

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-254-SB of 2009 (O&M)
Date of Decision:29.5.2015

Om Parkash

....Appellant

Versus

Central Bureau of Investigation (CBI)

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Argued by: Ms. Sharmila Sharma, Advocate for the appellant.

Mr. S.S. Sandhu, Advocate for the respondent.

NAVITA SINGH, J.

1. Om Parkash, who was Sub Inspector at the relevant time, was convicted and sentenced for the offences punishable under Sections 7 and 13 of the Prevention of Corruption Act. During the pendency of the appeal, he died and his legal representatives were impleaded in his place as they wanted to pursue the appeal because if the conviction was allowed to stand, the family would not get the service benefits of the deceased-appellant.

2. The case of the prosecution against the convict was that a complaint was made by Pawan Kumar before the Superintendent of Police, CBI that his vehicles were being used for transportation by Dainik Bhaskar Newspaper and one of the vehicles used to go daily to the Railway Station, Chandigarh. On the relevant day, i.e. 3.1.2005, the vehicle, which was going to Railway Station, had met with an accident in front of the Indian Express Office in Industrial Area, Chandigarh. When the complainant went for bail of the driver, Om Parkash, Sub Inspector demanded an amount of Rs.3500/- for that. The complainant resisted but he was told that the work would be done only if money was paid. He was directed to pay it on the same day at 4.00 pm and in case Om Parkash was not found present, he was directed to pay the money to Constable Sushil Kumar.

3. On the basis of the complaint, a raiding party was organized. Seven currency notes of Rs.500/- each, were given to the complainant, which were sprinkled with phenolphthalein powder.

4. One Gulshan Kumar was instructed to remain with the complainant and he was made a shadow witness who was to give a signal to the police party.

5. The complainant reached the Police Station at about 5.00 pm with the other persons of the team and he was told that Om Parkash would be reaching the Police Station at 6.00 p.m. He then waited outside. At about 6.00 p.m. Om Parkash came and took the complainant inside the Police Station on the first floor. He prepared bail bonds of his own hands and attested the same. He asked for the money which the complainant paid to him. He put the money in the pocket of his jacket and on getting the signal of the shadow witness he was apprehended by the police party. The currency notes were recovered and the hands of the accused were got washed in the sodium carbonate solution, which turned pink.

6. After conducting trial, the court below convicted the deceased-convict and sentenced him to rigorous imprisonment for one year and to pay fine of Rs.2500/- each, for the offences mentioned above.

7. Counsel for the appellant referred to the statements of the prosecution witnesses made before the trial Court and pointed out certain contradictions in order to convince the court that the charges against the appellant were not proved and rather a false case was foisted on him.

8. While making reference to the statement of Ravinder Kumar, PW4 and Pritam Singh, PW8, counsel for the appellant submitted that both the witnesses were declared hostile. Pritam Singh was the driver of the vehicle which had met with an accident. According to him, the accident took place on 2.1.2005 at about 4.00 am and he stated that he was released on bail on the same day at

about 7/8.00 pm. In his cross examination, he maintained that he was released on bail on 2.1.2005 by accused Om Parkash. He stated that in the examination-in-chief and also in the cross examination that Om Parkash had not called him in the Police Station on the next day i.e. on 3.1.2005. He, however, stated that he did not know that FIR was registered on 3.1.2005 at 1.00 p.m.

9. Ravinder Kumar, PW4 also stated that he was in business with Pawan Kumar regarding supply of vehicle to Dainik Bhaskar, Chandigarh and categorically stated that the accident had taken place on 2.1.2005. When the witness reached the Police Station before 4.00 pm, complainant Pawan Kumar was already present there and the accused had got the signature of the witness on the bonds and had set the driver free. Pawan Kumar complainant also stated that the accident had taken place on 2.1.2005 but in his complaint Ex.PW1/1, he mentioned the date on the foot of the complaint as 3.1.2005 and stated that in the morning the accident had taken place. According to that, date of accident should be 3.1.2005. He mentioned in the complaint that Om Parkash had asked him to come on the next day with Rs.3500/- and the date given in the bracket for next day is 3.1.2005. The complainant was thus himself not sure as to what he was complaining about.

10. Counsel for the appellant also pointed out that the complainant stated that earlier the accused demanded Rs.5000/- for releasing Pritam Singh on bail but when the complainant showed his inability, he finally said that the complainant would have to pay Rs.3500/- and told that he should be present in the Police Station at 4.00 pm on 3.1.2005 with the money. The complainant denied that he had said before the police that on his assurance the appellant had released the driver on the night of the accident itself. He was confronted with his statement where it was so recorded. He, therefore, said in his statement (Mark B) that the driver was released on 2.1.2005 itself. Counsel for the appellant

contended that in such event there was no occasion for the appellant to have demanded payment of Rs.3500/- or initially to have demanded Rs.5000/- to be paid on the next day i.e. 3.1.2005. Also the offence was bailable and therefore there was no action occasion for the driver or the complainant to pay bribe for bail.

11. So far as the offence being bailable is concerned, since the bail bonds have to be accepted by the police official(s), possibility of demanding money cannot be ruled out but it has to be seen in the case in hand whether it is proved from evidence that such demand was made or not.

12. Counsel for the appellant submitted that the police official, who conducted search of the appellant, had not offered himself for search and, therefore, planting of evidence could not be ruled out. She then argued that Gulshan Kumar (PW1), who was the shadow witness, stated that at the time the solution was tested by making him touch the currency notes and getting his hands washed in that, merely search of one another was conducted. That was, however, not sufficient because the Investigating Officer was required to offer himself for search to the person, who was to be apprehended i.e. Om Parkash. The witness further stated that he was introduced by the complainant to the accused as surety.

13. It was pointed out by counsel for the appellant that Gulshan Kumar stated in the examination-in-chief that mutual search of one another was conducted before proceeding to the Police Station whereas in the cross examination, he stated that personal search of the complainant and of other members of the team was made but this witness and one Mr. Chadha, who was present with him on the asking of the police i.e. CBI, were not searched. Pritam Singh, driver, who was granted bail, was stated to be present along with the raiding party. However, Pritam Singh denied his presence because he stated that

he was granted bail on 2.1.2005 itself. The witness did not even remember that Pritam Singh had signed the personal bond or not. It is not explained why the shadow witness, who was a Junior Engineer in CPWD, was made surety for Pritam Singh whereas employer i.e. Pawan Kumar was a better person to stand surety for his driver.

14. Counsel for the respondent argued that the discrepancies pointed out by the counsel for the appellant were of no consequence because such discrepancies were bound to occur when the witnesses were examined a long time after the incident. There was no successful rebuttal to the evidence of the prosecution and all the witnesses fully supported the case. The accused could not put up any defence so as to show or infer motive to implicate him falsely. The trial Court passed a well reasoned judgment holding that the charges against Om Parkash stood proved as per law because the veracity of the witnesses could not be shattered in the cross examination. He prayed for dismissal of the appeal.

15. Besides arguing the matter on merits, counsel for the appellant lastly contended that the appellant having died, his family would be on the road and would starve to death in case service benefits are denied to them on account of conviction of the deceased and even for that reason a lenient view may be taken. She relied on a judgment passed by a Single Bench of this Court as Amrik Singh Vs. State of Punjab 2005 (4) RCR (Criminal) 310, where acquittal was made in a bribery case. It was held that corruption cases are to be treated on a different footing so far as the appreciation of evidence is concerned and if conviction takes place in these cases, not only the accused goes to jail but he also loses his livelihood and earns ignominy. Though this Court is not bound to follow the view taken by a Coordinate Bench, yet the view taken in that case is subscribed to.

16. Counsel for the respondent i.e. CBI, per contra, raised a contention that death of the convict would be no ground for acquittal in the case, which otherwise stood proved against him. The courts here are not courts of compassion and there is no scope for emotion to creep in. If the convict was proved to be a corrupt police official, it is the bad luck of the family that they would have to bear the brunt of the consequences.

17. Even if emotion and compassion are kept aside, it can be said from the details given above on the basis of the arguments advanced by counsel for the appellant and other factors that charges against the convict were not proved beyond reasonable doubt. Since the case of the prosecution is weak on merits, then at this stage some part of compassion can play its role and it can be said that in a case, which is not foolproof and charges are not proved beyond doubt, the family should not be deprived of the service benefits of the deceased who lost head of the family and would also lose financially.

18. The order of sentence has become infructuous in view of the death of Om Parkash. The appeal is accordingly allowed setting aside the finding of conviction returned by the trial Court against the deceased-appellant and it is found that he was not guilty of the charges framed against him and for all intents and purposes, he stands acquitted.

(NAVITA SINGH)
JUDGE

29.5.2015
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