

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1300 OF 2003

HARSHADBHAI NATVARLAL LEUA

Appellant (s)

VERSUS

STATE OF GUJARAT & ANR.

Respondent(s)

(With office report)

WITH APPEAL(CRL) NO. 1302 of 2003
(With office report)

Date: 24/08/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s)

Mr. Ranjit Kumar, Sr. Adv.
Mr. Bhargava Bhatt, Adv.
Mr. Rajesh M. Chakwawala, Adv.
Mr. Nikhil Nayyar, Adv.
Mr. TVS Raghavendra Sreyas, Adv.
Mr. Swapnil Verma, Adv.

Mr. Mahendra Anand, Sr. Adv.
Mr. Subramonium Prasad, Adv.

For Respondent(s)

Ms. Jesal, Adv. for
Ms. Hemantika Wahi, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed setting aside the orders
of the courts below and order the appellants acquittal.
Their bail bonds be discharged forthwith.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1300 OF 2003

HARSHADBHAI NATVARLAL LEUA

.. APPELLANT(S)

vs.

STATE OF GUJARAT & ANR.

.. RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 1302 OF 2003

NARSINHBHAI MOTIBHAI JADAV

.. APPELLANT

vs.

STATE OF GUJARAT

.. REPOONDENT

O R D E R

This judgment will dispose of Criminal Appeal Nos.1300 and 1302 of 2003.

The facts have been taken from Criminal Appeal No. 1302/2003. They are as under:

The appellant, Narsinhbhai Motibhai Jadav, was serving as a Commercial Officer in the Telephone Exchange situated at Ellisebridge, Ahmedabad, where as appellant No.2 was working as a Record Keeper in the same office. An

application was made by Shakuntalaben (PW.4) on the 15th March, 1994 for transferring the telephone connection to

her new address. The staff of the Telephone Department visited the new address on the 31st March 1995 and installed the wiring and the telephone instrument but told her that

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the connection would be energized only on submitting proof of actual possession of the new premises as was required by the instructions. Balanarayan Ayyar (PW.2) thereupon met

appellant Jadav on the 5th April, 1995 and inquired about

the progress of the application and he was advised to

either submit proof of possession or get the application

for change of address attested by a Gazetted Officer, but

as PW.2 was unable or unwilling to carry out this

direction there appears to have been some unpleasantness

between them. PW.2 also threatened the appellant that as

PW.4 was the mother of a Police Inspector in the

Ellisebridge, Police Station where the Telephone Exchange

was situated and that his brother too was a Police

Inspector in the same Police Station he would get the

application attested from him as the Police Station was

close by. PW.2 thereupon left the exchange and returned a

short while later after getting the transfer application attested from some gazetted officer. This application was received by appellant Jadav on the same day i.e. 5th April, 1995. A letter was accordingly issued by him advising the concerned Branch to energise the telephone at the new address and a copy of this letter was also handed over to PW.2 on the very same day and it is the admitted case that the document had also been handed over to PW.4 shortly thereafter. On the 6th April, 1995 PW.2 filed a complaint with the Anti Corruption Bureau against the two appellants

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despite the fact that the telephone connection had been energized a day earlier. Acting on the aforesaid information the Police organized a raid on the appellants for demanding a bribe of rupees two hundred in the case of Jadav and rupees twenty five in the case of Natwarlal Leua. The raiding party consisted of PW.2 and as also PW.1 the Panch witness of the trap and PW.3-the Investigating Officer who was too appear on a signal being given by PW.2. It is the case of the prosecution that the money was handed over to the appellants and on the signal given by PW.2, PW.3 rushed inside and recovered the money from the pockets of the two appellants. Surprisingly, however, despite the success of the trap the First Information Report was lodged in this case only on the 23rd May 1995 which is after one and a half months of the incident. On the completion of the investigation the accused were charged for offences punishable under Sections 7,13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988 and were brought to trial. The Trial Court on a consideration of the evidence held that the trap as well as the recovery of the money in the fact that it had been treated with anthracene powder clearly spelt out the case against the appellants. The Trial Court also noted that in the circumstances the fact that the First Information Report had been lodged belatedly

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was of little consequence. The appellants were accordingly convicted under Section 7 of the Act and sentenced to undergo rigorous imprisonment of six months and to pay a fine of Rs.500/- and in default of payment of fine two months simple imprisonment and under Section 13(2) read with Section 13(1)(d) to a further sentence of one year and a fine of Rs.1000/-and in default to undergo further simple imprisonment of three months. The matter was thereafter taken in appeal to the High Court and the High Court has affirmed the judgment of conviction and sentence. The matter is before us after the grant of special leave.

There are certain peculiar facts in these appeals which need to be highlighted. PW.4 Shakuntalaben admittedly had no grievance as she filed no complaint. PW.2 who had in fact no connection with the parties had filed the complaint although it is admitted by the prosecution itself that the all the documents allowing transfer of the telephone to the new premises had been handed over to him by appellant Jadav on the 5th April, 1995 after completing the necessary formalities. It has also come in the evidence that the connection too had been energised on that very day. We are therefore of the opinion that there was no occasion for the trap to be organized on the 6th April, 1995. On the contrary the very nature of the evidence creates a suspicion that there was

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some thing amiss in the entire story. Concededly, there is no evidence that any demand had been made before the 6th of April, 1995 and on the contrary the evidence is that the order of shifting of the telephone had already been made on the 5th April, 1995. Moreover, we find that PW.2 was concededly unconnected with PW.4. We are therefore unable to understand as to why he took such deep interest in the energizing of the telephone belonging to PW.4.

Significantly PW.2's brother and PW'4 son were both Police Officers in the Ellise Bridge Police Station. It has also come in the evidence that PW.3-the Investigating Officer, had not witnessed the handing over of the money and had been called into the room only after the money had been handed over to the appellants in the Telephone Office. PW.3 therefore was not a witness of the handing over of the money. We also find that PW.1 the Peach witness was an employee of the Sales Tax Department. It is true that nothing adverse has been pointed out with respect to this witness but he too admitted that no demand had ever been made in his presence.. We are therefore of the opinion that the prosecution appears to be shrouded in grave suspicion.

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We accordingly allow these appeals, set aside the judgments of the courts below and order the appellants acquittal. Their bail bonds be discharged forthwith.

.....J.
(HARJIT SINGH BEDI)

.....J.
(GYAN SUDHA MISRA)

New Delhi,
August 24, 2011.