

Bombay High Court

The State Of Maharashtra vs Ramesh Yeshwant Baste And Ors on 18 December, 2020

Bench: K.R. Sriram

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.437 OF 2003

The State of Maharashtra) ..Appellant

V/s.

1 Ramesh Yeshwant Baste)
Res:- Marol Police Camp)
Building No.E-16, Room No.15)
Andheri (E) Bombay 400 059)

2 Sandeep Kamlakar Wadaghalkar)
Res: A/6 Triguna Society)
Near Sangita Wadi, Laxmibai)
Nerulkar Path, Dombivali (E), Thane) ..Respondents
(Ori. Accused Nos.1 & 2)

Ms. Anamika Malhotra, APP for State

CORAM : K.R.SHRIRAM, J.

DATED : 18th DECEMBER 2020 ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 29/30-10- 2002 passed by Learned Special Judge, Greater Bombay, acquitting accused no.1 for the offence punishable under Section 7 (Public servant taking gratification other than legal remuneration in respect of an official act), Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act 1988 and acquitting accused no.2 for the offence punishable under Sections 12, 13(2) read with 13(1)(d) of the Prevention of Corruption of Act and Section 109 of Indian Penal Code.

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2 I have to note that the appeal has been admitted by an order dated

30-10-2002 only against accused no.1

3 It is prosecution's case that accused no.1 was working as Asstt.

Inspector of Police at Sakinaka, Police Station. One Vijay Shankar Dube (P.W.-2) who was working as social worker and union leader and Director of Savdhan Group in South-East Mumbai area, had launched a movement against unauthorised constructions by slumlords. P.W.-2 was physically assaulted by 4 unknown persons on 9-7-1993. P.W.-2, therefore, lodged a complaint against 4 unknown persons at Sakinaka Police Station. Accused no.1 being duty officer attended to P.W.-2 and recorded his complaint for the offence under Sections 324 and 114 of IPC. P.W.-2 repeatedly visited the police station and inquired with accused no.1 about the arrest of the absconding accused but no steps were taken by accused no.1 and the police did not arrest any of the attackers.

4 According to P.W.-2, on 22-11-1993 when he visited Sakinaka Police Station he once again enquired about the arrest of those who assaulted him. Accused no.1 is alleged to have told him to give him Rs.2500/- as bribe to arrest those who had attacked him. On 24-11-1993 in the late evening, when P.W.-2 visited Sakinaka Police Station once again, at that time accused no.1 enquired with P.W.-2 as to whether he had brought the money. Therefore, second demand of bribe was made. P.W.-2 after some negotiations persuaded accused no.1 to reduce the demand of Rs.2,500/-

Meera Jadhav 3/13 1.apel-437-03.doc and accused no.1 reduced the amount to Rs.2000/-. P.W.-2 with reluctance agreed to pay the amount of Rs.2000/- on 25-11-1993. P.W.-2, thereafter, went to the bank withdrew Rs.2500/- and decided to lodge complaint against accused no.1 to ACB. P.W.-2 went to ACB where he met police officer Mr. Dal (P.W.-5) and narrated the entire incidence. P.W.-5 recorded the complaint and registered an offence under Section 7 of the Prevention of Corruption Act. Thereafter, pre-trap formalities were completed and panchnama was prepared and on the same day, i.e., 25-11-1993 they proceeded to trap accused no.1.

5 The raiding party stopped their vehicle at some distance from the police station and P.W.-2 and panch Bapuji Nandavadekar (P.W.-1) went ahead. They saw accused no.1 was sitting on a cot in front of the building of police station. Accused no.1 saw P.W.-2, greeted him and enquired who P.W.-1 was. P.W.-2 informed accused no.1 that P.W.-1 was his neighbour and had come to meet some other police officer. Accused no.1 replied by saying that other police officer was not present in the police station and, thereafter asked P.W.-2 whether he had brought what he was told. P.W.-2 told him that he had brought the money as told to him. Accused no.1 thereafter asked P.W.-2 to follow him and took P.W.-2 to the office of accused no.2 in an adjacent building. That was the office of BSES and accused no.2 was an officer working in BSES.

6 According to prosecution, accused no.1 entered the cabin of accused no.2 and accused no.2 was sitting on a chair. Accused no.1 occupied the Meera Jadhav 4/13 1.apel-437-03.doc other chair and P.W.-2 sat on a stool. P.W.-1 also entered the cabin. At that time accused no.1 demanded the money from P.W.-2. P.W.-2 asked accused no.1 whether it was alright to give money in presence of accused no.2, to which accused no.1 replied that it was a regular practice so there was no problem in handing

over money to him. P.W.-2 thereafter handed over the money to accused no.1 who did not accept the money but pointed towards accused no.2 and asked P.W.-2 to give the money to accused no.2. P.W.-2 then handed over the money to accused no.2 and came out of the cabin and gave the agreed signal to P.W.-5. Immediately P.W.-5 alongwith other members of the raiding party entered the cabin of accused no.2 and they apprehended both the accused by holding their wrists. The clothes and hands of the accused were searched under the UV light. But anthracene mark was found only on the fingers and right hand palm and on the left side pant pocket of accused no.2. Thereafter post trap panchnama was prepared, FIR was lodged, investigation commenced and the charge sheet was filed in the Special Court. Sanction was also obtained for prosecuting accused no.1. Defence had admitted all documents except FIR, pre-trap and post trap panchnama. Defence have also admitted the acceptance mentioned by accused no.2 and finding of money with accused no.2. 7 Offence of demand of bribe as per the charge took place on three dates, first on 22-11-1993, second on 24-11-1993 and third on 25-11-1993 just before the raid.

8 P.W.-2 has deposed that when he went to the police station on 22-11-

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9 P.W.-2 claimed to be a social worker, trade unionist and Director of one Savdhan Group and was fighting illegal and corrupt practices in the society. According to P.W.-2, he was visiting the police station regularly from 7-9-1993 to 22-9-1993. The names of his attackers were not known and it is not the case of P.W.-2 that the names of his attackers were known and disclosed to accused no.1 and accused no.1 though he knew who they were, Meera Jadhav 6/13 1.apéal-437-03.doc was avoiding arrest. If according to P.W.-2 that he was socially responsible person, who was fighting corruption in the society, one fails to understand why P.W.-2, when the constable told him to pay bribe, did not take it up with accused no.1. In his evidence, P.W.-2 does not state that he had talk with accused no.1 on 22-11-1993 and 24-11-1993. On 22-11-1993 he does not mention that the discussion with the constable happened in the presence of accused no.1 but on the second date, i.e., 24-11-1993 accused no.1 was present when the constable made demand. But accused no.1 did not talk to P.W.-2. P.W.-2 as a crusader against the corrupt, it is rather strange and unnatural that he did not take up the demand of the constable with accused no.1.

10 The next point is to be considered is the demand by accused no.1 on 25-11-1993 and whether the receipt of money by accused no.2 was pursuant to that demand.

The incident did not take place at one spot but in two spots. The demand was outside the building of Sakinaka Police Station where accused no.1 was sitting on a cot and thereafter in the cabin of accused no.2 in the BSES office, which was adjacent to the Sakinaka Police Station. Both the police station and BSES office are in the same compound as it appears from the evidence of P.W.-2. According to P.W.-2, the incident of paying the illegal gratification happened in the passage of BSES office. But P.W.-1 - panch witness, P.W.-3 - a labourer working in the office of BSES and the Investigating Officer P.W.-5 state the incident took place in the cabin Meera Jadhav 7/13 1.apéal-437-03.doc of the BSES office. According to P.W.-2 and P.W.-1, both went first to accused no.1 who was lying on the cot in front of the building of police station where accused no.1 enquired about money. P.W.-1 says that accused no.1 inquired about him and P.W.-2 introduced that he came for some work with some other police officer. P.W.-1 says that accused no.1 asked P.W.-2 in Hindi whether he had brought what he was told, at which time P.W.-2 answered in Hindi that he had brought it. Thereafter, accused no.1 took P.W.-2 to BSES office. Therefore, in the evidence of P.W.-1 there is no mention about direct demand of money by accused no.1. As regards the actual incident of bribe being accepted, P.W.-1 says that accused no.2 was sitting in the cabin, accused no.1 took a seat near accused no.2 in the cabin, thereafter P.W.-2 asked accused no.1 in Hindi whether he could be OK, if he could give the money in the presence of accused no.2, at which time accused no.1 had stated that accused no.2 was a person in his confidence and thereafter P.W.-2 took out the marked currencies and handed over it to accused no.2 and accused no.2 accepted that money. But P.W.-2 says that in the BSES office one person with beard was present and was sitting on the chair and accused no.1 was occupying the chair next to him and P.W.-2 was standing. P.W.-2 then stated that he told accused no.1 that he has brought the money, at that time accused no.1 told him not to give the money to him but to give it to accused no.2. After which P.W.-2 took out the marked currencies and handed over to that person with beard in BSES office and the said person accepted the money. Therefore, there are certain discrepancies with regard Meera Jadhav 8/13 1.apéal-437-03.doc to the conversation that took place in the evidence of P.W.-1 and P.W.-2 P.W.-2 has stated in his evidence that P.W.-1 was standing at the entrance near the steps of BSES office and he went inside the cabin alongwith accused no.1. But P.W.-1 states that he has gone inside the cabin alongwith P.W.-2. P.W.-3 claims to be present outside the BSES office as he was working as labourer in the BSES office under accused no.2. P.W.-2 also states that only accused no.1 went inside and is silent about the presence of P.W.-1 near the BSES office or cabin of accused no.2. PW.-5 I.O. says accused no.1 and P.W.-2 were inside the BSES cabin and he saw accused no.2 in the cabin and accused no.1 occupied the chair near accused no.2 and P.W.-2 sat on a stool. P.W.-5 also does not speak about the presence of panch in the cabin. In the cross-examination, P.W.-5 says that he did not see the panch entering the cabin. Therefore, except the panch neither P.W.-2 nor P.W.-3 or P.W.-5 state P.W.-1 had entered the cabin when the conversation between P.W.-2 and accused no.1 took place and when P.W.-2 handed over the marked currency to accused no.2. The point, therefore, is apart from P.W.-2 nobody has witnessed the demand and acceptance. Strangely, P.W.-5 says that he saw P.W.-2 has given money to accused no.2 and accused no.2 accepted. But in his cross-examination P.W.-5 says when he saw the signal given by P.W.-2, he realised that the money was passed on. Then how does he deposed that he saw P.W.-2 giving money to accused no.2 and accused no.2 accepted the money.

11 Moreover, there is no evidence to indicate that accused no.2 had

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knowledge of any previous talk, i.e., demand of money by accused no.1 and that the money that he accepted was tainted money being accepted on behalf of accused no.1.

12 Learned APP submitted that the fact that money was found with accused no.2, the presumption under Section 20 of the Act gets triggered of but presumption can be considered only if the prosecution proves the demand itself. When prosecution has failed to prove the demand, the point of presumption also does not arise.

13 Therefore, by considering all these facts and circumstances, the Trial Court disbelieved the evidence of P.W.-2, the only eye witness. In my view, the opinion of the Trial Court does not require any interference. 14 The Apex Court in Ghurey Lal V/s. State of U.P. 1 has formulated the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Section 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling 1(2008)10 SCC 450 Meera Jadhav 10/13 1.apeal-437-03.doc reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so. A number of instances arise in which the appellate

court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;
- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including Murlidhar & Ors. V/s. State of Karnataka² has held that unless the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in Ramesh Babulal Doshi V/s. State of Gujarat³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

15 I have perused the impugned judgment, considered the evidence and also heard Ms Malhotra, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

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16 There is an acquittal and therefore, there is double presumption in

favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

17 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

18 Appeal dismissed.

19 The Government/Appropriate Authority shall pay over to respondent,

within a period of 30 days from the date of receiving a copy of this order, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/ Department will pay, proceed and calculate on the basis that there was no such matter ever on record against the accused and will factor in all promotions and increments that the accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Meera Jadhav 13/13 1.apéal-437-03.doc Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/ dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

(K.R. SHRIRAM, J.)

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	by Meera M.
	Jadhav
M.	Date:
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