

Prabhat Kumar Gupta

v.

State of Jharkhand & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE HARJIT SINGH BEDI HON'BLE MR. JUSTICE CHADRAMAULI KR. PRASAD

Prabhat Kumar Gupta v. State of Jharkhand & Another

Criminal Appeal No. 1386 Of 2003 | 07-09-2010

1. Sole Appellant, aggrieved by his conviction u/ss 7 & 13(1) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act') & sentence of rigorous imprisonment for one year on each count, has preferred this appeal by grant of special leave.

2. According to the prosecution, Chhavi Majhian (PW.8), a loader in Bhawra Colliery of the Bharat Coaking Coal Ltd., Dhanbad, fractured her hand & her son PW.2, Bhagat Tadu took her to Jiyalgora Central Hospital on 24.8.1993 for plaster & met Dr. Sahu who had advised them to come on 25.8.1993. As advised, Bhagat Tadu & Chhavi Majhian went to the Hospital on 25.8.1993 but did not find Dr. Sahu there, rather Dr. Prabhat Kumar Gupta, the Appellant herein was present in the Chamber. He assured to plaster the hand but according to the prosecution he demanded Rs. 100 as illegal gratification. Bhagat Tadu was not prepared to pay the said amount & he submitted a report dated 25.8.1993 to the Superintendent of Police, Central Bureau of Investigation, Dhanbad. On the basis of that trap was arranged to apprehend Dr. Gupta red handed while demanding & accepting the illegal gratification. As directed, Bhagat Tadu produced 100 rupee note, which was created with phenolphthalein powder & handed over to him with the instruction to give the same to the Appellant, only when he makes such a demand. The number of currency note was noted in the preliminary memorandum in which pre-trap formalities were also incorporated. It is the allegation of the prosecution that on 26.8.1993, the Appellant was caught red handed while demanding & accepting the illegal gratification of Rs. 100 from the informant Bhagat Tadu by the raiding party consisting of the officials of the Central Bureau of Investigation & shadow witnesses namely, Chandra Shekhar Prasad (PW 9) & Parmatma Roy (PW 3). The currency note, according to the prosecution, was recovered from the money bag of the Appellant which was in the right hand side back pocket of the trouser. When the hands of the Appellant were washed in the solution of the sodium carbonate it turned pink, so also the inner lining of the money bag. A recovery memorandum was prepared incorporating all the post trap formalities & the hand wash & the bag wash were sent to the Central Forensic Science Laboratory which confirmed that these contained the parties of the phenolphthalein powder.

3. After the usual investigation the CBI submitted charge-sheet against the Appellant & ultimately he was put on trial. The Appellant denied to have committed the crime & claimed to be tried.

4. In order to bring home the charge the prosecution altogether examined 14 witnesses besides a large number of documents. Independents witnesses examined the informant Bhagat Tadu (PW 2), his mother Chhavi Majhian (PW 8), shadow witnesses Parmatma Roy (PW 3) & Chandra Shekhar Prasad

(PW 9). Another independent witness examined to support the case of the prosecution is P.W.7 J.N. Ghosh, an O.T. Assistant. All of them have been declared hostile excepting Chhavi Majhian who though not declared hostile but she also has not supported the case of the prosecution in its entirety. The Trial Court on appreciation of evidence came to the conclusion that the prosecution has proved its case beyond all reasonable doubt & accordingly convicted & sentenced the Appellant as above, which conviction & sentence has been affirmed by the High Court in appeal.

5. PW.2, Bhagat Tadu has stated in his evidence that when he went to the hospital the Appellant stated that he had to pay Rs. 100 & only then bandage & plaster will be done. He has further stated that he had given Rs. 100 to the compounder & at that time the Appellant was in operation theatre. He was declared hostile by the prosecution & in cross-examination he had clearly stated that he had not paid any money to the Appellant & no such statement was made during the course of the investigation. He has categorically stated that the hundred rupee note given by him to the compounder was taken from him by one CBI Constable & the said Constable went in the room provided to the Appellant had asked him to pay Rs. 100 to the compounder in order to bring the plaster from the market. PW 8, Chhavi Majhian who was all along with the informant Bhagat Tadu has stated in her evidence that a sum of Rs. 100 was demanded by the Doctor for plaster but no such amount was paid to him. PW 3, Parmatma Roy & PW 9, Chandra Shekhar Prasad have been examined by the prosecution as shadow-witnesses but they too did not support the case of the prosecution that the Appellant took money from the informant.

6. Mr. M.L. Varma, Learned Senior Counsel, appearing for the Appellant has made several submissions to assail the Judgment of conviction but as this appeal is to succeed on a very short point, we do not consider it expedient to incorporate or answer those submissions. Mr. Verma submits that there is no evidence to show that the Appellant voluntarily accepted the money. He points out that evidence of the hostile witnesses utmost go to suggest that the Appellant had made demand of Rs. 100 for plaster. He points out that from the evidence of the prosecution witnesses it is evident that the money was not paid to the Appellant but to the compounder. He further points out that mere recovery by itself cannot prove the charge in the absence of any evidence to prove that the Appellant had accepted the amount voluntarily. He also submits that PW 8, Chhavi Majhian, who has not been declared hostile by the prosecution, had categorically stated that they did not pay any money to the Appellant. In the face of it, according to Mr. Varma conviction of the Appellant cannot be sustained only on the evidence of the investigating officer. In support of his submission reliance has been placed on a Judgment of this Court in the case of C.M. Girish Babu v. CBI. Cochin, High Court of Kerala, 2009 (3) SCC 779 & our attention has been drawn to the following paragraphs:

“16. The crucial question would be whether he Appellant had demanded any amount as gratification to show any official favour & whether the said amount was paid by PW 10 & received by the Appellant as consideration for showing such official favour.

17. The only evidence available in this regard is that of PW 10 who did not support the case of the prosecution. The Appellant at the earliest point of time explained that it as not the bribe amount received by him but the same was given to him by PW 10, saying that it was towards repayment of loan taken by his Manager, PW 2 from accused 1. This is evident from the suggestion was put to the investigating officer that he had not recorded the version given by the Appellant correctly in the post-trap mahazar, Exhibit P-9 & no proper opportunity was given to explain the sequence of events.

18. In *Suraj Mal v. State (Delhi Admn.)* 19794 SCC 725 this Court took the view that, mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.”

7. Mr. Harish Chandra, Learned Senior Counsel, however, appearing on behalf of the CBI submits that as the investigating officer has supported the case of the prosecution, conviction of the Appellant cannot be said to be bad. He submits that the investigating officer is a witness to the recovery of money from the possession of the Appellant &, therefore, the legal presumption available u/s 20 of the Act nails the Appellant. Reliance has been placed on a decision of this Court in the case of *State of U.P. v. Dr. G.K. Ghosh*, 1984 (1) SCC 254 & our attention has been drawn to the paragraph 10 of the Judgment which reads as follows:

“10. It is now time to deal with the criticism urged as a matter of course in the context of the police officer leading the raiding party namely that he is an interested witness, This is true, but only to an extent a very limited extent. He is interested in the success of the trap to ensure that a citizen, who complains of harassment by a Government officer making a demand for illegal gratification, is protected & the role of his department in the protection of such citizens is vindicated. Perhaps it can be contended that he is interested in the success of the trap so that his ego is satisfied or that he earns a feather in his cap. At the same time it must be realised that it is not frequently that a police officer, himself being a Government servant, would resort to perjury & concoct evidence in order to rope in an innocent Government servant. In the event of the Government servant concerned refusing to accept the currency notes offered by the complainant, it would not be reasonable to expect the police officer to go to the length of concocting a false seizure memo for prosecuting & humiliating him merely in order to save the face of the complainant, thereby compromising his own conscience. The Court may therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant & the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused & not consistent with his innocence, there should be no difficulty in upholding the prosecution case. The present case appears to be a case of that nature. If the circumstantial evidence is of such a nature that it affords adequate corroboration to the prosecution case, as held by the Learned Special Judge, the appeal must succeed. If on the other hand the circumstantial evidence is considered to be inadequate to buttress the oral testimony, the appeal necessarily must fail.”

8. Reliance has also been placed on a decision of this Court in the case of *Subbu Singh v. State by Public Prosecutor*, 2009 (6) SCC 462, & our attention has been drawn to the paragraph 21 which reads as follows:

“21. It is to be noted that the Appellant was alone in his room for sometime holding the currency notes before PW 26 & other officer entered into the house. Therefore, as rightly observed by the High Court, the possibility of the Appellant counting the money with the help of right hand cannot be ruled out. Once it is proved by the prosecution that the money was demanded as bribe & the same was

received from PW 2, Section 20 of the Act comes into play. Once there is a presumption as contemplated u/s 20, it is for the accused to establish that the amount was not received as bribe.”

9. Having considered the rival submission, we find substance in the submission of Mr. Varma & the decision relied on clearly supports his contention. On consideration of the evidence of the witnesses including the hostile witnesses what emerges is that the Appellant asked for payment of Rs. 100 for plaster. The amount was not paid to him but was paid to the compounder. Even if we assume that the currency note was recovered from his possession there is no evidence that he had voluntarily accepted the same. In the face of it, he cannot be held guilty of the offence. The view which we have taken finds support from the decision of this Court in the case of GM. Girish Babu (supra).

10. Now referring to the decision of this Court in the case of Dr. G.K. Ghosh (supra) relied on by the Respondent, same is clearly distinguishable. In the said case it has been observed that when besides the evidence of the Police Officers there is circumstantial evidence which is consistent with the guilt of the accused & not consistent with his innocence, conviction can be upheld. Here in the present case besides the evidence of the investigating officials no witness had supported the case of the prosecution. In the present case, all the witnesses though not declared hostile has not supported the case of the prosecution. In Subbu Singh (supra), the prosecution had proved that the money was demanded as bribe & the same was received by the accused & in view of Section 20 of the Act it was observed that in such circumstance, the accused is to establish that the amount was not received as bribe. As, we have observed earlier the prosecution has not been able to prove that the money was received by the Appellant as bribe & therefore, the presumption as contemplated u/s 20 of the Act would not arise.

11. In the face of what we have observed earlier it is evident that the prosecution has not been able to prove its case beyond all reasonable doubt & accordingly the Appellant is entitled to the benefit of doubt.

12. In the result, the appeal is allowed & the conviction & sentence of the Appellant is set aside. The Appellant is on bail, his bail bonds shall stand discharged.

13. Appeal allowed.