

(1987) 06 KL CK 0020
In the High Court Of Kerala

Devan alias Vasudevan and etc.

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 01-06-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 143, 148, 162, 21

Citation : (1988) CriLJ 1005

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Judgement

K.T. Thomas, J.—Out of nine accused who faced a charge for offences under Sections 120-B and 162 of the I.P.C., only two (the appellants) were convicted, The first appellant was sentenced to undergo rigorous imprisonment for one year each for the two counts and the second appellant was sentenced to undergo simple imprisonment for a period of three months each.

2. The prosecution case, in short, is this : All the nine accused entered into a criminal conspiracy sometime during the period between April, 1980 and Feb., 1982 in order to obtain illegal gratification from persons who were anxious to join defence forces. The modus operandi designed by them was to represent to the aspirants that if they pay the amounts demanded by the first accused, he would see that they were recruited to the defence services with the help of one Lieutenant Colonel Krishnaiah, who was the Branch Recruiting Officer, at Calicut, and who was pictured as a close friend of the first accused. The accused succeeded in getting some persons as victims drawn into their dragnet. PWs. 1 and 7 paid the amounts to the first accused as demanded. But When they found that they would never get recruited to the forces, they demanded the money back, and the accused returned the money later. P.W. 5, another victim paid a sum of Rs. 6,500A to the first accused and on failure to get the recruitment, he compelled the first accused to return the money. But instead of returning the whole amount, the first accused issued a cheque for Rs. 3,000/- which, on presentation for encashment, was bounced by the Bank. These are the three

counts (among the several counts mentioned in the charge) which the trial court found proved in this case.

3. The evidence of P.W. 1 shows that he was introduced by the second accused to the first accused in Sept., 1980 and latter impressed upon P.W. 1 that if a sum of Rs. 3,500/- was paid, he would secure recruitment through Lt. Clause Krishnaiah, who was his personal friend. The amount demanded was paid to the second accused and later the first accused took P.W. 1 to the Recruiting Office, but after interview and test, P.W. 1 was found not up to the required standard and hence he was not selected for recruitment. Naturally P.W. 1 pressed for return of the money paid. Ext.P1 cheque (for Rs. 2,750/-) was issued by the first accused and the balance amount was paid by the second accused. P.W. 1's evidence gets support from the evidence of P.W. 24 who accompanied the former to the second accused and later to the first accused also. Nothing has been brought to my notice from the cross-examination of these two witnesses for suspecting the truth of the version given by either of them.

4. The first accused demanded a sum of Rs. 5,000/- from P.W. 6 and after some bargaining, the amount was reduced to Rs. 3,000/-. The recruitment was required for P.W. 7 and hence the amount was paid by P.W. 7 to the first accused through P.W. 6. When P.W. 6 came to know that he was not going to be selected by the Recruiting Officer, P.W. 6 pressed for return of the money paid. After some dialogue, the first accused issued Ext. P4 cheque for an amount of Rs. 2,000/-. This is the substance of the testimony of P.W. 6. The same version has been spoken to by P.W. 7 also. The learned Counsel for the appellant contended that P.W. 6 is to be treated on a par with the first accused as he took the money from P.W. 7 on the same pretext. A reading of the evidence shows that P.W. 7 was also present when P.W. 6 paid the amount to the first accused. The mere fact that the assistance of P.W. 7 was sought for is not sufficient to catagorise the witness along with the offenders. No stigma can be affixed on the witness for the role he played in the episode. In fact he only stands on a par with P.W. 6.

5. The difference in the episode in which P.W. 5 and his father P.W. 9 were involved is that the amount received by the first accused was not repaid despite repeated requests and exertion of pressure. The amount paid to the first accused was Rs. 6,500/-. On being pestered, he issued a cheque to P.W. 5, but that cheque was returned dishonoured when presented for encashment. Nothing has been brought to my notice to disbelieve the version spoken to by P.W. 5 and P.W. 9.

6. Thus the evidence establishes that the first and the second accused did collect amounts from the aforesaid witnesses assuring them that he would secure the recruitments desired by them through the office of Lt. Clause Krishnaiah.

7. Shri Ratna Singh, learned Counsel for one of the appellants contended that even if the entire evidence is accepted, it is not sufficient to constitute the offence u/s 162 of the I.P.C. since there is no evidence to show as to what the

accused did to Lt. Col. Krishnaiah. In order to analyse the said contention, the section is extracted below:

Taking gratification, in order, by corrupt or illegal means, to influence public servant:- Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to render any service or disservice to any person, or to render or attempt to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any local authority, corporation or Government company referred to in Section 21, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The ingredients of the offence are (a) The accused should accept or agree to accept (or even attempt to obtain) gratification from some one. (b) The gratification is for himself or for some one else, (c) It is a motive or reward to induce a public servant by corrupt or illegal means to do or to forbear to do any official act or to show favour or disfavour to some person etc. The gravamen of the offence is acceptance of or the obtaining or even the attempt to obtain illegal gratification as a motive or reward for inducing a public servant by corrupt or illegal means. It is not necessary that the person who received the gratification should have succeeded in inducing the public servant. It is not even necessary that the recipient of the gratification should, in fact, have attempted to induce the public servant. The receipt of gratification as a motive or reward for the purpose of inducing the public servant by corrupt or illegal means will complete the offence. But it is necessary that the accused should have had the animus or intent, at the time when he receives gratification that it is received as a motive or reward for inducing a public servant by corrupt or illegal means. Such intention can be gathered or inferred from evidence in each case. A scrutiny of the evidence shows that the offence stands established even without showing that the accused in fact induced or attempted to induce Lt. Col. Krishnaiah to do anything. Therefore the non-examination of Krishnaiah is of no consequence in this case.

8. The next contention is that since the evidence of those who paid the gratification is really evidence of accomplices the court should have sought for independent corroborative evidence before that evidence is acted on in criminal cases. According to Shri Gopinath, learned Counsel for one of the appellants, the evidence of one accomplice is hardly sufficient to corroborate another accomplice's evidence. Reference was made to Chonampara Chellappan and Others Vs. State of Kerala, in support of the contention. True, the person who pays the gratification is, in a way, an accomplice in the offence, when his role is viewed from a wide angle. But before his evidence is dubbed as unworthy of credit without corroboration, a pragmatic or realistic approach has to be made towards such evidence. If the bribe-giver voluntarily goes to the offender and

persuades him to accept the bribe, his position is that of an undiluted accomplice and it is a rule of prudence to insist on independent corroboration for such evidence. On the other hand, if the giver of gratification was persuaded to give it, he actually becomes a victim of persuasion by the offender. To name him an accomplice and to reject his testimony due to want of corroboration, would sometimes, be unrealistic and imprudent. The Court must always bear in mind that insistence on corroboration for the evidence of accomplice is not on account of any rule of law, but it is a caution of prudence. The density of the stigma to be attached to a witness as an accomplice depends upon the degree of his complicity in the offence. Suspicion towards his role as an accomplice should vary according to the extent and nature of his complicity. It must be considered in each case whether the bribe giving or payment of gratification was done in such a way that independent persons had no occasion to witness such acts. In *Re: K.V. Ayyaswamy*, . The rule of the Court which requires corroboration of the evidence of an accomplice, if it applies at all, applies with less rigor and force in a case of bribery or receipt of illegal gratification AIR 1948 342 (Nagpur) The Supreme Court decision cited by the counsel Chonampara Chellappan and Others Vs. State of Kerala, involved entirely different kinds of offences such as Sections 143, 148, 455 etc. of the I.P.C.

9. That apart, the evidence of those who paid the sums finds corroboration not only from the testimonies of those who accompanied them, but from Exts. P1, P4 and P7 cheques which bear the signatures of the 1st accused. Therefore, corroboration is not lacking in this case, even if it is required to ensure confidence in the mind of the court. I find no reason to interfere and hence the conviction and sentence are confirmed and the appeals are dismissed.