

Shripad Shivram Kulkarni

Vs

State of Maharashtra

Criminal Appeal No. 398 of 1974

(R. S. Sarkaria, A. C. Gupta, P. S. Kailasam JJ)

31.07.1980

JUDGMENT

SARKARIA, J. –

1. The appellant, Shripad Shivram Kulkarni (original accused 1) and Babulal Faras (original accused 2) were both working as Maintenance Surveyors in the same office under the City Survey Officer, Kolhapur. Both were prosecuted under Section 5(1)(d) of the Prevention of Corruption Act and under Sections 161 and 120-B read with Section 34 of the Indian Penal Code in the Court of Special Judge, Kolhapur.
2. The prosecution case was that house bearing No. C.T.S. 2340, 'A' Ward, Kolhapur was standing in the name of the father of one Madhav. Madhav submitted an application (Ex. 14), dated August 18, 1971, to the City Survey Officer, requesting that his name be substituted in place of his father. At the relevant time, the appellant was in charge of 'A' Ward, while Faras was in charge of another ward. After receiving the application, the City Survey Officer (PW 5) initialled it and directed the complainant to take it to the appellant. Accordingly, Madhav accompanied by his maternal uncle (PW 2) approached the appellant who was then sitting in a hall in which the other Maintenance Surveyors including Faras, and Clerks were working at different tables. The complainant first enquired from Faras as to whom the application should be handed over. Faras pointed out the appellant who was sitting behind the table opposite to his table. Madhav then handed over the application (Ex. 14) to the appellant who read the application and told Madhav that the khata of the property concerned will be transferred in his name at the earliest. The appellant then asked Madhav to meet Faras adding that the latter would tell Madhav what was to be done. Madhav and his uncle then again approached Faras, accused 2, and requested the latter to do the needful regarding the change of the entry of the property in his name. Accused 2 told Madhav that he would do it provided Madhav paid him Rs. 200 within two days. Madhav asked him why so much money was required. The accused explained that out of the amount of Rs. 200, Rs. 100 were to be paid to Saheb, i.e. the City Survey Officer, Rs. 50 to the appellant and the balance to Rs. 50 was for accused 2 himself. Accused 2 then asked Madhav to arrange for the payment of the amount. Madhav informed him that he would arrange for the money and went away.
3. On October 22, 1971, Madhav again went to the City Survey Office and met and asked the appellant about the fate of his application. Appellant then asked Madhav as to what the latter had done about the matter apprised by Faras. Madhav told him that he was not able to pay him Rs. 200 and that at the most he would be able to pay a small amount of Rs. 5 to Rs. 15. Appellant then told Madhav that other matters have been pending in the office for two to three years and he would consider Madhav's case as per serial order. Madhav then went to the City Survey Officer, who called

the appellant into his office room and asked him to make out the application, issue notices to the concerned persons and complete the case.

4. As no progress was being made by the appellant, Madhav, on October 29, 1971, again went to the City Survey Office and met the appellant and enquired about the progress of his application. The appellant told Madhav that the latter should see him after the notices had been issued.

5. On November 5, 1971, Madhav again went to see the City Survey Officer. He was waiting for him in the verandah when Faras accused 2 called and asked him to take his seat on a nearby stool. Faras then asked Madhav whether he had arranged for the money. Madhav told him that he was unable to pay that much amount. Accused 2 then informed Madhav that his work would not be done unless he arranged payment of Rs. 125 at least. Accused 2 assured Madhav that if the latter paid that much amount, the work would be done within two days. At that time, the appellant Kulkarni was sitting behind his table within the hearing range of Madhav. Madhav then told accused 2 that he would make necessary arrangements for payments of Rs. 125.

6. Madhav then went home and reflected over the matter. He then went to the Inspector of Anti-Corruption Branch, Kolhapur on November 12, 1971. There, he met Inspector Fernandes (PW 8). Madhav then made a complaint which was recorded by the Deputy Superintendent of Police. In this complaint, he has referred to all that had happened on October 29, 1971 and November 5, 1971 in regard to his application for transfer of the house to his name. Madhav signed the complaint. The Inspector sent a wireless message to the Deputy Superintendent of Police Anti-Corruption Branch, Poona. The latter, however, replied that he was unable to come. Inspector Fernandes then, on November 13, 1971, produced the complainant Madhav before the Judicial Magistrate, First Class, at his residence at about 9 a.m. and obtained his permission in writing to investigate into the complaint, as the Deputy Superintendent of Police was unable to come.

7. Thereafter, Inspector Fernandes and the Panch witnesses including PW 3, went back to the Anti-Corruption Office at about 11 a.m. The complainant narrated the entire story before the Panchas. The Inspector then laid a trap for the accused. Thirteen currency notes of the total value of Rs. 125 were tainted with anthracene powder. Their numbers were also noted down. The complainant was asked to hand over the same in the view of the Panchas either to the appellant, accused 1, or to accused 2, if demanded by either of them. The complainant and Panches then proceeded in a jeep and alighted at some distance from the City Survey Office. The complainant, accompanied by the Panch witness, Patil (PW 3) went to the City Survey Office. The appellant was not present there. He had gone out for survey work. Accused 2 was present. He asked the complainant to come after an hour.

8. At about 1.45 p.m., the complainant and PW 3 again went to the City Survey Office and met accused 2, Faras. The appellant was then not present in the office. In the seat formerly occupied by the appellant, another person, named Vijayantkar was sitting. Faras then asked Vijayantkar to take out Madhav's work. Vijayantkar took out Madhav's application and questioned him about his brothers and sisters. The complainant told him that he had no brother but had three sisters, who were all married and one of them was dead. Vijayantkar told him that it was necessary to record their statements. The complainant again went to the table of accused 2. Accused 2 told Madhav that he (accused 2) would do his work with two days. Madhav then took out the tainted currency notes and placed them in the right hand of accused 2 who asked Madhav whether the amount was correct. Madhav replied in the affirmative. Accused 2 then put those tainted currency notes to the right pocket of his pants. Immediately thereafter, Madhav and the Panch witness, Patil went out of the

office-room and stood in the verandah. Madhav gave the signal. Inspector Fernandes and his companions rushed into the office, and went to the table of the accused 2. The Inspector disclosed his identity and in the light of the ultraviolet lamp examined the hands of the members of raiding party and also of accused 2. In the light of the ultraviolet lamp a bluish glow was detected on the tips of the thumb and three adjoining fingers of the right hand of accused 2. The Inspector then asked 2 as to where the tainted money was. Accused 2 said that the money was in his pants' pocket and produced the tainted currency notes. The Inspector thereafter prepared the Panchnama which was signed by the Panchas. He then lodged the first information report (Ex. 40) at the Police Station, Lakshmipuri.

9. After investigation, both the accused were charge-sheeted in the Court of the Special Judge, as aforesaid. In their statements recorded under Section 342, CrPC, both the accused denied the prosecution case. The appellant, however, in his statement admitted that he was called by the City Survey Officer in connection with the complainant's application, but he did not remember if the complainant was then present in the office. He said that he had told the City Survey Officer that there was difficulty in issuing notices as addresses and names of the sisters of the complainant had not been give. The appellant further stated that he was innocent and had nothing to do with any of the demands made from the complainant or anybody on the side of complainant.

10. The special Judge convicted Kulkarni, appellant under Section 5(2) of the Prevention of Corruption Act and sentenced him to one year's rigorous imprisonment. He also convicted him under under Section 161 read with Section 34 and Section 120-B of the Penal Code, by an Order, dated June 29, 1972. He also convicted accused 2.

11. Aggrieved by the order of the special Judge, both the convicts filed separate appeals in the High Court, which were dismissed by a common judgment, dated November 30, 1973.

12. We are told that the special leave petition preferred by accused 2 in this Court under Article 136 of the Constitution has already been dismissed. Thus, only the appeal filed by the original accused 1, Kulkarni, is before us.

13. Shri U. R. Lalit, appearing as amicus curiae for the appellant, informs us that the appellant has served out the sentence of his imprisonment, but he is pursuing this appeal to clear himself of the stigma cast by his conviction. Shri Lalit has taken us through the evidence of the material witnesses and relevant documents. His main contention is that the evidence against the appellant was too tenuous and flimsy to form the basis of his conviction. It is emphasised that there was no evidence that the appellant demanded any bribe from Madhav, the complainant on any of the dates concerned; that it was accused 2 only who demanded the bribe; that the appellant had been transferred from the station and had formally handed over the charge to his successor-in-office, Vijyantkar, on October 29, 1971 when he signed the charge report (Ex. 27) in compliance with the transfer Order, dated October 15, 1971 (Ex. 26); that in any case, even according to the prosecution, the appellant was no longer working in this office after November 10, 1971, and on November 13, 1971 when Inspector Fernandes raided the City Survey Office and caught accused 2 red-handed with the bribe money, the appellant was not present there.

14. On the other hand, Shri O. P. Rana, learned counsel for the respondent-State has tried to support the conviction of the appellant, particularly, regarding the offence under Section 120-B, Penal Code. It is stressed that on August 18, 1971, the appellant was in charge of the work relating to 'A' Ward of Kolhapur, and the property concerned which was sought to be transferred in favour of the

complainant was also situated in that ward and accused 2 had nothing to do with that ward. It is submitted that in spite of it, when Madhav approached the appellant with his application, he directed him to go to accused 2 who was sitting nearby, adding that the latter would tell the complainant what he was required to do; that again on October 22, 1971, the appellant had asked Madhav as to what he had done about the matter apprised by accused 2. It is pointed out that when Madhav expressed his inability to pay the large amount of Rs. 200 demanded by accused 2, the appellant said that other like matters had also been pending for two to three years in the office and Madhav's case would, also, be taken in its serial order. The third circumstance relied upon by Mr. Rana, is that on November 5, 1971, when Faras accused 2 scaled down the demand of the bribe to Rs. 125, the appellant was present at his table within the hearing range of the complainant and accused 2. On the basis of these three circumstances, it is argued, Kulkarni and Faras had entered into a criminal conspiracy to obtain bribe and in pursuance of that conspiracy the demands had been made by accused 2, with the understanding that the money received in response thereto would be shared by both the accused.

15. At the outset, it may be noted that the special Judge had charge-sheeted both Kulkarni and Faras jointly on two counts. The first part of the charge stated that :

I furtherance of the common intention of you both at Kolhapur on August 18, 1971 at the instance of the accused 1, accused 2 demanded Rs. 300 from the complainant ... a gratification other than legal remuneration as a motive or reward for doing an official act, later the same demand was repeated by accused 1 on October 22, 1971, and further on November 5, 1971 ... accused 2 demanded Rs. 125 from the above said complainant in presence of accused 1 and ultimately on November 15, 1971 at 2 p.m., accused 2 in furtherance of your common intention demanded and directly accepted from the said complainant Rs. 125, a gratification ... and thereby committed an offence under clause (d) of sub-section (1) of Section 3 of the Prevention of Corruption Act, 1947 punishable under sub-section (2) of Section 5 of the said Act read with Section 34 of the Indian Penal Code and also punishable under Section 161 of the Indian Penal Code and within the cognizance of this Court.

The second part of the charge ran thus :

That you accused 1 and 2 at Kolhapur on August 18, 1971, October 22, 1971 and November 5, 1971 agreed to do an illegal act, to wit, to accept from the complainant a gratification other than legal remuneration as a motive for doing an official act and that Rs. 125 were directly accepted by accused 2 on November 15, 1971 in pursuance of the said agreement and thereby you accused 1 and 2 committed an offence punishable under Section 120-B of the Indian Penal Code

16. In the result, the trial Judge convicted both the accused on all the counts with which they were charged and awarded a cumulative sentence of one year's rigorous imprisonment and a fine of Rs. 300 to each of them.

17. The circumstances from which the courts below have drawn an inference of common intention and criminal conspiracy between the appellant and accused 2, are as follows :

(i) On August 18, 1971, the appellant asked the complainant to go to the table of accused 2 who was sitting in the same room and that the latter would tell the

complainant what to do. Accordingly, the complainant went to accused 2 who demanded Rs. 200 as a bribe from him for himself and others.

(ii) On October 22, 1971, when Madhav again came to enquire about the progress of his application, the appellant asked him as to what he had done to do that which accused 2 had suggested to him. When the complainant said that he could pay only Rs. 5 to Rs. 15 and not the big amount of Rs. 200, the appellant remarked that the complainant's case also would be taken up in its serial order, like other cases which were pending for two or three years.

(iii) On November 5, 1971, when accused 2 scaled down the demand to Rs. 125 and asked Madhav to pay this reduced amount at least, the appellant was sitting at his own table from where he could overhear the talk between the complainant and accused 2.

18. At the request of Shri Lalit, amicus curiae for the appellant, we have, in this case, examined the evidence on record carefully. We find that circumstance (i), by itself, is not of a definite tendency from which an inference of criminal conspiracy between the appellant and accused 2 to obtain bribe, could be unerringly drawn. Might be, accused 2 was more experienced and conversant with the rules of practice and procedure and, as such, was in a better position to advise the appellant in regard thereto. This conduct of the appellant in sending the complainant to a colleague in the same office to seek instructions could be compatible with his innocence, also. It did not conclusively point to the conclusion that in demanding the bribe accused 2 was acting as an agent or a co-conspirator of the appellant.

19. Regarding circumstance (ii), we find that it had not been cogently established by the prosecution. No doubt, in examination-in-chief, Madhav (PW 1) deposed to the facts comprised in this circumstance, yet, in cross-examination, he completely contradicted what he had said earlier on this point. Cross-examined, Madhav stated :

I deny that suggestion that on October 22, 1971 accused 1 Kulkarni told me that he was unable to issue notices as I had failed to furnish the addresses of my sisters. Even that day, I did not go and complain to the superior of the accused that money was demanded for doing my work. That day, I had contacted the City Survey Officer and the City Survey Officer had called accused 1 Kulkarni and had given him instructions. I deny the suggestion that accused 1 had then explained to the C.P.S. Officer that he did not issue notices as I had failed to give the addresses of my sisters. I had not then told the City Survey Officer that accused 1 had demanded money from me. Whatever talk which took place between me and accused 1 on October 22, 1971 was in the office of the City Survey Officer.

20. The last line of the above passage extracted from the evidence of the complainant, completely demolishes this circumstance appearing in his examination-in-chief. The courts below have failed to assess the destructive effect of this vital contradiction in circumstance (ii) alleged by the prosecution. At any rate, this material contradiction should have put the courts on their guard, not to accept the ipse dixit of Madhav in examination-in-chief on this point. It is well settled when a prosecution case rests on circumstantial evidence only, those circumstances should, in the place, be finally established, and further they should be a definite pointer towards the guilt of the accused. In the present case, since circumstance (ii) stood contradicted from the very mouth of the complainant

himself, it could not be said to have been indubitably established and as such, it was highly unsafe to act thereon.

21. Circumstance (iii) was of a still more precarious character. The appellant was transferred from the station by an Order of October 15, 1971 (Ex. 26). No less a witness than Madhav himself admitted in the witness-box that he had come to know sometime earlier than November 5, 1971, that accused 1 had been transferred from Kolhapur. A charge report (Ex. 27) of handing over charge by him and taking over charge by Vijyantkar, his successor-in-office, was prepared and signed both by the appellant and Vijyantkar on October 29, 1971. Nevertheless, Gaikwad (PW 6), a sheristadar of the City Survey Officer stated that the actual charge was handed over by the appellant on November 9 and 10, 1971. The High Court has accepted this ipse dixit of PW 5 as against the official record (Ex. 27).

22. In his examination under Section 342, Criminal Procedure Code, the appellant states that he had handed over the charge on October 29, 1971 and had gone away. He characterised as "all-false" the statement of PW 5 to the effect, that the actual charge was handed over on November 9 and 10, 1971. He denied his presence near the table of accused 2 on November 5, 1971.

23. Furthermore, in regard to circumstance (iii) also, the version of the complainant was so contradictory and self-destructive that it was extremely hazardous to accept it. In examination-in-chief, the complainant (PW 1) stated that on November 5, 1971, he went to the City Survey Office with idea of meeting the City Survey Officer. He was waiting in the verandah when accused 2 saw him there and called him. The complainant accordingly went inside and had a talk with accused 2, in the course of which the latter scaled down his demand of bribe to Rs. 125. There is no evidence as to what was to be the share, if any, of the appellant in this bribe money demanded by accused 2. Indeed, from the following sentence in the evidence of Madhav, it appears that this amount of Rs. 125 was demanded by accused 2 for himself : "he (accused 2) also promised me to do my work with two days if I paid that much amount". Of course, Madhav has further stated : "Accused 1 Kulkarni was sitting behind his table at that time and the talk was going on within the range of his hearing". In cross-examination, Madhav completely contradicted himself on this point and said :

I do not know if on October 29, 1971 the work of the handing over of the charge by accused 1 to Vijyantkar was going on or not. I deny the suggestion that Vijyantkar was present in the office that day. I do not know if accused 1 Kulkarni went on leave from that day onwards. It is true that accused 1 Kulkarni was not present in the office on November 5, 1971.

24. In the last sentence, extracted above, Madhav (PW 1), gave a complete go-by to what he had said earlier in examination-in-chief in regard to the presence of Kulkarni. Thus this circumstance also had not been established beyond doubt.

25. It is common ground that on November 13, 1971, when the trap was laid and the tainted money was, in pursuance thereof, recovered from the person of accused 2, the appellant was not there at all in the office.

26. In the light of what has been said above, the conclusion was irresistible that the circumstantial evidence on the basis of which the appellant has been convicted was replete with vital contradictions and material infirmities, and therefore, could not be safely acted upon to convict the appellate for the commission of the offences in question.

27. These, then, are the reasons in support of our Order dated July 23, 1980, by which we allowed Kulkarni's appeal and set aside his conviction and sentence.

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