

Sadashiv Mahadeo Yavaluje and Gajanan Shripatrao Salokhe

Vs

State of Maharashtra

Criminal Appeal Nos. 622 and 623 of 1979

(G. L. Oza, Smt. M. S. Fathima Beevi JJ)

06.12.1989

JUDGMENT

OZA J. -

1. These two appeals arise out of the conviction of the two appellants by learned Special Judge, Kolhapur wherein appellant accused 1 Gajanan Shripatrao Salokhe, a Head Constable of Police was convicted under Section 161 IPC and sentenced to suffer rigorous imprisonment for 9 months and fine of Rs. 100 in default, rigorous imprisonment for one month whereas accused 2 Sadashiv Mahadeo Yavaluje, a Constable of Police was convicted under Section 165-A IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for four months for the offence under Section 165 IPC and rigorous imprisonment for one year and a fine of Rs. 200 in default of fine further rigorous imprisonment for two months for the offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act by Special Judge, Kolhapur in special Case No. 2 of 1975 and on appeal the High Court of Bombay confirmed the conviction and sentence so far as accused 1 the Head Constable is concerned and confirmed the conviction and sentence of accused 2 under Section 165-A but modified the sentence under Section 5(2) read with Section 5(1)(d) and reduced to rigorous imprisonment for 9 months and fine of Rs. 100 in default of fine further imprisonment for for one month.

2. The prosecution case was that the complainant one Pandurang Narayan Bhosale at the relevant time was a Mukadam serving in the Municipal Corporation at Kolhapur. As a Mukadam he had to supervise the work of cleaning carried out by the lady sweepers in the town. One of such in his charge was Laxmibai Rajaram. Some incident is alleged to have taken place between this complainant Pandurang and the said sweeper Laxmibai. As a result of which on March 30, 1975 Laxmibai's husband filed an application with the Laxmipur Police Station alleging that Pandurang had enticed away his wife Laxmibai. This application was inquired into by Head Constable Kambale of the Laxmipur Police Station. Kambale recorded the statement of Rajaram but since Pandurang was residing within the jurisdiction of Juna Rajwada Police Station in Kolhapur City this application of Rajaram was forwarded to the said police station for recording the statement of Pandurang. This application, which is Ex. 24, was received in Juna Rajwada Police Station on July 14, 1975. At that time PW 8 Ramchandra Maradur was the Police Inspector in charge of the said police station. On receipt of the aforesaid application, it was entrusted to accused 1 who was a Head Constable attached to the police station for the purpose of recording the statement of Pandurang. At that time accused 2 was a Constable attached to the said police station. Admittedly he was one amongst many at the police station. On November 25, 1975 it is alleged that Pandurang went to Juna Rajwada Police Station where his statement was recorded by accused 1. It is alleged that when he was coming out he asked accused 2 who was known to him, according to his own version,

whether he could go and it is said that accused 2 asked accused 1 whether he could go and accused 1 told him that he could go and saying this accused 1 went inside the police station. It is alleged that thereafter accused 2 told Pandurang that accused 1 was demanding Rs. 200 to compromise the matter and to file the application of Rajaram and that he has asked Pandurang to see accused 1 and settle with him. Pandurang told him that he did not have so much of money but he would see accused 1 later.

3. It is alleged that on November 29, 1975 i.e. four days after this incident on November 25, 1975 Pandurang went to the house of accused 1 in the morning and enquired from him as to what has happened to his work. It is alleged by Pandurang that accused 1 had demanded Rs. 200 and told him that if he pays the amount the application of Rajaram will be filed and when Pandurang expressed his inability to pay Rs. 200 the demand was reduced to Rs. 100 and after the bargain was settled Pandurang told accused 1 that he would pay the amount on the 1st or 2nd after he receives his salary. According to the prosecution this arrangement was fixed up when accused 1 was alone and it is alleged that accused 1 told him to see him at Juna Rajwada Police Station. Thereafter, according to the prosecution, Pandurang went to the office of Vasant Belasare, PSI Anti-Corruption and informed him of the aforesaid facts. His complaint was recorded and he was called on the next day. After recording of the statement, Vasant Belasare informed the Deputy Superintendent of Police Anti-Corruption, Pune but he was informed that the Deputy Superintendent of Police was busy in other work and therefore it will not be possible for him to come. Pandurang went to the office of the Anti-Corruption Police on December 1, 1975 when the PSI Anti-Corruption Belasare took Pandurang to the residence of the Chief Judicial Magistrate, Kolhapur who after verifying the facts granted permission to Belasare to lay a trap and investigate into the offence. After obtaining permission Belasare requested the Deputy Engineer of Public Health Project, Sub-Division No. 1 Kolhapur to spare the services of two officers from his office to act as panchas on the next day i.e. December 2, 1975.

4. On the morning of the next day December 2, 1975, two persons viz. Airan and Kagale, both working as Junior Engineers in Public Health Project, went to the office of the Anti-Corruption Police as per the directions of the Deputy Engineer. At the said office the complainant Pandurang also came and he was asked to narrate the facts to the panchas. Subsequently Pandurang produced Rs. 50 consisting of five currency notes of Rs. 10 each. He was unable to bring more moneys as initially the settlement was for Rs. 100. Belasare PSI produced Rs. 50 currency notes consisting of five currency notes of Rs. 10 each from his office, number of these notes were noted by the panchas and the PSI Anthracene powder was applied to the currency notes. The currency notes were kept in a small packet and given to Pandurang and he was instructed to pay the amount to accused 1 and the panch Airan was instructed to remain with the complainant. They were further instructed that when the amount is received by accused 1, the complainant should give a signal to the police by moving his left hand on his head. Panchnama of these facts also was drawn up. Thereafter the complainant Pandurang along with panch Airan left ahead on foot, while the PSI Belasare the other panch Kagale and Heddur, Police Inspector, Anti-Corruption, and the other policemen followed the complainant and the panch Airan at some distance.

5. It is alleged that when the complainant reached the Juna Rajwada Police Station at about 9.30 a.m. accused 1 was standing near the police station and the complainant asked accused 1 as to what had happened about his work and informed that he had brought the money but according to the complainant himself accused 1 pointed at a Constable standing there Jaysingh Kale who was at some distance in plain clothes and saying this accused 1 left the police station in the police wireless van. According to the prosecution the complainant did not give the money to that Constable as the

complainant did not know him nor he knew whether he was a Constable or someone else. After about an hour accused 1 came back to the police station in the wireless van at about 10.30 a.m. when again the complainant Pandurang approached him and again accused 1 told Pandurang to go and hand over the money to the tea vendor by pointing out to him the tea stall outside the police station and saying so, according to the prosecution, accused 1 went inside the police station. The money was not handed over to the tea vendor in the tea stall but the complainant and the panch waited outside the police station. After some time accused 1 came out of the police station, sat in the police wireless van and again went away. It is alleged that after some time Jaysingh Kale came out of police station and he, complainant Pandurang and panch Airan went to the Cafe Alankar situated in front of the police station. It is alleged that the complainant Pandurang inquired from Kale as to what has happened about his work and also told him that accused 1 had asked Pandurang to give the money in the hands of Kale. Thereupon it is alleged that Kale replied that he would go inside the police station, see the papers and find out what had happened about his work. Kale then went to the police station. Complainant Pandurang and Panch Airan also came out of the cafe. It is alleged that when they came out they noticed accused 2 standing near the police station and accused 2 called Pandurang. Pandurang and the panch Airan approached him and told him about his work and also told accused 2 that he had brought the money and that Kale had gone into the police station to see the papers and find out what had happened to the complainant's work. It is alleged that accused 2 told him that he would go inside and see the papers and so accused 2 also went inside the police station. He came out thereafter and went to the Cafe Alankar along with complainant Pandurang and the panch Airan. There it is alleged that he told the complainant that Kale was inside the police station and told him to give them amount. It is alleged that complainant handed over the currency notes to accused 2 and he placed them in his pant pocket. When they came out of the hotel, a signal was given and it is alleged that the police party which party which was waiting apprehended accused 2. From the pocket of accused 2 the said currency notes were recovered.

6. It is on this evidence that the two courts below convicted the two appellants for the offences alleged against them.

7. Learned counsel appearing for appellant accused 1 contended that although, according to the prosecution, the arrangement arrived at on November 29, 1975 by complainant Pandurang was with accused 1 to pay Rs. 100 but in fact when the complainant Pandurang approached accused 1 he did not receive the money. On the contrary as the prosecution's own evidence clearly indicates that he once pointed out towards a Constable and second time pointed out at the tea vendor and every time doing this he left the police station and went away in the wireless van of the police station. This clearly indicates that this appellant not only did not accept the money not anything is established against him. Even about the arrangement it is alleged to have been arrived at between this appellant and the complainant when it is alleged that the complainant approached him at his house on November 29, 1975. Even for that there is no other evidence except the evidence of Pandurang the complainant decoy whose testimony without independent corroboration could not be accepted and the manner in which according to the Pandurang's own testimony this appellant avoided the complainant Pandurang when he attempted to hand over money to him even makes his testimony about the earlier agreement or arrangement arrived at on November 29, 1975 doubtful. Learned counsel therefore contended that so far as accused 1 the Head Constable is concerned there is nothing in evidence to connect him with the crime. It is unfortunate that the two courts below by considering extraneous circumstances and drawing inferences which are nothing but mere suspicions connecting this appellant with crime convicted him.

8. The counsel appearing for accused 2 contended that it is no doubt true that according to the

complainant Pandurang he was known to him. So far as the story of November 25, 1975 is concerned there is no evidence to corroborate the testimony of complainant Pandurang and apart from it is nothing more than that this accused 2 told the complainant to approach accused 1. Thereafter, according to the prosecution case, the complainant Pandurang independently approached accused 1 on November 29, 1975 and settled the bargain with him and there is nothing in evidence to indicate that this accused 2 has anything to do with settlement or bargain on November 29, 1975 nor there is anything to indicate in the evidence that he had any knowledge thereto.

9. It was contended by the learned counsel that what transpired on December 2, 1975 clearly shows that as this decoy complainant Pandurang failed twice to hand over the money to accused 1 for whom the trap was laid, practically the trap failed and it appears that ultimately order to save his face before the Anti-Corruption officers he just over money to this accused when there was no demand made by him nor there was no arrangement arrived at between them nor there was any representation made by this accused to help this complainant in his affair. It was contended by the learned counsel that this all indicates that the story given out by this complainant Pandurang to the Anti-Corruption office was not based on facts and somehow when he thought that the trap was laid for accused 1 and accused 1 always avoided this complainant and virtually the trap failed when this complainant approached accused 2 to pass on this money to accused 1. Although this was not the arrangement arrived at between the complainant and accused 1 nor it was the case of the prosecution when the statement of this complainant Pandurang was recorded by the Anti-Corruption Officer. Under these circumstances it is contended that this accused appellant also could not be convicted.

10. The learned courts below so far as accused 1 is concerned have drawn an inference from the subsequent conduct of the accused after the trap was laid. Apparently such an inference could not be drawn because if the accused was really involved in the matter after the trap was laid and money was recovered from accused 2 it will be nothing failure of the trap against accused 1. To take the application or the statement made by the complainant afterwards may be nothing but curiosity and the inference drawn could not be justified. Admittedly there is no evidence at all against accused 1 except the story given out by complainant Pandurang on November 29, 1975. The evidence about the incident of December 2, 1975 only indicates that this accused avoided the complainant whenever he approached him. On this evidence the conviction of the appellant could not be sustained at this does not establish any of the ingredients of the offence.

11. As regards accused 2 merely because he was entrusted with some money to be passed on to accused 1 it could not be held that he was guilty of any one of these offences unless it is established that it was a party to the arrangement and the arrangements arrived at was that the money would be handed over to accused 2 to be given over to accused 1. Apparently accused 2 was not expected to help the complainant. The assurance to the complainant to settle the matter, according to the prosecution was given by accused 1 and according to the prosecution's own case and the evidence of complainant Pandurang this arrangement was finally settled on November 29, 1975 at the house of accused 1. Admittedly accused 2 was not there nor it is alleged that he had any knowledge about this settlement. The incident of November 29, 1975 is said to be between accused 1 and Pandurang alone and the only evidence is that of Pandurang. Under these circumstances it could not be held that accused 2 accepted this amount for any purpose. At best as the complainant told him to pass this money on to accused 1 he accepted it but on that basis it could not be held that he was sharing the intention with accused 1 or was acting on his behalf.

12. Under these circumstances the evidence as it stands does not establish the offences even against accused 2 beyond reasonable doubt. In the light of the discussions above therefore the conclusions

reached by both the court below could not sustained. The appeals are therefore allowed. The convictions and sentence passed both the appellants are set aside. They are on bail. Their bail bonds are directed to be discharged. In the event of fine having been already paid, it shall be refunded.

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