

A

STATE OF A.P.  
v.  
K. PUNARDANA RAO

SEPTEMBER 3, 2004

B

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

C

*Prevention of Corruption Act, 1988—Sections 13(1) (d) and 13(2)—Respondent prosecuted for demanding and receiving bribe—Complainant examined as PW 1—Conviction by special Judge—Acquitted by High Court on the ground that evidence of PW 1 suspicious—On appeal held—Accused liable to be convicted as defense version is highly improbable and no court of law can accept such a version.*

D

E

Respondent-accused was prosecuted for offences punishable under section 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act 1988. He was working as Commercial tax Officer. It was alleged that he demanded bribe from complainant for extending time for submission of accounts and other documents. A trap was laid by the Anti Corruption bureau and Rs. 20,000 recovered from his possession. His fingers, pyjama and bedcover were found to be positive on chemical test. The Special Judge relying on the evidence of PW 1, the complainant, convicted the accused. The High Court rejecting the evidence of PW1, acquitted the accused. Hence the appeal.

Allowing the appeal, the Court

F

G

HELD : 1. It is proved by satisfactory evidence that PW1, complainant, went to the house of the respondent and the trap party was able to recover the money from his possession. The phenolphthalein test conducted on the hands, pyjama and bed cover of the respondent proved to be positive. The explanation of the respondent that he shook hands with PW1 and thus his hands got contaminated with chemical substance, is highly improbable and no court of law can accept such improbable version. High Court committed a serious error by rejecting the evidence of PW1 and the evidence of the accompanying witnesses of the trap party. [107-D-F; 108-B]

H

2. This being an appeal against acquittal, this court would be slow

in reversing the acquittal, when the High Court has taken a reasonable view of the evidence as adduced by the prosecution; but if there is perverse appreciation of evidence and serious miscarriage of justice, the acquittal of the accused is to be reversed. This is one such case where the high Court failed to appreciate the evidence in the correct perspective. Minor flaws in the prosecution evidence were given undue importance and the impeccable evidence which unmistakably proved the guilt of the respondent was ignored. Therefore, the acquittal of the accused was clearly erroneous and the same is reversed. [108-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 408 of 1998.

From the Judgment and Order dated 1.9.97 of the Andhra Pradesh High Court in Crl. A. No. 1222 of 1994.

Guntur Prabhakar for the Appellant.

Jaspal Singh and D. Mahesh Babu for the Respondent.

The Judgment of the Court was delivered by

**K.G. BALAKRISHNAN, J. :** This is an appeal preferred by the State of Andhra Pradesh against the acquittal of the respondent who was convicted by the Special Judge for SPE and ACB cases, Nellore, for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The respondent was working as a Commercial Tax Officer at Naidupet from 13.7.1991 to 22.8.1992. The de-facto complainant Badri Audhiseshiaiah was the proprietor of two firms, by name, Sri Lakshmi Oil Mill & Company and Sri Bharatha Lakshmi Traders at Gudur. The complainant received notices from the respondent asking him to submit 'C' Forms and affidavits and other account books relating to his firm, Sri Bharatha Lakshmi Traders. The prosecution case is that on 8.8.1992 at about 7.00 A.M., the complainant went to the house of the respondent and sought for a month's time for submission of accounts and other documents. The respondent refused to grant time and threatened that the complainant would be visited with penalty in case he failed to submit the books of accounts and other documents in time. Complainant made repeated requests and then the respondent agreed to extend the time provided the complainant paid him Rs.

A 25,000 as bribe. The complainant said that the amount demanded was a huge amount and, therefore, the respondent reduced the amount to Rs. 20,000 and wanted the complainant to pay the amount on the next day. The complainant on 8.8.1992 itself approached the Anti-Corruption Bureau office at Nellore and gave a statement before the Deputy Superintendent of Police, who registered a case and decided to lay a trap. On 9.8.1992, at about 8.00 A.M., the complainant went to the house of the respondent and gave him Rs. 20,000. Trap party immediately intervened and Rs. 20,000 was recovered from the possession of the respondent Officer. On being subjected to chemical test, the fingers of the respondent were found positive and the pyjama allegedly worn by the respondent -Officer was also found to be positive on chemical test. On the side of the prosecution, 5 witnesses were examined and Exhs. P1 to P25 and M.Ps. 1 to 10 were marked. The complainant was examined as PW 1. He deposed that he had met the respondent on 8.8.1992 when the latter demanded Rs. 25,000 and on his request the amount was reduced to Rs. 20,000/- and that he paid that amount to the respondent on the next day. On the side of defence, DW 1 to DW 5 were also examined. The evidence of PW 1 was accepted by the Special Judge.

E The High Court in appeal rejected the evidence of PW 1 and held that it was suspicious. The defence of the respondent was that on 8.8.1992, he was not at Nellore and that he had gone to Chirala and attended the Panchayat at the instance of DW 3 Major D. Samuel in Chirala. The respondent also contended that on chemical test his fingers were found to be positive only as he had shaken hands with PW-1 and his pyjama pockets were also contaminated with chemical substance as a mediator of the trap party had searched his pockets for the tainted money.

F The learned Single Judge held that there were certain discrepancies in the evidence of PW 1. It was noted that the complainant received notice in respect of M/s. Sri Lakshmi Oil Mill & Company whereas the assessment was in respect of M/s. Sri Bharatha Lakshmi Traders. PW 1 claimed that he was the proprietor of the M/s. Bharatha Lakshmi Traders as well as Shri Lakshmi Oil Mill & Company. Admittedly, the notices were issued by the respondent to the complainant. Whether the assessment related to M/s. Sri Lakshmi Oil Mill & Company or M/s Bharatha Lakshmi Traders is inconsequential, as the assessment of both these concerns had to be finally settled by the respondent Officer. The High Court also was of the view that the turnover of M/s. Sri Bharatha Lakshmi Traders was only Rs. 1,55,750;

therefore, the tax payable was only Rs. 6000 or Rs. 7000 and the complainant could not have agreed to pay Rs. 20,000 as bribe. But it has come in evidence that the total annual turnover of M/s. Bharatha Lakshmi Traders, which was also a concern of the complainant, was Rs. 30-40 lakhs. The whole question was whether the evidence of PW 1 could be relied on. According to the respondent, the complainant had visited his house in the early morning of 9.8.1992 for some work and sought time for submitting account books and the respondent asked him to come to his office. Thereafter, his servant DW-4 found a bundle of notes lying on the sofa set. DW-4 immediately told the respondent about the same whereupon the respondent instructed DW-4 to go and find out whether the complainant had gone and to give him back the money he had left. DW-4 went out and found that the complainant had already left the place and, therefore, he gave the money to the respondent who kept the same underneath the pillow in his bedroom. The explanation offered by the respondent is highly improbable. DW-4 gave evidence in support of the defence set up by the respondent. But his evidence was not at all reliable and even the High Court found that the evidence of DW-4 did not inspire confidence.

In this case, it is proved by satisfactory evidence that PW 1 went to the house of the respondent and the trap party was able to recover the money from the possession of the respondent. The phenolphthalein test conducted on the hands, pyjama and bed cover of the respondent proved to be positive. The explanation of the respondent that he shook hands with PW-1 and thus his hands got contaminated with chemical substance, is highly improbable.

According to the respondent, he had no prior appointment with PW 1 and how Rs. 20,000 happened to be in his possession is not satisfactorily explained. The defence version supported by the evidence of DW-4 is highly improbable and no court of law can accept such improbable version. The alibi set up by the respondent that on 8.8.1992, he was not in Naidupet, also is not free from suspicion. The examination of railway officials proved that the respondent had travelled from Naidupet to Chirala in Hyderabad Express. The respondent had no reservation tickets and he stated that he had produced two tickets with certain specified number. How he could have remembered the number of tickets creates some doubt. Moreover, there is nothing on record to show that the respondent had availed leave on 7.8.1992, the day on which he is alleged to have left Naidupet. DW-4 gave the evidence to the effect that he had received a leave letter from the

A respondent to be handed over to an employee working in his office, but in fact he did not hand over any such letter. It is important to note that there was no enmity alleged against PW-1. He is an independent witness having two business concerns and the matters relating to tax on the said two firms come within the jurisdiction of the respondent Officer.

B The High Court committed a serious error by rejecting the evidence of PW 1 and the evidence of the accompanying witnesses of the trap party. The recovery of the tainted money from the respondent coupled with the evidence of PW 1 clearly establishes that the respondent did receive a bribe and thus committed the offence under section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The defence evidence adduced by the respondent was not able to cast any suspicion on the prosecution case.

D We are quite aware that this being an appeal against acquittal, this Court would be slow in reversing the acquittal, when the High Court has taken a reasonable view of the evidence as adduced by the prosecution; but if there is perverse appreciation of evidence and serious miscarriage of justice, the acquittal of the accused is to be reversed. This is one such case where the High Court failed to appreciate the evidence in the correct perspective. Minor flaws in the prosecution evidence were given undue importance and the impeccable evidence which unmistakably proved the guilt of the respondent was ignored. Therefore, we are of the view that the acquittal of the accused was clearly erroneous and the same is reversed. We find the respondent guilty of the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. On each count, the appellant is sentenced to undergo imprisonment for a period of one year. The sentence on both counts shall run concurrently. The cash amount of Rs. 20,000 recovered during the course of investigation shall be returned to PW 1.

G The appeal is allowed accordingly.

K.G.

Appeal allowed.