

RESERVED

THE HIGH COURT OF MEGHALAYA

CRL. APPEAL NO. 5 (SH) 2010

Smti. Halida Khatun, D/O late Abdul Gani, Supreme Enclave, Mayur Vihar, New Delhi

..... Appellant

-Versus-

State through CBI, Oakland, Shillong

..... Respondent

Shri A. B. Choudhury, Sr. Advocate assisted by Shri J.P.Sharma, Shri R. Jha and Shri B. K. Deb Roy, Advocates present for the appellant

Shri V. K. Jindal, Sr. Advocate assisted by Shri S. Dey, Advocate present for the respondent

Date of hearing 28th of May, 2014

Date of Judgment and Order : 30.05.2014

JUDGMENT AND ORDER

HON'BLE PRAFULLA C. PANT, CHIEF JUSTICE

This appeal is directed against the judgment and order dated 19.03.2010/13.05.2010 passed by the Special Judge(CBI), Shillong in Special Case(CBI) NO.10 of 2002 whereby said Court has convicted the accused/appellant Ms. Halida Khatun under Section 12 of the Prevention

of Corruption Act, 1988 and sentenced her to imprisonment for a period of 5(five) years and directed to pay fine of Rs.5000/-(Rupees five thousand) in default of payment of which she is required to undergo imprisonment for another one year. She has been further convicted under Section 201 IPC, and sentenced to various terms of imprisonment and directed to pay fine under Section 201 IPC read with 120B, 420, 468 and 471 IPC. All the sentences are directed to run concurrently.

2. Heard learned counsel for the parties and perused the lower Court record.

3. Briefly stated prosecution story is that Ms. Halida Khatun (accused/appellant) was a Supreme Court lawyer who was facing trial in RC Case No.21A of 1996 (relating to forged bills of fee) in Special Court(CBI), Shillong. On 20.02.2002, she contacted Shri Sarjeet Singh (PW 7) of Court Naib of CBI and offered him better job and monetary benefits if he agreed to hand over her original documents of RC Case No. 21A of 1996 so that she could destroy the same to

save herself from the clutches of law. PW7 Shri Sarjeet Singh did not respond and simply complained orally to the Superintendent of Police, CBI and Deputy Superintendent of Police, CBI Shri Tonmoy Behera (PW 8). Thereafter, the accused/appellant Ms. Halida Khatun again made an attempt in this connection and offered to pay Rs.1,00,000/-(Rupees one lakh) on which PW 7 Sri Sarjeet Singh gave a written complaint to his superior officers which was registered by the CBI, whereafter a trap was laid by CBI. Ms. Halida Khatun had to appear on 24.04.2002 before the Special Court(CBI), Shillong in RC Case No.21A of 1996, and she reached Shillong on 21.04.2002 alongwith her brother Sri Abdul Sattar. On 22.04.2002 she contacted PW7 Sri Sarjeet Singh in the matter promising bribe for the original documents relating to RC Case No.21A of 1996. On 23.04.2002 at 9.30 A.M. written complaint from Sarjeet Singh was registered and a trap team consisting PW8 Sri T. Behera, Deputy Superintendent of Police, CBI including independent witnesses Sri J. S. Marbaniang(PW 3), Sri Mrinal Sharma(PW 4) and the lady constables was constituted in order to apprehend the accused red handed. A preliminary memorandum of

list of the documents(Ext.5) asked for by the accused was prepared and the trap team proceeded to NEC guest House where the accused was staying with her brother. PW 7 Sarjeet Singh was instructed to scratch his head as a signal to the team when the accused would hand over him money. After reaching NEC Guest House, Shillong, on 23.04.2002 at 11.45 A.M. the members of the trap team hid themselves in the guest house and allowed PW 7 Sarjeet Singh to meet accused Ms. Halida Khatun. When PW 7 Sarjeet Singh reached in the room at second floor of the guest house, accused Halida Khatun asked him if all the documents have been brought. PW 7 Sarjeet Singh gave affirmative reply as per trap plan and told her that the original documents are lying in Vehicle No. ML05 6161 parked infront of the NEC guest House. Thereafter, they came down at 11.55 A.M. along with Sri Abdul Sattar (brother of the accused with whom she was staying). Accused Halida Khatun and her brother Abdul Sattar took out the bags containing the documents from the dickey of the car and took the same to her room (in the second floor of the guest house) and she randomly verified the

documents. Thereafter, she offered Rs.1,00,000/- (Rupees one lakh) to PW 7 Sarjeet Singh on which Sarjeet Singh gave the signal as per the plan by scratching his head to the hiding members of the trap team. The trap team led by Sri Tonmoy Behera (PW 8), Deputy Superintendent of Police, CBI entered in the room and immediately seized one lakh rupees offered by accused Halida Khatun to Sarjeet Singh, and also took into possession the two bags containing documents from the place under the bed of accused relating to RC Case No.21A of 1996. The documents relating to RC Case No.21A of 1996 were checked and tallied with preliminary memorandum (Ext.5), and seizure memo was prepared. On further search of the room of accused Halida Khatun, amount of Rs.46,100/- was also found which she told that it was for her personal expenditure as such the same was returned. The two lady constables were also part of personal search team. Accused Halida Khatun was arrested along with her brother Sri Abdul Sattar and necessary memorandums were prepared whereafter on completion of investigation, PW8 Sri Tonmoy Behera, Deputy Superintendent of Police, CBI, submitted charge-sheet

in the present case against Ms. Halida Khatun and her brother Sri Abdul Sattar (Co-accused Sri Abdul Sattar died during trial on 19.07.2007 and case against him stood abated after framing of charge).

4. Copies of necessary documents were supplied to the accused and after hearing the parties, charge was framed by the Special Judge, CBI on 04.06.2007 against the accused/appellant Ms. Halida Khatun and her brother Sri Abdul Sattar. Both of them pleaded not guilty and claimed to be tried. Due to the death of co-accused Sri Abdul Sattar, the case stood abated against him. Thereafter, prosecution got examined PW 1 Sri Supratik Sarvottam, Assistant Manager of ICICI Bank, Mayur Vihar Branch, Delhi from where money was withdrawn by the accused, PW 2 Sri Ramesh Lama, Caretaker of NEC Guest House, Shillong; PW 3 Sri J. S. Marbaniang (State Bank of India official of Shillong who was member of the trap team); PW 4 Sri Mrinal Sharma, another member of trap team who was an official of CID Department of Assam Police; PW 5 Sri Murali Dhar Madhur, an official of North-Eastern Council(NEC) who booked the room for

the accused in the guest house; PW 6 Sri Bishwajit Ghosh, Driver of Vehicle No. ML-05 A 0522 who drove CBI officials from Oakland to NEC Guest House; PW 7 Sri Sarjeet Singh, Court Naib of CBI (the key witness/complainant who was offered the bribe by the accused) and PW 8 Sri Tonmoy Behera, Deputy Superintendent of Police, CBI who investigated the crime and laid the trap. Various documents were proved by the above mentioned witnesses.

5. Original and documentary evidence was put to the accused Halida Khatun under Section 313 of Cr.P.C., in reply to which, accused Halida Khatun admitted that she had withdrawn Rs.1,50,000/-(Rupees one lakh and fifty thousand) on 17.04.2002 from ICICI Bank, Mayur Vihar Branch, Delhi. She further admitted that she along with her brother Sri Abdul Sattar (since deceased) were staying in NEC Guest House, Motinagar, Shillong since 21.04.2002 to 23.04.2002. She admitted that her signature were obtained in Ext.6 containing the numbers of currency notes and also admitted her signature in Arrest Memo (Ext.87) and Personal Search Memo (Ext.88) but added that she was forced to sign

the documents. She also admitted that PW 5 Sri Murali Dhar Madhur had given lift to her and her brother Abdul Sattar from airport, Guwahati on 21.04.2002 to Shillong. Rest of the evidence was denied as false by the accused. Lastly she pleaded in her statement under Section 313 Cr.P.C. that CBI officials pressurized her several times for gratification but she did not succumb to it. However, she admitted that she did not lodge any FIR regarding this. In defence no evidence was adduced.

6. After hearing the parties, the trial court found that the prosecution has successfully proved the charge of offences punishable under Section 12 of Prevention of Corruption Act, 1988 and the one punishable under Section 201 IPC. After hearing on sentence, the trial court sentenced the convict Halida Khatun to imprisonment for a period of 5(five) years and directed to pay a fine of Rs.5,000/- (Rupees five thousand) in default the payment of which, the convict is directed to undergo further one month imprisonment. She was also sentenced to various terms of imprisonment under

Section 201 read with Section 120B, 420, 468 and 471 IPC. All the sentences were directed to run concurrently. Aggrieved by the said judgment, this appeal was filed by the convict.

7. Before further discussion of evidence, this Court thinks it just and proper to mention here that it is not disputed by the accused/appellant that when the alleged trap was led, she was already facing trial before the Special Judge, CBI, Shillong in connection with RC Case No. 21A of 1996 (which was relating to false bills submitted by her as a lawyer to public sector undertakings whom she represented in the Supreme Court). It is also not disputed as discussed above, rather admitted that she withdrew Rs.1,50,000/- (Rupees one lakh and fifty thousand) from her account with ICICI Bank, Mayur Vihar Branch, Delhi on 17.04..2002. It is also admitted to the accused/appellant that she was staying in NEC Guest House since 21.04.2002 till 23.04.2002 when she was arrested. This Court has to now examine whether or not prosecution has proved it that she offered bribe of Rs.1,00,000/-(Rupees one lakh) to PW 7 Sri

Sarjeet Singh, a Court Naib of CBI in lieu of certain documents relating to RC Case No.21A of 1996 and thereby committed abetment punishable under Section 12 of Prevention of Corruption Act, 1988. This Court has also to see as to whether it is also proved that the accused Halida Khatun was caught red handed while giving bribe in her attempt to get the documents relating to RC Case No. 21A of 1996.

8. PW 1 Sri Supratik Sarvottam, then Assistant Manager of ICICI Bank, Mayur Vihar Branch, Delhi has proved from the statement of account of accused Halida Khatun, resident of Supreme Enclave, Mayur Vihar, Delhi that she withdrew an amount of Rs.1,50,000/- from her account on 17.04.2002 vide Cheque No. 575902(Ext.1/1). Since said fact is admitted to the accused as such there is no reason to doubt testimony of the above witness.

9. PW 2 Sri Ramesh Lama is the Caretaker of NEC Guest House who has proved the fact that an advocate (accused/ appellant) along with her brother (Sri Abdul Sattar) checked in NEC Guest House on

21.04.2002 and checked out on 23.04.2002 under signature of Sri Abdul Sattar. This witness has proved the entry in the NEC Guest House Register (Ext.2/1 and Ext.2/2). Since stay of the accused in the above mentioned guest house is admitted to her, as such nothing more is to be discussed with regard to the statement of this witness (He is not witness of trap operation). This witness has stated in cross-examination that he did not know the fact as to how CBI arrested the accused, as such, the questions put to this witness by the defence in cross-examination are of little relevance except regarding the location of the rooms of the guest house.

10. PW 3 Sri J.S. Marbaniang, State Bank of India Official of Shillong who was taken by the Deputy Superintendent of Police(CBI) Sri Tanmoy Behera (PW 8) who led the trap, with him, is an important witness who has corroborated the prosecution story. This witness has stated that on 23.04.2002, he was asked by his superior officer to go to the CBI office, and he reached there at about 9.40 A.M.. The

witness has further stated that he was told about the complaint of Sri Sarjeet Singh by the CBI officer (PW 8 Sri Tanmoy Behera) and the purpose of the trap team. This witness has proved Ext.4 complaint and Ext. 5 preliminary memorandum prepared relating to the list of documents of RC Case No.21A of 1996 before the team went to NEC Guest House in an order to apprehend accused offering bribe. The witness has further told that at 11.45 A.M., he along with other members of the trap team reached in NEC Guest House and stated details of positioning of the members of the trap team, and as to how from the room of the second floor of Guest House, Sarjeet Singh (PW 7) gave signal. He also told that he heard accused Halida Khatun asking Sarjeet Singh whether he had brought all the documents or not. The witness has further proved the memorandum relating to the currency notes taken into possession by the CBI team after the trap. He also proved Ext.8 and Ext.9 relating to the documents which were seized from the possession of the accused relating to the earlier case. This witness was subjected to the

lengthy cross-examination but nothing has come out which creates doubt in his testimony.

11. Similarly PW 4 Shri Minal Sharma, another member of the trap team who is Sub-Inspector of Assam State Police, has corroborated the prosecution story as narrated above.

12. PW 5 Sri Murali Dhar Madhur, is a NEC official with whom the accused along with her brother had gone to NEC Guest House and got the room booked. Testimony of this witness is of formal in nature as the stay in the guest house is admitted to the accused.

13. PW 6 Sri Bishwajit Ghosh is a taxi driver of tourist taxi bearing Vehicle Registration No. ML-05 A 0522 which took CBI team on 23.04.2002 from CBI office, Oakland, Shillong to NEC Guest House, Motinagar, Shillong at about 11.30 A.M.. Testimony of this witness corroborates the journey undertaken by the CBI team to the NEC Guest House on the day of the trap. The defence counsel for the

reasons best known to him, did not prefer to cross-examine this witness.

14. PW 7 Sri Sarjeet Singh is the key witness of the case to whom accused Halida Khatun contacted and asked to give original documents relating to RC Case No.21A of 1996 and offered money and better job to him. This witness (PW 7) has stated that on 20.02.2002 accused Halida Khatun met him in the court premises and asked for the documents of the above mentioned case and in return promised reward to him. The witness deposed that initially he did not take it seriously but when she telephoned to him in the office Phone Nos.223142 and 223728 and also at his residence number, he told about her activities to his superiors. The witness further narrated that 24.04.2002 was the next date fixed in RC Case No.22A of 1996 and the accused/appellant arrived in Shillong on 21.04.2002 from Delhi. She again met him on 22.04.2002(in court premises) and offered to pay Rs.1,00,000/- if the documents are given to her. The witness told to the Court on oath that on this he gave written complaint to his superiors on 23.04.2002

at 9.30 A.M.. He proved the complaint(Ext.4) registered by CBI. PW 7 Sarjeet Singh, Court Naib of CBI further told that on the same day trap team of independent witnesses of Sri G. S. Marbaniang(PW 3), Sri Bhim Singh, two lady constables Smti. B. Shadap and Smti. W. Sampliang, CBI Inspector Sri A. Mao, constables Sri Jhon David and Smti. E. Lingdon, another Inspector, CBI Shri Minal Sharma (PW 4) was constituted under the leadership of the Deputy superintendent of Police, CBI Shri Tonmoy Behera (PW. 8) and team members were told about the plan to trap accused Halida Khatun. This witness has also proved Ext.5 preliminary memorandum of list of documents prepared by E. Lingdon in the presence of other witnesses which were demanded by the accused Halida Khatun. The witness further told that he travelled in Vehicle No.ML-05 6161 and rest of the team followed in a different car bearing registration NO.ML-05 A 0522. The witness further told that at about 11.45 A.M., he reached NEC Guest House. He also told that as per the plan, he went up to second floor and knocked the door of the room of Halida Khatun (accused/appellant) who asked him if he had brought the documents. The witness further

told that on his answering in the affirmative, the accused Halida Khatun along with her brother Abdul Sattar went down with him, and from the dickey of the taxi and her brother Abdul Sattar took out the bags containing documents and took it to their room. The witness further told that after randomly verifying the documents, the accused Hamida Khatun gave him two bundles of 500 rupee notes on which he scratched his head to give signal to the hiding members of the trap team. The witness further told that immediately the members of the trap team came and apprehended the accused Halida Khatun and her brother Abdul Sattar and seized Rs.1,00,000/- cash and also the documents kept by them in the room. The statement of this witness got further corroborated by the statement of PW 8 Shri Tonmoy Behera, Deputy Superintendent of Police, CBI who was the leader of the team.

15. On going through the entire evidence on record, this Court is in agreement with the trial court that the prosecution has successfully proved charge of offence punishable under Section 12 of the Prevention of Corruption Act, 1988 and the one relating offence

of causing disappearance of documents which is punishable under Section 201 IPC, against accused Halida Khatun.

16. On behalf of the accused, it is argued that the F.I.R. does not stand proved on the record. However, on perusal of the lower court record, this Court finds that there is ample evidence on record proving the F.I.R.. In this connection, it is also pleaded on behalf of the accused that if the complaint was made by the PW 7 at 9.45 A.M. to the local officer at Shillong, it is practically not possible to obtain the orders from the Superintendent of Police, CBI, Guwahati and make a raid at 11.45 A.M. in the NEC Guest House. However, this Court does not find force in the contention of learned counsel for the appellant for the reason that it is not the case of the prosecution that after 9.45 A.M., somebody had to go to Guwahati to obtain orders. It has come on the record that PW 7 Sarjeet Singh gave the information relating to the attempt made by the accused and it has come in the statement of the PW 8 Tonmoy Behera, Deputy Superintendent of Police, CBI that on receiving the written complaint,

he informed telephonically about the development not only to the Superintendent of Police but also to the Deputy Inspector General and received telephonic instructions to lay the trap. As such, this Court finds no irregularity in the trap laid by the trap team.

17. Shri Chowdhury, learned senior counsel for the appellant contended that there is no proof of entry in Crime Module (something like General Diary Entry) relating to the F.I.R., as such, the prosecution case is doubtful. I have considered the submission advanced on behalf of the appellant, and I am of the view that since F.I.R. was not formally sent to the Superintendent of Police, CBI office of Guwahati before the trap, as such there was no question of making entry in the crime module. I have already discussed above that in the present facts and circumstances of the case, since telephonic instructions were obtained to lay the trap, as such mere non-production of entry in the crime module cannot be said to be fatal to the prosecution case.

18. The next argument advanced on behalf of the appellant is that since the prosecution has not led any evidence of allurement made by the accused on phone before the day of trap, the prosecution story cannot be believed. On careful reading of evidence on record, this Court does not find force in the above contention. PW 7 Sarjeet Singh has given the evidence regarding the allurement made to him not only on phone but also directly in the Court premises. There is no reason to doubt the testimony of PW 7 Sarjeet Singh in the present case who had no enmity with the accused.

19. It is also submitted by the learned counsel for the appellant that it was not possible for the members of the trap team to see PW 7 Sarjeet Singh scratching the head and, as such, it cannot be said that the incident occurred in the manner alleged by the prosecution witnesses. I have carefully gone through the evidence on record and find that it has come on the record that before the members of the trap team took their position, PW 8 Tonmoy Behra inspected the topography of the NEC Guest House and, thereafter,

directed the members of the trap team to take the position and change it so that they are able to see PW 7 Sarjeet Singh signalling by scratching the head. There is nothing on the record to disbelieve the testimony of the prosecution witnesses on this point.

20. It is also contended by the learned counsel for the appellant that non-examination of Inspector Sri A. Mao by the prosecution also creates doubt in the prosecution story. However, this Court is of the view that mere non-examination of Inspector Sri A. Mao who was one of the members of the team does not create reasonable doubt in the prosecution story for the reason that it is quality not the quantity of the evidence which is relevant for the purposes of proving a case.

21. For the reasons as discussed above, this Court is of the view that there is not illegality committed by the trial court in recording the conviction of the accused Halida Khatun under Section 12 of the Prevention of Corruption Act, 1988 and in respect of the offence punishable under Section 201 IPC.

It is relevant to mention here that minor infirmities in the investigation of the case are not sufficient ground for not accepting the prosecution case as it is seen that practically it is not possible for any one to make fool proof investigation, and it is difficult to find a case where some infirmity cannot be pointed out by the defence.

22. For the reasons as discussed above, as far as the conviction of the accused/appellant Halida Khatun is concerned, this appeal is liable to be dismissed. However on the point of sentence, it is submitted on behalf of the appellant that the trial court has awarded maximum sentence without considering the fact that the accused/appellant is a woman. It is further stated that the appellant has already remained in jail for almost six months (i.e. minimum prescribed sentence u/S 12 of P. C. Act). In the above facts and circumstances, this Court is of the view reducing the sentence of imprisonment awarded to the accused/appellant Halida Khatun to the period already undergone without interfering with the quantum of fine, would meet the ends of justice.

23. Accordingly, on the point of conviction under Section 12 of the Prevention of Corruption Act, 1988 and under Section 201 of IPC, the appeal is dismissed, but on the point of sentence, the appeal is partly allowed and sentence of imprisonment awarded to accused/appellant Halida Khatun is reduced to the period already undergone on all the counts i.e. u/S 12 of P. C. Act, 1988 and u/S 201 I.P.C., without interfering with the sentence of fine awarded by the trial court. Let the lower court record be sent back along with copy of this judgment for information and necessary action.

30.05.2014

(Prafulla C Pant)
CHIEF JUSTICE

as