Court which was granted and thus the appeal is before us.
4. The charge against the appellant was that while working as a Police Prosecutor, he demanded illegal gratification from the complainant Parshram Govind Aglave PW 1 as a motive or reward for not bringing to the notice of the court the previous conviction of the complainant which would have exposed him to enhanced punishment. Pursuant to this demand which was for Rs. 50 it was agreed that the complainant should pay to the first accused Rs. 25 which, it is alleged, he accepted on November 21, 1969.
5. The complainant was being tried for an offence under the Bombay Prohibition Act during the months of August to September, 1969. The appellant was working as Police Prosecutor whereas the second accused was on duty as court orderly. According to the prosecution on August 18, 1969, the appellant advised the complainant to plead guilty so that he would be let off on a nominal sentence and on his part promised not to bring to the notice of the court the previous conviction. He demanded Rs. 50 as gratification. On the date of the next hearing November 3, 1969, the appellant

again contacted the complainant and repeated his demand and the complainant promised to think it over. Subsequently, on November 18, 1969, the complainant offered to pay Rs. 25 and the appellant agreed to receive that amount. The complainant promised to make the payment on November 21, 1969. In the meanwhile, on November 19, 1969, the complainant wrote to the Police Sub-Inspector attached to the Anti-Corruption Branch complaining of the illegal demand and requesting the officer to meet him at his village on the evening of November 28, as the case was posted for the next day.

6. Mr. Wadekar (PW 6), the Sub-Inspector attached to the Anti-Corruption Branch went to the village with two panchas and on taking down the complaint and on completing the formalities, laid the trap in the verandah of the courtroom on November 21 at 12 noon. The complainant's version is that at about 1 p.m. he and the panchas stood near the eastern side of the verandah of the court building, the appellant came near him and inquired if he had come. The complainant told him to relieve him from the case and to see he was given a lesser sentence. The appellant asked him if he had brought the money and the complainant told him that he had. The second accused Dalvi was standing there. Appellant asked him to pay the money to constable Dalvi. Appellant asked Dalvi to receive the money from him and then went inside the court. According to the complainant, when this conversation took place between him and the appellant the panchas were standing at a distance of 2 to 3 feet from him. After the appellant returned to the court the second accused took the complainant to the southern side of the verandah and asked him to pay to the Sahib. The complainant did not pay the money on the ground that his father had not arrived as he wanted to pay and amount in his presence to the appellant. Subsequently, after the court recess the appellant came out to the verandah and asked him if he had paid the amount to Dalvi. The complainant told him that he had not and solicited permission to give it to him by that time. The second accused came and the appellant told Dalvi to accept the money from the complainant. Dalvi and the complainant entered the court room and the panchas were standing nearby. Dalvi asked complainant to pay the money, as agreed between the complainant and the appellant. The complainant took the notes to which powder was applied and gave those notes in hand. As to what happened subsequently there is not much dispute. The marked notes were recovered from the second accused.

7. The courts below accepted the testimony of the complainant and the evidence of PW 3, the panch witness who spoke to the conversation between complainant and the first accused when they met for the first time.

8. There could be no doubt that the evidence of the complainant should be corroborated in material particulars. After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon. It has to be borne in mind that the marked notes were recovered from the possession of the second accused and not the appellant. It is the case of the prosecution that the market notes were paid to the second accused for the purpose of being handed over to the appellant. The evidence of the complainant regarding the conversation between him and the accused has been set out earlier. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversation between the complainant and the appellant during which the appellant demanded the money and directed payment to the second accused which was accepted by the complainant, we will have to see whether this part of the evidence of complainant has been corroborated. The prosecution relies on the testimony of PW 3, the panch witness, as corroborating the evidence of the complainant on this aspect. It may be reiterated that according to the complainant when he asked the appellant to relieve him from the case and to see that he was given a lesser sentence, the appellant asked him if he had brought the money and the complainant told him

that he had and the appellant asked the complainant to pay the money to Dalvi, the second accused, and asked the second accused to receive the money from the complainant. On this aspect the evidence of PW 3 is as follows :

They saw the appellant coming out of the court hall and the complainant informed that he was the Police Prosecutor. Then there was a talk between the complainant and the appellant in the verandah. The witness was at a distance of 3 to 4 feet from them and was in a position to overhear the conversation. According to the witness he heard the appellant asking the complainant "Have you come", the complainant then said "Yes". The witness further heard the appellant saying that he would see that heavy punishment is not inflicted and the case as it is, was difficult. The complainant had then asked the appellant whether his work will be achieved. The appellant assured him in the affirmative. The appellant told the complainant to give what was to be given to the second accused.

9. It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and that the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to by the panch witness PW 3. According to panch witness on the complainant asking the appellant whether his work will be achieved, the appellant assured him in the affirmative and the appellant told the complainant what was to be given to the second accused. It is significant that PW 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW 3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on.

10. Finding that the version of the complainant is lacking corroboration, the learned Counsel appearing for the State sought to support the conviction on the testimony of PW 3 the panch witness. It is unnecessary for us to set out in detail the attack made against the witness by Mr. Lalit, the learned Counsel appearing for the appellant except mentioning that the case of the panch witness that he heard the talk between the complainant and the appellant, is not mentioned either in the complaint or in the first information report. It cannot be denied that the account of conversation as spoken to by the panch witness, PW 3, is not in conformity with the version given by the complainant. According to PW 3 the complainant asked the appellant whether his work will be achieved and the appellant assured him in the affirmative and then the appellant asked the complainant what was to be given to Dalvi. There is no mention of any demand by the appellant for payment of the money or the direction by the appellant to the complainant to pay the money to the second accused. In the circumstances, we feel it is unsafe to base a conviction on the sole testimony of the panch witness. We have found that the evidence of the complainant is not corroborated on these material particulars.

11. We are conscious of the fact that both the trial Court as well as the appellate Court accepted the evidence of the complainant and PW 3 and found the appellant guilty. Though this Court normally will not interfere with the concurrent findings of the courts below, we feel that on the material placed before us it will be hazardous to base a conviction. The market notes were not recovered from the appellant. The prosecution case is that the money was paid to the second accused to be handed over to the appellant. The complicity of the appellant is sought to be established by the

conversation that took place between the complainant and the appellant in the presence of PW 3. The version regarding the conversation as given by the complainant and PW 3 is not consistent. In the circumstance, we are constrained to give the benefit of doubt. In doing so we make it clear that we are not convinced about the innocence of the appellant. We feel on the material before us, though there is grave suspicion, the guilt of the accused has not been established beyond reasonable doubt. In the circumstances, we are constrained to give the benefit of doubt to the appellant. In the result, we allow the appeal, set aside the conviction and sentence and acquit the appellant.

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