SUPREME COURT OF INDIA

Narayana

Vs.

State of Karnataka

Crl.A.No.307 of 2003

(Harjit Singh Bedi and Chandramauli Kr. Prasad JJ.)

05.10.2010

JUDGEMENT

Harjit Singh Bedi, J.

1. PW-1 Sudarshan and PW-2 Bhargave, two brothers, were running the Varsha Provision Store, Bijapur situated near the Government Maternity Hospital since the year 1989 after having obtained a license in the name of PW-2. The accused- appellant Narayana who was working as a Commercial Tax Inspector came to the shop in early December 1994 and enquired from PW-1 and PW-2 as to why they were not paying sales tax. PW-1 told him that as the sale in the shop was less than Rupees one lakh, no sales tax was payable. The appellant, however, told the two brothers that they should pay a sum of Rs.2000/- on Diwali as was being paid by others failing which he would issue a notice that the accounts maintained by them were not accurate and that the shop would be seized and they would be penalized. This threat was repeated by the appellant on two different occasions thereafter. On the 4th January, 1994, the appellant came to the shop at around 10:00 a.m. and again demanded the payment. PW-1, however, refused to pay as the sales tax was not leviable. The appellant, however, told him that if a sum of Rs.1500/- was not paid within two or three days they would suffer on that account.

2. As PW-1 was not prepared to make the payment, he appeared on 5th January, 1994 before CW-16-M.Vishwanath, Inspector in the Lokayuktha Office and made a complaint Exhibit P-1 to him. CW-16 also asked PW-7 Head Constable Khanderao, to secure the presence of PW-5 Basavant Shankargouda Patil and PW-6 Mahadev Sidramappa Dandoragi to act as witnesses. They were accordingly brought to the office of the Inspector and the complainant narrated the entire story to them as well. CW-16 also told PW-1 to produce the bribe amount of Rs.1500/- and the currency notes provided by him were smeared with Phenopthelene powder and the details of the test to be conducted were also displayed to the witnesses.

3. The raiding party left for Bijapur at 3:00 p.m. and reached the Inspection Bungalow at about 5:00 p.m. PW-1 was sent to find out as to whether the appellant was available in his

office. He returned after a short while and told them that the appellant was indeed in the office and that he would be visiting the shop in the evening. The party thereafter returned to the Inspection Bungalow and then went on to the shop belonging to the complainant. The appellant, however, came to the shop at about around 8:00 p.m. and at that time PW-2 was also present in the shop. The appellant stated that he was in a hurry and that the payment should be made to him immediately. PW-1 thereafter took out the currency notes and handed them over to the appellant who put the same in his hand bag. Immediately thereafter, PW-1 came out of the shop and made a pre-determined signal on which CW-16 and PW-7 and the other witnesses rushed in shop. CW-16, thereafter took out the money from the hand bag of the appellant and the Phenopthelene test was carried out and the colour of the solution turned pink. The serial numbers of the currency notes were also tallied with the memo prepared at the time of the preparation of the trap.

4. On the completion of the investigation and after due sanction from PW-8, the Commissioner of Commercial Taxes, the appellant was brought to trial. The prosecution in support of its case relied primarily on the evidence of PWs-1, 2 and 7 and also the circumstantial evidence in the case as PWs-5 and 6 turned hostile. The Trial Court on a consideration of the evidence acquitted the appellant. The matter was thereafter taken in appeal to the High Court. The High Court has, by the impugned judgment, set aside the conviction and sentenced the appellant as under:

> "..... the accused is sentenced to undergo imprisonment for a period of 6 months and also to pay a fine of Rs.2000/- and in default to suffer S.I. for one month for the offence under Section 7 of the Prevention of Corruption Act and he is also directed to undergo imprisonment for a period of 1 year and also to pay fine of Rs.5000/- and in default to suffer S.I. for 3 months for offence under Section 13 (1)(d) r/w 12 (2) of the said Act and the accused is directed to suffer the said sentence accordingly, The accused is also directed appear before the trial court and to pay the fine amount within one month from the date of this judgment and the trial court shall commit him to the prison to suffer imprisonment in accordance with this judgment, failing which the trial court shall issue warrant and secure the presence of the accused and commit him to prison in accordance with this judgment.
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> Both the sentences to run concurrently and the accused is also entitled for the benefit of provisions of Section 428 Cr.P.C."

5. For arriving at its conclusions, the court observed that though interference in an appeal against acquittal should only be for substantial and compelling reasons but at the same time it was open to the appellate court to review the evidence and to determine as to whether the judgment of the trial court was justified on the evidence if the acquittal was completely without basis, interference was called for.

6. With this prefatory note, the High Court examined the evidence. It was observed that the statements of PWs-1, 2 and 7 were without any blemish as to the recovery of the bribe

amount was proved beyond any doubt notwithstanding the fact that CW-16, the Lokayuktha Inspector, had since died and could not thus be examined as a witness. The court observed that as there were several witnesses to the trap merely because PWs-5 and 6 had not supported the evidence and had been declared hostile, would not detract from the evidence of the other witnesses. The court also observed that the money had been handed over to the appellant who had put it in his hands bag and as the phenopthelene test was positive, this too was a corroborative evidence. The court further opined that in the light of the presumption drawn under Section 20 of the Prevention of Corruption Act, 1988, the case against the appellant stood proved.

7. The present appeal has been filed impugning the judgment of the High Court.

8. Mr. Bhat, the learned counsel for the appellant has submitted that the trial court had taken a view in favour of the appellant and interference by the appellate court in an acquittal appeal was not warranted. It has also been submitted that there were substantial discrepancies in the evidence of PWs-1, 2 and 7 with respect to the actual trap as PWs-5 and 6, the only two independent witnesses had been declared hostile, the evidence of interested witnesses alone could not form the basis for conviction.

9. Mr. Hegde, the learned counsel for the State of Karnataka has, however, supported the judgment of High Court and has pointed out that there was absolutely no justification in the acquittal recorded by the Trial Court and the said judgment was completely contrary to the evidence. It has been argued that the appellant had visited the premises belonging to PWs-1 and 2 on three or four occasions and there was absolutely no reason as to why they would involve him in a false case as no animosity of any kind had been suggested. He has finally submitted in the light of the fact that the money had been recovered from the hand bag of the appellant a presumption under Section 20 of the Act was also to be raised against him.

10. We have considered the arguments advanced by the learned counsel for the parties. We find in the facts of the case that the decision of the High Court was fully justified. The Trial Court, had on a complete misreading of the evidence, rendered a judgment which could not be sustained. We have also gone through the evidence of the PWs.1 and 2 who categorically speak about the demand and these witnesses alongwith PW-7 speak about the recovery of the tainted money as well. It is also significant that the evidence had been recorded over a period of about four years and if there were some minor discrepancies inter-se PWs-1, 2 and 7, it would reasonably be explained on account of this long delay.

11. Mr. Bhat has, however, submitted that as CW-16, the Investigating Officer had not been examined, this fact caused prejudice to the appellant. This argument has absolutely no merit as CW-16 had died before his statement could be recorded.

12. For the reasons recorded above, we find no merit in this appeal. It is accordingly dismissed.