

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4 OF 2004

C. MANICKAM

.....

APPELLANT

VERSUS

STATE OF TAMIL NADU

.....

RESPONDENT

O R D E R

1. The appellant herein, Manickam and his co-accused were working as Office Assistants in the Office of the Assistant Commissioner (Enforcement), Commercial Tax, Salem during the relevant period. P.W. 1 -Nazer Sherif along with seven partners was running his business in the name of Ragam Ready Made at Cherry Road, Salem. The business was also registered with the Commercial Tax Officer as per certificates, Exhibits P5 and P6. At about 1:30p.m., on 10th November, 1989, both the accused came to the shop of P.W. 1 and demanded Rs. 100/- as Deepavali Inam. P.W. 1 expressed his inability to pay the amount on which he was threatened with dire consequences. Under this circumstance, P.W. 1 promised to pay up and an entry was made at page No. 25 in the note book Exhibit P1 maintained by the two accused. Both the accused again came to the shop on 23rd November, 1989 and this time along with P.W. 1

his father P.W. 5 Ahamed Sherif was also present in the shop. The accused again demanded the sum of Rs. 100/-. P.W. 1 further told them that his partners were not agreeing to pay Rs. 100/- and he, accordingly, refused to pay the amount. The accused again threatened P.W. 1 that if he did not pay up he would repent later and that they would return on 27th November, 1989 at 6:00p.m. to take the money. P.W. 1 thereafter lodged a complaint Exhibit P2 before P.W. 10 Asokan, the Inspector of Police, Vigilance Department, Salem at about 3:00p.m. P.W. 10 made the necessary preliminary arrangements and also secured the service of P.W. 7 to act as a shadow witness. At about 6:45p.m., the two accused came to the shop of P.W. 1 and stood in front of the cash counter and again reiterated the demand for Rs. 100/-. P.W. 1 thereupon took out two notes of Rs. 50/- and handed them over to A1, who put the same in his bag. A1 also enquired as to the identify of P.W. 2 and he was told that he was one of the partners in the business. At about 6:50 p.m. P.W. 1 gave the pre-arranged signal to P.W. 10 by folding the sleeves of his shirt. P.W. 10 rushed to the spot and seized the tainted money and also carried out the phenolphthalein test on A1. The said test proved positive as the solution turned pink. On the completion of the investigation, the accused were

charged for offence punishable under Sections 7, 32 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The trial court on a consideration of the evidence of P.W. 1 and P.W. 2 who had seen the passing of the tainted money and P.W. 5 and P.W. 7 to the effect that the phenolphthalein test on A1 was positive and further relying on the entry dated 10th November, 1989 in the note book Exhibit P1, convicted and sentenced the accused for the offences charged. The conviction was maintained by the High Court in appeal for the same reasons. The matter was thereafter brought to this Court and whereas the Special Leave Petition qua A1 - S.K. Natesan, was dismissed leave has been granted qua A2 Manickam.

3. We have heard the learned counsel for the parties in length.

4. Mr. V.J. Francis, learned counsel for the appellant has pointed out that the case of A1 and the appellant was substantially different inasmuch as that no recovery had been made from the person of the appellant and that the phenolphthalein test had not been carried out in his hands as he had not handled the money and in this view of the matter, the ocular evidence relied upon by the prosecution could not prove the case against him. The learned State

counsel has, however, pointed out that the appellant had accompanied his co-accused to the shop of P.W. 1 on three different occasions on 10th November, 1989, 22nd November, 1989 and again on 27th November, 1989 and on the last two dates, P.W. 5 and P.W. 2 had also been present in addition to P.W. 1. It has been submitted that the perusal of the evidence of P.W. 1 would also indicate that when he had refused to make the payment it was the appellant herein who had held out the most serious threats.

5. It is true that the recovery has been made from the bag carried by the co-accused and the phenolphthalein test also carried out on his hands. However, in the face of the other evidence, already alluded to above, that is of P.W. 2, P.W. 5 and P.W. 7 and the diary Ex.P1 we find that that the appellant also stands inculpated. We also see that it is not the prosecution's case that the appellant had ever handled the tainted money. In this view of the matter the argument that as the phenolphthalein test had not been carried out on the appellant, the recovery cannot be foisted on him, cannot be accepted. We also see that the courts below have on a very clear cut discussion of the evidence and relying on the evidence of the four witnesses mentioned above as well as the evidence of P.W. 10 the

Investigating Officer have found that the appellant and his co-accused were equally involved in the incident.

6. We thus find no merit in the appeal which is, accordingly, dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
AUGUST 18, 2010.

