SUPREME COURT OF INDIA

Syed Yousuf Hussain

Vs.

State of Andhra Pradesh

Crl.A.No.539 of 2013

(K.S.Radhakrishnan and Dipak Misra JJ.)

05.04.2013

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. The present Appeal by Special Leave is directed against the judgment of conviction and order of sentence dated 29.12.2012 in Criminal Appeal No. 466 of 2005 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad whereby the Division Bench, while maintaining the conviction for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity "the Act") read with Section 34, I.P.C. since the accused-appellant was convicted along with another accused, namely, Mohd. Shafi-Ul-Haq, recorded by the Principal Special Judge for S.P.E. and A.C.B. Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, in C.C. No. 11 of 1995, reduced the sentence to that of simple imprisonment for six months for the offence punishable under Section 7 and to one year under Section 13(1)(d) read with Section 13(2) of the Act instead of one year and two years respectively as imposed by the learned Special Judge with the further stipulation that both the sentences shall be concurrent.

3. The facts in a nutshell are that on 4.1.1994, PW-2, Mohd. Shareef, a driver in the Cuddapah Transport Company, Hyderabad was driving a lorry bearing No. AP 04-T-372 in Hyderabad near Tadbund and was proceeding towards Musheerabad locality via Santoshnagar cross-road, the places situated in between Hyderabad-Secunderabad twin cities. When the said lorry reached Santoshnagar cross-road,

the accused- appellant (hereinafter referred to as “the accused”) along with the other accused stopped the vehicle on the pretext that the lorry had entered the ‘No Entry Zone’. The accused took away the documents of the vehicle from the driver, PW-2, and all excuses fell on deaf ears and a demand was made for Rs.100/- towards illegal gratification for return of the documents and not to book a case against him. PW-2, who was asked to pay the amount by the evening, did not have any intention to give the bribe and, accordingly, approached the Deputy Superintendent of Police, Hyderabad, PW-6, and lodged a complaint, Ext. P-15, on 4.1.1994 about 3.45 P.M. and the said complaint was registered as F.I.R., Ext. P-16. PW-6 held a pre-trap proceeding by securing the presence of four persons including one S. Prakash, who has been examined as PW-5 by the prosecution. As the evening approached, the trap party along with others and PW-2 reached Kamal Talkies about 7.00 P.M. where PW-2 met the accused persons at Chadarghat Junction. As the story further gets unfurled, PW-2 was asked by the accused to meet accused No. 2, Mohd. Shafi-Ul-Haq, who, in turn, directed him to wait at the Traffic Police Station where the documents of the vehicle were kept. About 7.20 P.M., PW-2 reached the Traffic Police Station and the trap party followed him as per the previous arrangement. Accused No. 2 accepted the bribe amount of Rs.100/- in the presence of the present appellant and returned the documents. Thereafter, on signal being given, PW-6 along with the trap party reached the place, seized the amount from the shirt pocket of accused No. 2 and completed the other formalities. After completing the investigation, chargesheet was laid before the learned Special Judge who, on the basis of the materials brought on record, framed charges against them on 5.12.1995. The accused persons pleaded not guilty and claimed to be tried.

4. The prosecution, in order to bring home the guilt of the accused persons, examined seven witnesses, got sixteen documents exhibited and marked eleven material objects. On the basis of the evidence brought on record, the learned Special Judge came to hold that the money was recovered from accused No. 2 and there being no cogent, credible and acceptable explanation given by him and regard being had to the other circumstances, the presumption as provided under Section 20 of the Act was attracted. That apart, the learned Special Judge held that there was a consensus as regards the demand and acceptance of the money and, therefore, the prosecution had brought home the charge against both the accused persons and, accordingly, sentenced them as has been stated hereinbefore.

5. On appeals being preferred by the accused persons, the High Court took note of the fact that though PW-2, the de facto complainant, had resiled from the allegations made in Ext. P-15, yet his evidence could not be totally discarded,

especially, the testimony leading to the trap and recovery. The High Court scrutinized the evidence of the said complainant and opined that it was clear from the evidence that the money was recovered from the accused No. 2 and, therefore, there was no reason to discard the genuineness of Ext. P-15 and payment of the amount to accused No. 2. The learned Judge, as is demonstrable, has studiedly scanned the evidence of PWs-5 and 6 and found that their evidence is consistent with the evidence of PW-2 and, therefore, the trial court was justified in taking aid of Section 20 of the Act. Because of the aforesaid analysis, it was opined that the prosecution had proved the acceptance of the amount by the accused No. 2. Thereafter, the High Court has analysed the evidence and recorded a finding that the accused was very much on the site and had intercepted the vehicle and taken away the documents of the vehicle and further was also present in the other room when the transaction took place and, hence, he was involved in the commission of the offence. Being of this view, it sustained the conviction and reduced the sentence as mentioned earlier.

6. We have heard the learned counsel for the parties. It is submitted by the learned counsel for the appellant that the evidence brought on record by the prosecution is absolutely sketchy and do not even hazily point out towards the involvement of the accused. Per contra, learned counsel for the State would submit with emphasis that the learned trial Judge as well as the High Court has scrutinized the evidence in detail and correctly reached the conclusion that the demand and acceptance was done with his consent. It is urged by him that he had abetted in the commission of the crime and definitely had the intention to demand and accept the bribe.

7. At the very outset, it is obligatory to state that the Special Leave Petition (Crl.) No. 5867 of 2012, preferred by the accused No. 2, has been dismissed by this Court vide order dated 30.7.2012. Thus, the recovery of the tainted money and the demand and acceptance of the amount as illegal gratification which is the sine qua non for constituting an offence under the Act have been put to rest as far as the accused No. 2, Mohd. Shafi-Ul-Haq, is concerned.

8. In the present appeal, what is necessary to be dwelled upon is the involvement of the accused-appellant in the crime in question. In this regard, we notice that PW-2, though who has been declared hostile, has stated in his examination-in-chief at one point of time that it was a home guard who had demanded the amount, yet later on, he has deposed that when he enquired from accused No. 2, he had told him that the documents would be available at the police station and at that time, the accused was present. In his cross-examination, he has accepted that both the accused persons were present together. We may note with profit that the plea taken that

currency notes were thrust in the pocket of the accused No. 2 has been disbelieved. The High Court, as is evident, has accepted the genuineness of Ext. P-15 and the evidence leading to the payment of the amount to accused No. 2. After a careful appreciation and analysis of the evidence, it has been held by the learned trial Judge that the vehicle was intercepted by the accused and the same has been accepted by the High Court. We have bestowed our anxious consideration and on a keen scrutiny of the same, we find that PW-2 has admitted that the vehicle was intercepted. Though he has adroitly introduced the story of a home guard, yet the same has not been given any credence and, rightly so, by the learned trial Judge on consideration of the totality of the evidence brought on record. It is worth noting that PW-6, a retired Joint Director of ACB, has deposed that the accused had demanded a bribe of Rs.100/- for not booking a case for traffic violation and, in fact, no case was registered. It is interesting to note that PW-2, the de facto complainant, has stated that when he went to Chadarghat Chowrasta, the accused had asked him to contact accused No. 2 who was present there. The accused No. 2 asked him to come to Yakutpura Police Station as the documents of the vehicle were at the police station. He has admitted that the accused was in the central room and the accused No. 2 was in the adjacent room at the police station. At this juncture, a reference may be made to the testimony of PW-1, who was working as Traffic Sub-Inspector during the relevant period. The learned trial Judge, on analysis of his evidence, has opined that both the accused persons were to attend the duty at Shaidabad “T” Junction, and Shaidabad and Santoshnagar are adjacent to each other. The trial court has referred to Ext. P-12, the order book of the Traffic Police Station, Yakutpura. It is apt to note that on behalf of the accused, a question was put in cross-examination that one Sivarama Krishna, S.I., was in-charge from Chadarghat to Nalgonda Cross-road on that day, and to nullify the effect of the same, the learned counsel appearing for the accused, in the course of argument, had sought the indulgence of the trial court to substitute the name as “Yousuf Hussain”, i.e., the accused. Appreciating the cumulative effect of the aforesaid evidence, the trial Judge had come to the conclusion that both the accused persons were on duty at the relevant place at the relevant time and the vehicle was intercepted and the documents were taken away by the accused and the same has been accepted by the High Court.

9. Learned counsel for the appellant has submitted that the prosecution has failed to establish the common intention in the present case. Both the accused were charged for substantive offences in aid of Section 34 IPC. Section 34 IPC is intended to cover a situation wherein the accused persons have done something with common intention to constitute a criminal act. To get Section 34 attracted, certain conditions precedent are to be satisfied. The act must have been done by

more than one person and they must have shared a common intention either by omission or commission in effectuating the crime. It is always not necessary that every accused must do a separate act to be responsible for the ultimate criminal act. What is required is that an accused person must share the common intention to commit the act. In Barendra Kumar Ghosh v. King Emperor[1], it has been held as follows: -

> "Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for 'that act' and 'the act' in the latter part of the section must include the whole action covered by 'a criminal act' in the first part, because they refer to it.

10. In Mahbub Shah v. Emperor[2], it has been held thus:- "Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say 'the common intentions of all' nor does it say 'an intention common to all'. Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone."

11. The learned counsel would further submit that there is no material on record that the accused persons acted in furtherance of common intention to attract the liability in aid of Section 34 IPC. The Constitution Bench in Mohan Singh v. State of Punjab[3], while dealing with the scope of Section 34 IPC, has ruled thus: -

> "Like Section 149, Section 34 also deals with cases of constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the common intention in question animates the accused persons and if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them. Just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a

> combination of persons sharing the same common intention is one of the features of Section 34."

12. In Suresh and another v. State of U.P.[4], Thomas, J. opined that to attract Section 34 IPC, two conditions precedent are imperative: -

> "23. Thus to attract Section 34 IPC two postulates are indispensable: (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons."

13. In Lallan Rai and others v. State of Bihar[5], relying upon the dictum laid down in Barendra Kumar Ghosh (supra) and Mohan Singh (supra), this Court opined that the essence of Section 34 is simultaneous consensus of the mind of persons participating in the criminal action to bring about a particular result. It has been stated therein that such consensus can be developed at the spot, but in any case, such a consensus must be present in the commission of the crime itself.

14. In Rotash v. State of Rajasthan[6], it has been opined that the common intention to commit a crime can be gathered from the totality of the circumstances.

15. In the case at hand, on a careful appreciation of the evidence which we have done in the earlier part of our decision, certain aspects, namely, (i) interception of the vehicle at the instance of the accused, (ii) the presence of the accused at the place of occurrence along with accused No. 2, (iii) the direction given by the accused to PW-2 to contact accused No. 2 who was standing nearby at Chadarghat, (iv) his presence at the police station in the central room when PW-2 went to meet accused No.2, (v) recovery of tainted currency from accused No. 2; (vi) delivery of documents of the vehicle; and eventually, (vii) non-registration of any case for traffic violation against PW-2, are absolutely clear. The conclusion arrived at by the learned trial Judge which has been concurred with by the High Court that the accused was involved in the commission of the crime cannot be found fault with for the said conclusion is in consonance with the principles stated in the aforesaid pronouncements.

16. Consequently, we do not perceive any flaw in the analysis and the ultimate conclusion arrived at by the learned trial Judge which has been concurred with by the High Court and, accordingly, the appeal, being devoid of merit, stands dismissed.

[1] AIR 1925 PC 1
[2] AIR 1945 PC 118
[3] AIR 1963 SC 174
[4] (2001) 3 SCC 673
[5] (2003) 1 SCC 268
[6] (2006) 12 SCC 64