

C.M.Sharma vs State Of A.P. Th. I.P on 25 November, 2010

Equivalent citations: AIR 2011 SUPREME COURT 608, (2011) 48 OCR 225, 2011 AIR SCW 297, (2011) 97 ALLINDCAS 150 (SC), 2011 CRI. L. J. 975, AIR 2011 SC (CRIMINAL) 23, (2011) 2 PAT LJR 21, 2010 (15) SCC 1, (2011) 2 MAD LJ(CRI) 303, (2011) 1 RECCRIR 183, (2010) 4 CURCRIR 412, (2010) 12 SCALE 381, (2011) 1 UC 26, (2011) 1 JCR 30 (SC), (2011) 2 CHANDCRIC 6, (2010) 4 CRIMES 347, 2013 (2) SCC (CRI) 89, 2011 (1) KCCR SN 33 (SC), 2011 (73) ACC (SOC) 22 (PAT)

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Bench: Chandramauli Kr. Prasad, Harjit Singh Bedi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.232 OF 2006

C.M. SHARMA

.... APPELLANT

VERSUS

STATE OF A.P. TH. I.P.

..... RESPONDENT

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

1. The appellant, at the relevant time was posted as Deputy Chief Engineer, Railway Electrifications, South Central Railway. He was put on trial for commission of the offences under Section 7 and 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred 'the Act'). Special Judge for CBI cases at Visakhapatnam by judgment and order dated 15th of February, 1999 passed in C.C. No. 17 of 1997 held him guilty of the aforesaid offences and sentenced him to undergo rigorous imprisonment for a period of one year and fine of Rs. 2,000/-, in default to suffer simple imprisonment for three months for the offence under Section 7 of the Act. The appellant was further sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2,000/-, in default to suffer simple imprisonment for three months for the offence under Section 13 (1) (d) (ii) read with Section 13 (2) of the Act. Both the substantive sentences were directed to run concurrently.

2. Aggrieved by the same he preferred appeal and High Court by its judgment dated 29th of July, 2005 passed in Criminal Appeal No. 499 of 1999 had affirmed the conviction and sentence of the appellant and dismissed the appeal. Aggrieved by the same the appellant has preferred this appeal with the leave of the court.

3. According to the prosecution, the appellant at the relevant time was posted as Deputy Chief Engineer, Railway Electrification, South Central Railway, Vijaywada. PW-1, M. Venka Reddy (hereinafter referred to as the 'contractor'), during the years 1992-1994, was awarded the contracts of railway electrification between railway stations Bhongir and Sanathnagar and Maulali and Sanathnagar bypass under agreement No. 29 dated 3.4.1992 and agreement No. 41 dated 20.11.1992 respectively. Further by agreement No. 3 dated 18th October, 1994 work to provide height gauges at railway crossing between Vijayawada and Gannavaran was awarded to him. According to the prosecution the contractor completed the works to the satisfaction of the railway authorities and in respect of the works covered by aforesaid agreement nos. 29 and 41 he received the payment. The contractor also completed the work covered under agreement No. 3 dated 18.10.1994 aforesaid in the month of March, 1995. The appellant was the competent authority to pass the bills and accordingly the contractor met him on 19.4.1995 and requested to finalise the bill. It is alleged that the appellant told to the contractor that he had passed the final bill and demanded Rs. 3,000/- as illegal gratification and reminded the contractor that he did not pay any amount in respect of earlier bills. The contractor expressed his inability to pay the illegal gratification but the appellant insisted and asked him to bring the money on 20th April, 1995. The contractor was not willing to pay the illegal gratification and accordingly he met the officials of the Central Bureau of Investigation and gave a written report (Exh. P-1 dated 19th of May, 1995). Being satisfied with the bonafide of the allegation, a pre-trap exercise was undertaken by PW-7, S.B. Shankar in which PW-2, G.T. Kumar besides the contractor participated. PW-2, G.T. Kumar at the relevant time was posted as Inspector of Central Excise and on the instruction of office Superintendent, he had gone to participate in the pre-trap exercise. It is alleged that the contractor alongwith the shadow-witness PW-2, G.T. Kumar went to the office of the appellant but he asked the shadow-witness to go out of the chamber. Shadow witness left the chamber. However, contractor brought the shadow witness in the chamber and explained to the appellant that he is his financier. Despite that shadow-witness was asked to leave the chamber and he went out. Thereafter appellant demanded the money and the contractor handed over the tainted money to him, which he received from his right hand and kept in right side pocket of the trouser. A signal was given, whereupon PW-7 S.B. Shankar, the Inspector along with his team entered in the chamber, apprehended the appellant and conducted sodium carbonate test on the fingers of both the hands and right trouser pocket of the appellant, which turned pink. The tainted notes were lying on the floor of the office, which were recovered.

4. After usual investigation, the Investigating Agency submitted the charge-sheet and the appellant was put on trial, where he abjured his guilt and claimed to be tried. In order to bring home the charge, prosecution had examined altogether seven witnesses and got exhibited a large number of documents. Out of the witnesses examined by the prosecution PW-1, M. Venka Reddy is the contractor, whereas PW-2, G.T. Kumar is a shadow witness, PW-7, S.B. Shankar, at the relevant time was Inspector of the Central Bureau of Investigation, who had conducted the pre-trap exercise and laid the trap in which appellant was apprehended after he had accepted the bribe. The plea of

the appellant in his statement under Section 313 of the Code of Criminal Procedure is of false implication due to enmity with the contractor. In order to prove the defence, he had examined DW-1, Bodh Raj Sharma, Chief Administrative Officer, Construction as defence witness.

5. The trial court on appreciation of the evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt. While doing so it considered the defence version and rejected the same. Accordingly the appellant was convicted and sentenced as above by the trial court, which has been affirmed in appeal by the High Court.

6. Mr. Nagendra Rai, learned Senior Counsel appearing on behalf of the appellant submits that there being strained relationship between the appellant and the contractor it is highly improbable that he would demand the illegal gratification from him. In this connection he has drawn our attention to the evidence of the contractor in his cross- examination wherein he had stated that as his bill was pending in the office of the accused, he entertained an idea to make complaint against the appellant. Our attention also has been drawn to the evidence of DW.1, Bodhraj Sharma and the letter dated 11.3.1995 (Exh.2) written by the appellant to the Chief Engineer, in which he had stated that since he has flatly refused to clear the bill as per contractor's claim, he had threatened him to rope in some false case. In the aforesaid background, it has been highlighted that demand of illegal gratification alleged to have been made by the appellant is absolutely untrue. In support of the submission reliance has been placed on a decision of this Court in the case of Panalal Damodar Rathi v. State of Maharashtra, 1987 Supp. SCC 266 and our attention has been drawn to the following paragraph of the judgment:

"26. Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard, the court will view the allegation of payment of the bribe to and recovery of the same from the accused with suspicion."

7. We do not find any substance in the submission of Mr. Rai and the decision relied on has no bearing on the facts and circumstances of the case. From the evidence of contractor PW.1, M. Venka Reddy and the shadow-witness PW.2, G.T. Kumar it is evident that both of them entered into the chamber of the appellant. The appellant asked the shadow- witness to go out and PW.2 accordingly left the chamber. However, he was brought back by the contractor stating that PW.2, G.T. Kumar is his financier but the appellant again asked him to go out and within few minutes after PW.2, G.T. Kumar left the chamber appellant demanded the money, whereupon he delivered the tainted notes. Appellant kept them in the right trouser's pocket. After the signal PW.7, S.B. Shanker Inspector of the Central Bureau of Investigation came and sodium carbonate test was conducted on the right hand fingers and the right trousers pocket and the solution turned pink.

8. PW.7, S.B. Shanker, Inspector of the Central Bureau of Investigation had stated in his evidence that on 19th April, 1995 he received a complaint against the appellant of demanding illegal

gratification from the contractor and he conducted a pre-trap proceedings on 20th April, 1995 at about 8 a.m. in the presence of PW.2, G.T. Kumar and others. He has further stated that he laid the trap on the same day at 11.45 a.m. and recovered the tainted currency notes under the office table of the appellant when the appellant had thrown the said notes on being questioned by him. In the face of the specific and positive evidence of these witnesses which cannot be said to be inherently improbable, the plea of the appellant that the prosecution case is fit to be rejected on the ground of improbability does not appeal to us. It is accordingly rejected.

9. As regards the decision of this Court in the case of Nanjudiah (supra) the same does not advance the case of the appellant. Whether the case of the prosecution deserves acceptance or not is decided on appreciation of evidence and no hard and fast rule can be laid in this regard. In the said case the Court on fact did not accept the case of the prosecution. Here in the present case as stated above there does not seem any reason to reject the evidence of the contractor, the shadow-witness and the Inspector who laid the trap.

10. Mr. Rai, then submits that the conviction of the appellant is not fit to be sustained only on the evidence of the contractor without any corroboration. He submits that the contractor is an accomplice and, therefore, before sustaining the appellant's conviction it is essential that his evidence is corroborated by evidence of other witnesses. Reference has been made in this connection to a decision of this Court in the case of Panalal Damodar Rathi vs. State of Maharashtra, (1979) 4 SCC 526 and which attention has been drawn to paragraph 9 thereof which reads as follows:

"9. It will be seen that the version of the complainant that the appellant asked the complainant whether he had brought the money and that the complainant told him that he had and that the appellant asked him to pay the money to the second accused is not spoken to by the panch witness PW 3. According to panch witness on the complainant asking the appellant whether his work will be achieved, the appellant assured him in the affirmative and the appellant told the complainant what was to be given to the second accused. It is significant that PW 3 does not mention about the appellant asking the complainant whether he had brought the money and on the complainant replying in the affirmative asking the complainant to pay the money to the second accused. Omission by PW 3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on."

11. Yet another decision on which reliance is placed is the decision of this Court in the case of Meena (Smt) W/O Balwant Hemke v. State of Maharashtra, (2000) 5 SCC 21 in which it held as follows:

"The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the other panch witness, PW 5 categorically admitted that even as the Inspector of Police, PW 6 arrived, the appellant gave the same version that PW 1 tried to force

into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the prosecution. The contradictory version of PW 1 of the very incident when earlier examined in departmental proceedings renders his testimony in this case untrustworthy. PW 3, the Head Copyist, seems to be the brain behind all this and that PW 1 as well as Jagdish Bokade appear to be working as a group in this affair and despite the blunt denial by PW 3, his closeness to PW 1 and Jagdish Bokade stands well substantiated. All these relevant aspects of the case seem to have been completely overlooked by the courts below."

We do not find any substance in the submission of Mr. Rai. The word accomplice has not been defined under the Evidence Act and therefore presumed to have been used in the ordinary sense. A person concerned in the commission of crime, a partner in crime and associate in guilt is an accomplice. He takes part in the crime and is privy to the criminal intent. In our opinion a witness forced to pay on promise of doing or forbearing to do any official act by a public servant, is not a partner in crime and associate in guilt and therefore can not be said to be accomplice. It has long been rule of practice, which has become equivalent to rule of law, that the evidence of an accomplice is admissible but to be acted upon, ordinarily requires corroboration. Contractor who gave bribe, therefore, can not be said to an accomplice as the same was extorted from him. Reference in this connection can be made to a decision of this Court in the case of Dalpat Singh and another v. State of Rajasthan, AIR 1969 SC 17, in which it has been held as follows:

"We are unable to accept the contention of the learned counsel for the appellants that PWs 1,2,3,4 and 17 and other prosecution witnesses to whose evidence we shall presently refer, should be considered as accomplices and therefore their evidence is required to be corroborated in material particulars before being accepted. On the proved facts, even those who gave illegal gratification to the appellants cannot be considered as accomplices as the same was extorted from them. Though PWs 1,2,4 and 17 can be considered as interested witnesses as regards their evidence relating to trap, as a matter of law, it is not correct to say that their evidence cannot be accepted without corroboration, see State of Bihar v. Basawan Singh 1959 SCR 195 = (AIR 1958 SC

500) (underlining ours)

12. Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the court seeks corroboration in material particulars from other evidence. However in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in all circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker

to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law can not countenance such situation. In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness. Not only this corroboration of the evidence of a witness can be found from the other materials on record. Here in the present case there does not seem any reason to reject the evidence of the contractor PW.1, M. Venka Reddy. His evidence is further corroborated by the evidence of the shadow-witness PW.2, G.T. Kumar. The shadow-witness has stated in his evidence that when he entered in the chamber, appellant was asked by the Inspector as to whether he had received any amount from the contractor, he denied and then removed the currency notes from his trouser's pocket and threw the same. He had further stated that sodium carbonate test was conducted in which the solution turned pink when the appellant's fingers and the right side trouser's pocket were rinsed. From the aforesaid one can safely infer that the evidence of the contractor is corroborated in material particulars by the shadow-witness.

13. In the case of Panalal Damodar Rathi (supra) relied on by the appellant, the version of the complainant was not supported by the Panch witnesses and in the face thereof this Court gave the accused the benefit of doubt, which is not the situation in the present case. Similarly in the case of Meena(supra), faced with contradictory evidence and plea of the accused this Court found corroboration necessary to uphold conviction.

14. Mr. Rai, lastly submits that from the evidence of the prosecution witnesses the worst which can be said against the appellant is that currency notes were recovered from him. That itself, in his submission, does not constitute the offence. He submits that to bring home the charge the prosecution is required to prove beyond reasonable doubt that the accused had demanded the illegal gratification and accepted the same voluntarily. In support of the submission reliance has been placed on a decision of this Court in the case of C.M. Girish Babu v. CBI, Cochin, High Court of Kerala, 2009 (3) SCC 779 and our attention has been drawn to the paragraph 18 of the judgment which reads as follows:

"18. In Suraj Mal v. State,(Delhi Admn.) 1979 (4) SCC 725 this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

Another decision on which reliance is placed is the decision of this Court in the case of State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, (2009) 15 SCC 200 in which it has been held as:

"16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the

amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety."

15. We do not have the slightest hesitation in accepting the broad submission of Mr. Rai that demand of illegal gratification is sine qua non to constitute the offence under the Act. Further mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. In the facts of the present case, we are of the opinion that both the ingredients to bring the act within the mischief of Sections 7 and 13 (1) (d) (ii) of the Act are satisfied. From the evidence led on behalf of the prosecution it is evident that the appellant demanded the money from the contractor as he had passed his bills. There is further evidence that when the contractor went along with the shadow-witness on the date told by the appellant for payment of the bribe, appellant asked the shadow-witness to leave the chamber and thereafter the demand for payment of illegal gratification was made and paid. The positive sodium carbonate test vis-à-vis the fingers and right trousers pocket of the appellant go to show that he voluntarily accepted the bribe. Thus there is evidence of demand of illegal gratification and the voluntary acceptance thereof.

16. All the submissions made on behalf of the appellant being devoid of any substance, we do not find any merit in this appeal and it is dismissed accordingly. Appellant is on bail, his bail bonds are cancelled and he is directed to surrender to serve out the remainder of the sentence.

.....J [HARJIT SINGH BEDI]J
[CHANDRAMAULI KR. PRASAD] NEW DELHI NOVEMBER 25, 2010.