The State Of Gujarat vs Navinbhai Chandrakant Joshi on 17 July, 2018

Equivalent citations: AIR 2018 SUPREME COURT 3345, 2018 CRI LJ (NOC) 251, (2018) 2 ORISSA LR 714, (2018) 3 BOMCR(CRI) 618, (2018) 3 CRILR(RAJ) 734, (2018) 72 OCR 367, (2018) 9 SCALE 34, (2018) 2 UC 1418, 2018 (3) SCC (CRI) 730, (2018) 3 PAT LJR 365, (2018) 3 CURCRIR 226, (2018) 2 ALD(CRL) 477, (2018) 3 ALLCRILR 867, (2018) 189 ALLINDCAS 170 (SC), (2018) 3 JLJR 341, 2018 (9) SCC 242, 2018 (4) KCCR SN 439 (SC), 2019 (1) GLR SN 272 (SC)

Author: R. Banumathi

Bench: Chief Justice, R. Banumathi, Navin Sinha

RE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.895-896 OF 2018
(Arising out of SLP(Crl.) Nos.8259-60 of 2016)

THE STATE OF GUJARAT

Versus

NAVINBHAI CHANDRAKANT JOSHI ETC. ..

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. These appeals arise out of the judgment dated 16.04.2015 passed by the High Court of Gujarat in Criminal Appeal Nos. 477-78 of 2000 in and by which the High Court reversed the verdict of conviction passed by the trial court in Special (ACB) Case No.10 of 1992 and thereby acquitting the respondents under Section 7 and Section 13(1)

(d) of the Prevention of Corruption Act, 1988 ('the Act').

3. Briefly stated case of the prosecution is that accused No.1/respondent No.2 – J.D. Patel was working as a Junior Clerk in Non-Agriculture Department and accused No.2/respondent No.1 –

Navinbhai Chandrakant Joshi (Navinbhai) was also working in the same department. The complainant-Bhagwandas (PW-1) is a businessman dealing in the business of sugar as a wholesale retailer. The complainant/PW-1 was desirous of starting a new firm by name Purvi Monomal Pvt. Ltd. for manufacturing of acrylic monomal and for this purpose, he has purchased a plot at Village Chhatral from one Sandeep Agrawal and Manoj Agrawal. The agreement to sell was executed in December, 1990 and the sale deed was executed in March, 1991. Though the original owners of the plot had got the plot converted into non-agricultural plot for different purpose, PW-1 had to place the revised plan for necessary Non-Agricultural permission.

4. It is the case of PW-1 that accused No.1-J.D. Patel used to time and again assure PW-1 that he would see to it that the necessary permission is approved for the revised plan of PW-1. On 27.03.1991, PW-1 learnt through accused No.1-J.D. Patel that the revised plan of PW-1 was not accepted and his application was rejected. On the direction of Taluka Development Officer (TDO), PW-1 paid a fine of Rs.368.30 on 02.04.1991 in the office of Gram Panchayat, Chhatral and the receipt was produced before the TDO. At that time, PW-1 requested accused No.1-J.D. Patel with whom the file of PW-1 used to remain to ensure that the matter is expedited at the earliest and necessary permission is accorded. At that point of time, accused No.1- J.D. Patel had demanded Rs.1,000/- for expediting the matter and ultimately it was settled for Rs.500/-. Accused No.1-J.D. Patel told PW-1 that he should pay him Rs.500/- on 03.04.1991 before recess hours and after he receives the money, he would see to it that necessary order of permission is passed in favour of PW-1. PW-1 approached the ACB Office and lodged the complaint against the accused. After registration of the case and after following the procedural formalities, a trap was arranged. On 03.04.1991, PW-1 went with PW-3-Devendra Kumar to accused No.1-J.D. Patel. Accused No.1-J.D. Patel showed accused No.2-Navinbhai Joshi to PW-1 and asked PW-1 to give the money to accused No.2- Navinbhai Joshi in the gallery. PW-1 paid the money to accused No.2- Navinbhai Joshi who kept it in his left side shirt pocket and went near accused No.1-J.D. Patel and sat there. On showing the pre-arranged signal, the police party came inside and the currency notes were seized from accused No.2-Navinbhai. On throwing the ultra violet light on the shirt of accused No.2-Navinbhai Joshi, white colour of light blue light of anthracene powder could be seen on the left side pocket of the shirt worn by accused No.2-Navinbhai. Likewise, upon throwing of ultra violet light on the hands of accused No.1-J.D. Patel, white shining of light blue colour of anthracene powder could be seen on the four fingers of right hand of accused No.1. After completion of investigation, charge sheet was filed.

5. To prove the guilt of the accused, prosecution has examined six witnesses and produced documentary evidence. Upon consideration of oral and documentary evidence, the trial court held that the demand and acceptance of the illegal gratification was proved by the prosecution by the evidence of PWs 1 and 3 and also by the presence of anthracene powder in the shirt pocket of accused No.2-Navinbhai and the right hand of accused No.1-J.D. Patel. The trial court convicted both accused Nos. 1 and 2 under Sections 7 and 13(1)(d) of the Act and sentenced each of them to undergo rigorous imprisonment for one year and two years respectively and also imposed fine with default clause.

6. Being aggrieved, the accused preferred appeals before the High Court. The High Court, by the impugned judgment, reversed the judgment of the trial court by holding that there was no recovery from accused No.1-J.D. Patel and the demand and acceptance by the accused persons has not been proved by the prosecution and acquitted the accused. Being aggrieved, the State has preferred these appeals, challenging the correctness of acquittal.

7. We have heard Ms. Hemantika Wahi, learned counsel appearing on behalf of the State of Gujarat and Mr. Parthiv Goswami, learned counsel appearing on behalf of the respondents. We have perused the impugned judgment and also the judgment of the trial court and other materials placed on record.

8. It is well-settled that to establish the offence under Sections 7 and 13(1)(d) of the Act, particularly those relating to the trap cases, the prosecution has to establish the existence of demand as well as acceptance by the public servant. In B. Jayaraj v. State of A.P., (2014) 13 SCC 55, it was held as under:-

> "7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma v. State of A.P. (2010) 15 SCC 1 and C.M. Girish Babu v. CBI (2009) 3 SCC 779."

9. In the present case, demand of the money by accused No.1-J.D. Patel and acceptance of the bribe amount by accused No.2-Navinbhai at the behest of accused No.1-J.D. Patel is proved by the evidence of PWs 1 and 3. In his evidence, PW-1 had clearly stated about the demand by accused No.1-J.D. Patel for expediting the matter regarding the approval of revised plan for Non-Agricultural permission. PW-1 further stated that when he met accused No.1-J.D. Patel on 03.04.1991, accused No.1-J.D. Patel told him that it would not look proper if he takes the amount from PW-1 in office and showed him accused No.2-Navinbhai and asked PW-1 to give the money to him. PW-1 further stated that he went to the gallery and gave muddamal currency notes to accused No.2-Navinbhai. Thereafter, accused No.2-Navinbhai had gone near accused No.1-J.D. Patel and sat down. On showing the pre-arranged signal, the police team went inside and questioned accused Nos.1 and 2. On search of accused No.2-Navinbhai, muddamal currencies were recovered from the left side shirt pocket. Throwing light of ultra violet lamp had shown presence of anthracene powder in the left side shirt pocket of accused No.2-Navinbhai. Likewise, throwing light of ultra violet lamp on the hands of accused No.1-J.D. Patel shown the presence of anthracene powder. From the evidence of PW-1, demand by accused No.1-J.D. Patel and accused No.2-Navinbhai is proved by the prosecution. The same is corroborated by the test of the ultra violet light showing the presence of anthracene powder on the shirt worn by accused No.2-Navinbhai and the right hand of accused No.1-J.D. Patel. Evidence of PW-1 is corroborated by the evidence of PW- 3-Devendra Kumar. The trial court recorded the findings that the evidence of PWs 1 and 3 is consistent and they are reliable

witnesses. Upon appreciation of evidence, adduced by the prosecution, the trial court convicted accused Nos. 1 and 2.

10. The High Court acquitted the accused on the ground that there was no recovery from accused No.1-J.D. Patel and that the demand by the accused persons has not been established by the prosecution. The High Court took the view that accused No.2-Navinbhai had no idea for what purpose the money was given to accused No.1-J.D. Patel by PW-1 and therefore, it cannot be said that accused No.2-Navinbhai had accepted the bribe amount upon demand to PW-1. The High Court was not right in brushing aside the evidence of PW-1 who has clearly stated that accused No.1-J.D. Patel demanded bribe of Rs.1,000/- and the same was settled for Rs.500/- for expediting the matter for conversion of the plot for non-agricultural purpose. Recovery of the tainted currency notes from accused No.2-Navinbhai and the presence of anthracene powder in the right hand of accused No.1-J.D. Patel and the pocket of the shirt of accused No.2- Navinbhai clearly show that they acted in tandem in the demand and acceptance of the bribe amount. When the demand and acceptance of illegal gratification has been proved by the evidence of PWs 1 and 3, the High Court was not right in holding that the demand and acceptance was not proved. The findings of the trial court did not suffer from any infirmity and the High Court was not justified in setting aside the conviction of the accused.

11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In C.M. Girish Babu v. C.B.I. Cochin, High Court of Kerala (2009) 3 SCC 779, this Court held as under:-

> "21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accuse charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.....
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> 22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt..." Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.

12. In the case in hand, the accused have not offered any explanation to rebut the presumption under Section 20 of the Act. On the other hand, from the evidence of PW-1 that accused No.1 demanded the bribe appears to be natural. The application for approval of revised plan was earlier rejected. When the complainant and his advocate met TDO and on whose direction PW-1 has paid the requisite fine amount, the file has to necessarily move. It was at that point of time accused No.1 demanded bribe amount from PW-1. While appreciating the evidence, the High Court should have given proper weight to the views of the trial court as to the credibility of all evidence of PWs 1 and 3.

When the findings recorded by the trial court is based upon appreciation of evidence, the High Court was not right in reversing the judgment of the trial court.

13. In so far as the sentence of imprisonment is concerned for conviction under Section 13(1)(d) of the Act, the trial court imposed sentence of imprisonment of two years upon each of the accused. The occurrence was of the year 1991 that is about 27 years ago. Considering the passage of time, we deem it appropriate to reduce the sentence of imprisonment of two years to the statutory minimum imprisonment of one year.

14. In the result, the impugned judgment of the High Court dated 16.04.2015 in Criminal Appeal Nos.477-78 of 2000 is set aside and these appeals are allowed affirming the conviction of the accused Nos.1 and 2 under Section 7 and Section 13(1)(d) of the Act. The sentence of imprisonment under Section 13(1)(d) of the Act imposed upon each of the accused is reduced from two years to one year. The respondents/accused Nos.1 and 2 shall surrender themselves to serve the remaining sentence within two weeks from today, failing which, they shall be taken into custody.

.....J. [RANJAN GOGOI] ..... J. [R. BANUMATHI] New Delhi;

July 17, 2018