

(2009) 02 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 1212-SB of 2007

Amar Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2009) 29 CriminalCC 73 : (2009) 2 RCR(Criminal) 735

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Advocate : A.S. Kalra and Mr. M.S. Sidhu, for the Appellant; K.S. Pannu, AAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Puri, J.—Feeling that he has been wrongly convicted by Shri Birinder Singh, the then Special Judge. Ferozepur vide judgment dated 5.6.2007 and sentenced to undergo rigorous imprisonment for 1-1/2 years and to pay a fine of Rs. 5,000/- vide separate order of even date, the appellant has filed this appeal and laid a challenge to the said judgment/order.

2. The factual matrix of the prosecution case is that the land of complainant Surjit Singh was acquired by the Government for which he was to be paid compensation. On coming to know that the cheque for compensation has been received in the office of SDM, Abohar, he visited that office. Accused Amar Lal was posted as a dealing hand in that office. The complainant contacted the accused who was to disburse the cheque for amount of compensation to him. The accused demanded Rs. 1,000/- as illegal gratification for disbursing the cheque to the complainant but on request of the accused, the matter was settled at Rs. 500/-. The accused told the complainant to come on the next day with Rs. 500/-. The complainant was not prepared to give illegal gratification to the accused.

3. On 25.3.1999. the complainant was standing at Bus Stand, Abohar for boarding the bus for Ferozepur where Jagjit Singh son of Jagtar Singh met him. He narrated the entire episode to him who advised the complainant not to give bribe. Then he along with Jagjit Singh went to the office of Vigilance Bureau, Ferozepur where they met DSP Sukhdev Singh before him he lodged his report Exhibit P16 and produced the amount of Rs. 500/- consisting of five one hundred rupees notes. The said DSP recorded the FIR against the accused. The DSP then treated the currency notes with phenolphthalein powder, hereinafter referred to as "P" Powder, and after preparing the entrustment memo in which number of those currency notes were noted down, handed over the same to Surjit Singh complainant with a direction to pay the same to the accused on his demand. Jagjit Singh PW was directed to act as a shadow witness and accompany the complainant to the accused and to hear the conversation between them and to flash a signal on receipt of the amount by the accused. The DSP then held a demonstration to show the effect of "P" Powder on the solution of sodium carbonate and procured a glass of water in which solution of sodium carbonate was prepared and the colour of the water did not change. Then he dipped a piece of paper treated with "P" Powder in that glass as a result of which the colour of the water changed into light pink. That solution was destroyed. Then the party accompanied by the two witnesses and other officials left for the office of the accused. On reaching Abohar, the raiding party first went to the office of Market Committee from where Sahib Ram, Assistant Marketing Officer, Punseed was joined and he was introduced with the complainant and on reaching outside the office of SDM, Surjit Singh complainant and Jagjit Singh, shadow witness were directed to proceed to the office of the accused, while the party posted itself at a short distance. After some time, on receipt of pre-planned signal from Jagjit Singh, the party stormed into the office of the accused where he was found sitting on a chair. The DSP disclosed his identity to the accused. On seeing the DSP, the accused threw the tainted currency notes on the floor. The DSP then procured a glass of water in which solution of sodium carbonate was prepared but the colour of the water did not change. Then the accused was asked to dip the fingers of both his hands in that solution as a result of which its colour changed into light pink. The solution was transferred in a nip which was taken into possession vide memo, Exhibit P-18. The tainted currency notes were lifted from the floor. The numbers of the currency notes were got compared and were found to be the same as described in the entrustment memo, Exhibit P17. The said tainted currency notes were then taken into possession vide a memo. On further search of the accused, a purse containing note of Rs. 50/-, one identity card and a wrist watch were recovered and the same were taken into possession. The right side pocket of the pants worn by the accused was dipped in the newly prepared solution of sodium carbonate and its colour changed into light pink. The solution was also put in separate nip and sealed. The same was taken into possession vide a memo. Cheque for Rs. 15,994/- was taken into possession vide a memo. The cheque book was also taken into possession, Rough site plan of the said place was prepared. After procuring sanction Exhibit P4 for the prosecution

of the accused from Deputy Commissioner, Ferozepur and on receipt of report of Director, Forensic Science Laboratory, Chandigarh, the accused was sent up to face trial in the Court.

4. Charge for the offence u/s 7.13(2) of the Prevention of Corruption Act (in short the Act) was framed against the accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined PW-1 Gulshan Rai, PW-2 Constable Resham Singh, PW-3 Avtar Singh, Senior Assistant, PW-4 Tek Singh, Revenue Patwari, PW-5 Bhupinder Singh, Clerk, PW-6 Surjit Singh, Complainant, PW-7 Lakhbir Singh, PW-8 Sahib Ram and PW-9 Jagjit Singh, shadow witness. The prosecution failed to produce and examine DSP Sukhdev Singh, Investigating Officer, despite numerous opportunities including last opportunity, and as such the prosecution evidence, was closed by order.

6. After the close of prosecution evidence, the statement of the accused was recorded u/s 313 Cr.P.C wherein he pleaded false implication in this case. According to him, neither he demanded any bribe nor accepted the same. On 25.3.1999, it was a Gazetted holiday but he was doing work in the office because financial year was about to end. Surjit Singh along with Jagjit Singh came to him in the office in the morning and demanded cheque of compensation of his acquired land. He told the complainant to bring Sarpanch or Lamberdar of his village for identification. At about 12 noon, Surjit Singh, Jagjit Singh, Parmeshwari Bai Sarpanch and her husband Raja Ram again came to him. After proper identification and obtaining signatures of Surjit Singh on concerned record, he handed over the cheque to Surjit Singh who forcibly tried to give him Rs. 500/- which he refused to accept and in this process, currency notes fell on the ground. In the meantime, vigilance party came inside on their own accord and lifted currency notes from the ground. Parmeshwari Bai Sarpanch and Raja Ram were still present in the office and they disclosed about the said facts to the but the DSP took him along with Surjit Singh and Jagjit Singh to Ferozepur at about 2.30 PM and completed all the formalities there.

In his defence, the accused examined Parmeshwari wife of Raja Ram as DW-1.

After trial, the accused was convicted and sentenced, as noticed in the earlier part of the judgment.

Feeling dis-satisfied, the appellant has filed the instant appeal.

7. The learned counsel for the appellant has submitted that to prove the ingredients of offence under Sections 17 and (2) of the Act, the prosecution is required to establish the demand, acceptance and recovery of illegal gratification. The prosecution story depends on the statements of PW-6 Surjit Singh complainant, PW-9 Jagjit Singh, shadow witness and PW-8 Sahib Ram, official witness. Surjit Singh being the complainant is naturally interested in the success of the case. His testimony remains uncorroborated. Jagjit Singh who, according

to the prosecution case, acted as a shadow witness has demolished the case of the prosecution on all the material particulars. In the cross-examination, he has ruled out the acceptance of illegal gratification. The other material witness for the prosecution was Parmeshwari, ex-Sarpanch. According to the case of the prosecution, she was present at the time of acceptance of bribe by the accused. The prosecution has not cited said Parmeshwari as a witness. She, according, to the prosecution, has identified the complainant before the accused. The said witness has been produced by the accused and she has categorically stated that there was no demand, acceptance and recovery of illegal gratification. She has stated that Surjit Singh PW was handing over the tainted amount to the accused but he was not accepting the same and in the struggle the currency notes fell down on the ground. Similar statement was made by Jagjit Singh in his cross-examination. So, the testimony of Surjit Singh alone is not sufficient to convict the accused for an offence under Sections 7 and 13(2) of the Act. There was no reason for Parmeshawri to depose in favour of the accused. She is an independent witness and her testimony is corroborated by Jagjit Singh. So, in these circumstances, the prosecution story is doubtful. The tainted amount has been recovered from the ground. Sahib Ram, PW-8 is a Government employee and he has categorically stated that he cannot refuse to become a witness for the Vigilance as the Vigilance Department could conduct a raid upon him.

The learned counsel for the appellant has further submitted that so far as hand wash is concerned, that does not help the prosecution as the complainant has tried to hand over the currency notes to the complainant forcibly and in that process, "P" Powder might have touched the hands of the accused.

8. It is further submitted that so far as the hand wash of the accused is concerned, the same becomes immaterial. According to the prosecution witnesses, Sahib Ram PW-8, after recovery of the currency notes, had made the pocket wash. In the process of counting the notes, his hands might have been smeared with "P" Powder. Thereafter the hand wash was conducted and, therefore, the possibility cannot be ruled out that hands of Sahib Ram caused the change of solution of Sodium Carbonate to pink due to handling of the notes while counting the same. The demand of illegal gratification also goes on account of testimony of Jagjit Singh PW and Parmeshwari, DW-1.

9. It is further submitted that the cheque bears date of 20.2.1998. The date of raid, according to the prosecution, is 25.3.1999. The validity of the cheque is for a period of six months. So, the appellant was not in a position to demand illegal gratification for a stale cheque.

10. The learned counsel for the appellant has further submitted that 25.3.1999 was a holiday and on that count, there was no chance for accepting illegal gratification.

11. The learned counsel for the appellant has further submitted that the accused has been seriously prejudiced by non-examination of the Investigating Officer.

The appellant lost the right of cross-examination of the Investigating Officer on material points.

12. The learned counsel for the appellant has further submitted that there is no valid sanction for the prosecution of the accused. He has submitted that PW-3 Avtar Singh has stated that draft sanction was received from the Vigilance Department and sanction letter was issued after deleting word "draft". So, in these circumstances, there is non-application of mind of competent authority to grant the sanction for the prosecution of the accused.

The learned counsel for the appellant has relied upon the following authorities :-

1. Raghbir Singh Vs. State of Punjab, .
2. Abdul Rahman Sheikh v. State of M.P., 2002 (3) RCR (Cri) 58 : 2002 (3) Cri CC 46 (MP).
3. Balbir Chand v. State of Punjab, 1991(3) RCR(Cri) 369.
4. Pirthi Pal Singh v. The State of Punjab, 1991(1) RCR (Cri) 694.
5. Jarnail Singh v. State of Haryana, 1991(1) RCR(Cri) 351.
6. Amrik Singh v. State of Punjab, 2005 (4) RCR(Cri) 310 (P&H).
7. Subash Parbat Sonvane v. State of Gujarat, 2002(3) RCR (Cri.) 188 (SC).
8. Dalip Singh v. State of Punjab, 1988(1) RCR(Cri.) 123.
9. Tarlochan Singh v. State of Punjab, 2003(4) RCR (Cri) 867 : 2004 (1) CCC 543 (P&H).
10. Ram Jaspal Kanungo v. State of Punjab, 1991(2) RCR (Cri.) 547.

13. In reply to the above noted submissions, the learned State counsel has supported the judgment of the trial Court. It is submitted that there was no animus of complainant, shadow witness and Sahib Ram, official witness with the accused. It is further contended that PW-6 Surjit Singh complainant and PW-8 Sahib Ram have supported the case of the prosecution on all material particulars. They have been cross-examined at length but nothing could be brought on the file to discard their sworn testimony. PW Jagjit Singh has also supported the case of the prosecution on all the material particulars in the examination-in-chief. The defence counsel has not conducted cross-examination on the day when the examination-in-chief of Jagjit Singh was recorded. Later on, he was won over by the accused. The testimony of this witness in cross- examination that the complainant was forcibly handing over the notes is simply to help the accused. However, the fact remains that in the examination-in- chief this witness has categorically stated that tainted amount was received by the accused on his demand. It is further contended that the testimony of Parmeshwari to the effect that the complainant forcibly tried to hand over the tainted currency notes is to help the accused. However, Parmeshwari has supported the case of the

prosecution regarding the fact that she was called by the complainant for his identification before the accused. Non-examination of the Investigating Officer is not fatal for the prosecution and this aspect has been duly dealt with by the trial Court. It is contended that the very fact that the accused remained present on a holiday otherwise lends support to the prosecution version.. For the sake of bribe, the accused wasted his holiday. The complainant was not aware of the fact that the cheque in question was a stale one, otherwise the accused should not have handed over the cheque to the complainant as he fully knew the fact that the cheque could not be encashed after six months of its issuance. The accused has not disputed the fact that Parmeshwari identified the complainant regarding the issuance of cheque. The motive for receiving illegal gratification was there and there was no motive for false implication of the accused.

Thus, a prayer has been made for the dismissal of the appeal.

14. The prosecution case rests on the testimony of PW-6 Surjit Singh and PW-9 Jagjit Singh. PW-8 Sahib Ram is an official witness. Surjit Singh and Sahib Ram have supported the prosecution case on all the material particulars and they have been cross-examined at length but nothing could be brought on the file to discard their sworn testimony. So far as shadow witness, PW-9 Jagjit Singh is concerned, he has supported the case of the prosecution in his examination-in-chief recorded on 23.1.2002 and his cross-examination was deferred at the request of the accused as lawyers were not appearing in the Court due to strike. His cross-examination was conducted on 10.2.2006 i.e. after a period of more than four years. During the intervening period of 23.1.2002 to 10.2.2006, the accused seems to have won over this witness to some extent. In the examination-in-chief he has categorically stated that Surjit Singh demanded illegal gratification in his presence and the same was also accepted in his presence. He has also stated in the examination-in-chief regarding the recovery of Rs. 500/-. This witness has further stated that after receiving Rs. 500/- as illegal gratification and after counting the same, the accused put the same in the right pocket of his pants and thereafter handed over cheque of Rs. 15,994/- to Surjit Singh, complainant. The Court has to sift the grain from the chaff. Since Jagjit Singh, PW-9 has supported the case of the prosecution in his examination-in-chief on all the material particulars and his cross-examination was conducted after a period of more than four years, so his testimony in the cross-examination has rightly been accepted by the learned trial Court. No doubt, to appreciate, the evidence examination-in-chief as well as in cross-examination has to be read together and where there are special circumstances, in that case, the Courts have the right to ignore the testimony in the cross-examination. No reason has been given by the accused for falsely implicating him. Even no solid motive has been suggested to any of the prosecution witnesses for falsely implicating the accused. The accused has not disputed the fact that he called for the identifier and the complainant brought Parmeshwari, DW. It is also not disputed that Parmeshwari identified the complainant before the accused. The office-bearers of the panchayat normally do not appear against the Government servants and the

villagers for the fear of loss of vote Bank and so the learned trial Court has rightly not given much importance to the testimony of Parmeshwari, DW1. However, the testimony of Parmeshwari lends support to the prosecution story to the extent that the accused demanded the identifier and she had identified the complainant in respect of issuance of cheque before the accused. Her testimony to the effect that the complainant handed over the currency notes does not appeal to reason. There was no reason for the complainant and shadow witness to falsely implicate the accused.

15. So far as the submission made by the counsel for the appellant to the effect that since the cheque was stale and as such the prosecution case is doubtful is concerned, the same is without any substance. The accused, in this manner, has committed another fraud upon the complainant by issuing stale cheque. It is not the case of the accused that the complainant had the knowledge of stale cheque which was being handed over to him. His presence in the office on a holiday further lends support to the prosecution version and does not create any doubt in it. For taking illegal gratification, the accused sacrificed his holiday and remained present in the office. From the perusal of the record, it is revealed that the date of identification has not been intentionally put to conceal the fact that identification was being taken on a holiday. Otherwise, the accused was not competent to have identification on a holiday.

16. So far as hand wash of the accused is concerned, the same proves the fact of handling the tainted currency notes by him. Even if the pocket wash is ignored on the grounds taken by the accused in the arguments, in that case also the hand wash is sufficient to clinch the issue. The story of falsely handing over the currency notes does not appeal to reason. Mere fact that the Vigilance Department can conduct raid upon Sahib Ram PW does not lead to the conclusion that Sahib Ram has come forward only at the instance of Vigilance Department. In case, the above contention is accepted, in that case no Government official can be an official witness in a raid case as almost all the officers/officers are not immune from raid by the Vigilance Department.

17. So far as challenge in respect of sanction is concerned, PW-3 Avtar Singh has proved it. Mere fact that he has stated that draft sanction was received does not invalidate the sanction. There is nothing on the file that sanction, in the present case, is taken on non-application of mind.

18. So far as authority in case Raghbir Singh (supra), is concerned, in that case, it has been held that the public servants should treat tainted currency notes with "P" Powder. In the present case, the tainted currency notes were treated with "P" Powder and even hand wash and pocket wash proved positive.

19. Authority in case Abdul Rahman Sheikh (supra) is also distinguishable as in that case also, the witnesses were also silent about the washing of hand and pocket with the solution of Sodium Carbonate.

20. Authority in case Balbir Chand (supra) is also distinguishable as in that case,

blanks were filled in a draft for sanction of prosecution.

21. Authority in case Prithi Pal Singh (supra) is also distinguishable as in that case, according to the prosecution, the accused was still holding currency notes in his hands when the police reached. In the present case the accused had thrown away the tainted currency notes on the ground and the same were recovered from him.

Authority in case Jarnail Singh (supra) is distinguishable as in that case the demand and acceptance of bribe was found to be doubtful.

Authority in case Amrik Singh (supra), is also distinguishable as in that case, the prosecution witnesses made inconsistent statements. In that case, there was no motive for accepting the bribe as mutation has already been sanctioned four months prior to the raid regarding which illegal gratification was stated to have been received.

Authority in Subash Parbat Sonvane's case (supra), is also distinguishable as in that case, there was no evidence that the accused demanded money from the complainant.

Authority in case Dalip Singh (supra), is distinguishable as in that case, the work had already been done and there was no motive for demanding illegal gratification. The prosecution story was found to be doubtful.

Authority in case Tarlochan Singh (supra) is also distinguishable as in that case, the prosecution witnesses were not found to be trust-worthy.

Authority in case Ram Jaspal Kanungo (supra) is distinguishable as in that case there was no evidence of demand of illegal gratification. Recovery was not supported by the shadow witness.

22. In view of the above discussion, the conviction of the accused/appellant as recorded by the trial Court stands confirmed.

However, keeping in view the fact that the occurrence relates to the year 1999, the sentence of the accused is reduced to one year from 1-1/2 years, as awarded by the trial Court. But, the sentence of fine is maintained.

With the above modification in the sentence, the appeal stands dismissed.

A copy of this judgment be sent to the trial Court for strict compliance.