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P. PARASURAMI REDDY

v.

STATE OF A.P.

(Criminal Appeal No. 462 of 2003)

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AUGUST 2, 2011

[V.S.SIRPURKAR AND T.S.THAKUR, JJ.]

PREVENTION OF CORRUPTION ACT, 1988:

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ss. 7 and 13 (1) (d) r/w s. 13 (2) – Conviction by trial court for demanding and taking illegal gratification – Upheld by High Court – HELD: Prosecution has not been able to prove that the accused had fixed the time and place to receive the money – As per the complainant, when he approached the accused on 12.1.1994, he was driven away by the accused –

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There is no evidence as to what happened thereafter – Besides, the treated currency notes could not be found out nor is there any explanation for the same – The only circumstance that the test of fingers of accused was positive would not be sufficient to convict him – Accused given benefit of doubt and acquitted accordingly.

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The appellant-accused was prosecuted for committing offences punishable u/ss 7 and 13 (1) (d) read with s. 13 (2) of the Prevention of Corruption Act, 1988.

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The prosecution case was that the appellant, who was working as the Mandal Development Officer, demanded a bribe of Rs. 500/- from the complainant on 31.12.1993 for releasing the loan amount granted to him for digging a community irrigation well. The demand was reiterated

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on 6.1.1994. On 11.1.1994, the complainant approached the Superintendent of Police, Anti Corruption; a trap was laid and the accused was apprehended on 12.1.1994. The trial court convicted the accused of the offences charged

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and the High Court upheld the conviction. Aggrieved, the accused filed the appeal.

Allowing the appeal, the Court

HELD: 1.1 Considering the overall circumstances, the prosecution has not been able to prove that the accused had fixed the time and place to receive the money. The dates 31.12.1993, 6.1.1994 and 11.1.1994 mentioned in the complaint are rather speaking. It is further admitted in the evidence of the complainant (PW1) that on 11.1.1994, when the accused was tried to be approached, he was not found present in his office. It was, therefore, that the accused was approached on the second day i.e. on 12.1.1994. [Para 8] [661-E-G]

1.2 As per the complainant, when he approached the accused on 12.1.1994, he was driven away by the accused. The complainant then remained silent as to what happened when he was turned away by the accused on his first meeting with the accused in his office. This circumstance creates doubt. There is no evidence to suggest as to what transpired between the accused and the complainant when the accused was first approached by the complainant. [para 8-9] [661-H; 662-A-C-F]

1.3 The second circumstance, which is really suspicious, is not finding of the treated currency notes which were thrown away by the accused. It cannot be accepted that a raiding party which consisted of nine persons would not be able to recover the currency notes which were thrown away by the accused in the open space and which were allegedly taken away by the members of public. There is absolutely no evidence given by the investigating officer (PW-9) as to what efforts he made to find out the currency notes. [para 9] [662-E-G].

1.4 Both the courts below seem to have been

A impressed by the chemical test of the fingers of the
accused, which would not be sufficient to convict the
accused. It could have been the possibility that the
complainant had touched the currency notes and had
shaken hand with the accused or it could be that any one
B of the investigating officer or the member of the raiding
party had touched the fingers of the accused. That
circumstance itself cannot be ruled out. The accused is,
therefore, given the benefit of doubt and accordingly
acquitted. [para 10-11] [663-B-D]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 462 of 2003.

From the Judgment & Order dated 12.08.2002 of the High
Court of Andhra Pradesh at Hyderabad in Criminal Appeal No.
D 1071 of 1996.

R. Sundervardhan, T. Anamika for the Appellant.

I. Venkatanarayana, D. Mahesh Babu, Ramesh Allanki, V.
Pattabhi Ram, Savita Dhanda for the Respondent.

E The Judgment of the Court was delivered by

SIRPURKAR, J. 1. The present appeal is filed by the
appellantaccused who was found guilty by the trial court for the
offences punishable under Sections 7 and 13(1)((d) read with
Section 13(2) of Prevention of Corruption Act (hereinafter
F referred to as "The Act").

2. The story of the prosecution in short is as under:-

G The complainant had applied for loan for digging a
community irrigation well in his land and for that purpose, he
was sanctioned a loan of Rs. 23,400/-. The complainant was
paid Rs. 19,240/- on furnishing evaluation certificates and the
remaining balance was due. The accused-appellant, who was
H working as Mandal Development Officer, was dealing with the

implementation of the scheme by allotting necessary amounts from time to time. It is the case of the complainant that when he approached the accused for the payment of the remaining amount and also for sanction for installing a electric motor near the well, the accused demanded Rs. 500/- as bribe. According to the complainant, this happened on 31.12.1993 at the office of accused. The complainant again approached the accused on 6.1.1994. However, the demand was again reiterated by accused. Therefore, on 11.1.1994 the complainant approached Superintendent of Police, Anti Corruption Bureau, Tirupati-PW9 and gave a report to this effect. Thereupon, PW-9 asked the complainant -PW1 to bring Rs. 500/- which were treated with phenolphthalein powder. Thereafter, the raiding party reached the office of accused at 4.50 p.m. However, up to 7.00 p.m. the accused was not found present in the office. Therefore, not finding the accused in his office, the raiding party returned to the office of PW9. The shirt in which the currency notes were kept was kept in the office of the Investigating Officer.

3. It is further the case of the complainant that next day on 12.1.1994, the raiding party started from the office of PW-9 at about 9 a.m. and reached the office of accused by 10.00 a.m.. On seeing the complainant, who alone went to the office of the accused, the accused asked him as to whether he has brought the bribe amount. On this, the complainant gave the money to accused who took the same with his right hand and kept the same in his right hip pocket. The complainant came out of the office and gave the agreed signal. On getting signal from complainant, raiding party immediately rushed towards the accused. They noticed accused also coming out of office room. PW9 then apprehended the accused. On disclosing the identity by PW9, the accused threw the currency notes in the open ground towards the public and shouted "take away, take away". When the right hand fingers and back side pocket were subjected to sodium carbonate test, the solution turned pink. Interestingly, the currency notes of Rs. 200/- found from the open space, which were claimed by the accused as his own,

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A were returned to him by PW9

4. Be that as it may, on this basis, the investigation started and a charge-sheet was filed against the accused. The accused claimed that he never demanded and had never accepted the bribe money.

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5. The trial court did not accept the defence of the accused. He was convicted and sentenced for the offences punishable under Sections 7 and 13(1)((d) read with Section 13(2) of Prevention of Corruption Act The appeal against the conviction was also dismissed by the High Court. Hence, the appellant is before us.

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6. Mr. S. Sunderavardhan, learned senior counsel appearing for the appellant very strenuously urged before us that this case is full of doubts. He points out that very strangely, there is nothing on record to corroborate as to what transpired between the accused and the complainant when the complainant allegedly approached the accused to give him the bribe. Learned counsel further points out that there is no evidence except that of the complainant to suggest that when the complainant approached the accused, he actually demanded the money and in pursuance to that demand, the complainant paid him the money. The counsel urged that there was no corroboration to the evidence of complainant. The second contention is that there is enough gap between the time of bribe demanded and paid. Though the money was demanded as back as on 31.12.1993, there is nothing on record to suggest that any time or place to accept the money was fixed in any manner. Learned counsel further points out that though the accused was approached by the complainant on 6.1.1994, he never made any disclosure about the bribe. Learned counsel further points out that on 11.1.1994 when the complainant along with the raiding party reached the office of accused, he was admittedly not present in the office. There was no prior commitment between the accused and the complainant fixing the time and place for receiving the bribe. This, according

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to the learned counsel, is a suspicious circumstance. He further points out that it is very strange that no one was present to hear as to what transpired between the accused and the complainant when bribe was paid and to add further chaos to the prosecution story, there was no seizure of the treated currency notes either. Learned counsel wonders as to how it could have happened that the currency notes, which were given by the complainant to accused, could not be recovered.

7. Mr. I. Venkatanarayana, learned senior counsel appearing for the respondent-State supported the concurrent judgments of the courts below and contended that the findings of facts were concluded by the courts below. Mr. Venkatanarayana points out that there was no reason for the complainant PW-1 to falsely implicate the accused. In fact, that was also no reason why the investigating agency, particularly PWs 4, 6 & 9 should be disbelieved. According to Mr. Venkatanarayana, the fact that money was accepted by the accused stands proved on the basis of sodium carbonate test which was done on the right hand fingers and the back side pocket of the accused.

8. Considering the overall circumstances, we do feel that the prosecution has not been able to prove that the accused had fixed the time and place to receive the money. The dates 31.12.1993, 6.1.1994 and 11.1.1994 mentioned in the complaint of the complainant are rather speaking. It is further admitted in the evidence of PW1- complainant that on 11.1.1994, when the accused was tried to be approached, he was not found present in his office. It was, therefore, that the accused was approached on the second day i.e. on 12.1.1994. what surprises us is that when two panchas were present in the raiding party and if one of them had accompanied the complainant and noted the conversation between the complainant and the accused, that would have given a definite corroboration to the version of the complainant. But that did not happen. Further even as per the complainant, when he

A approached the accused on 12.1.1994, he was driven away by the accused. In his cross examination, the complainant states as under:

B "When I went there the accused on seeing me became irritated and asked me to go away and that I need not approach him"

C 9. Though thereafter the complainant asserted that the accused demanded bribe from him. It is rather strange that the complainant was driven out of the room when he first approached the accused. The complainant then remained silent as to what happened when he was turned away by the accused on his first meeting with the accused in his office. This circumstance, according to us, creates doubt. If the accused had to accept the bribe, he would never have driven away the complainant when he was approached by the complainant in his office. When both of them were alone in the office of accused, that would have been the best opportunity for the accused to accept the bribe if there was any such demand on his behalf and if there was any such transaction. In short, there is no evidence to suggest as to what transpired between the accused and the complainant when the accused was first approached by the complainant. The second circumstance, which is really suspicious, is not finding of the treated currency notes which were thrown away by the accused. We cannot imagine that a raiding party which consisted of nine persons would not be able to recover the currency notes which were thrown away by the accused in the open space and which were allegedly taken away by the members of public. There is absolutely no evidence given by the investigating officer PW9 as to what efforts he did to find out the currency notes. The only explanation which has come out from the evidence of investigating officer is that it was not possible. In his cross-examination, PW 9 stated as under:

H "We did not surround the people at that place as there was no possibility. I did not subject the amount 200 to any

chemical test. It is not true to say that I did not seize Rs. 200 from any vacant space and that the said amount is in the pocket of accused. I returned Rs. 200 as it is his personal money." A

10. This was rather strange. Learned counsel appearing for the State very heavily relied on that circumstance. That circumstance by itself may not be able to establish that money was demanded and it was accepted as bribe. It could have been the possibility that the complainant had touched the currency notes and had shaken hand with the accused or it could be that any one of the investigating officer or the member of the raiding party had touched the fingers of the accused. That circumstance itself cannot be ruled out. B C

11. We have seen the judgments of the courts below wherein the sole evidence of the fingers being soiled in sodium carbonate turned pink has been relied upon. Both the courts below seem to have impressed by this situation alone. We do not feel it sufficient to convict the accused on this evidence alone and we would choose to give him the benefit of doubt. D

12. The appeal is allowed. The appellant is on bail. His bail bonds are discharged. E

R.P.

Appeal allowed.