

(1990) 05 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 175 of 1987

Rattan Chand

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 31-05-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 16, 313
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1990) 1 ILR HP 380

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.G. Chitkara, for the Appellant; M.S. Guleria, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—The accused has been prosecuted for the commission of offence u/s 161 of the Indian Penal Code and Section. 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (hereafter briefly "the Act"). The trial ended in conviction and sentence to the extent of rigorous imprisonment for one year and a fine of Rs. 1000 - u/s 161 of the Indian Penal Code and sentence for three years rigorous imprisonment and a fine of Rs. 1000/- Under Section 5(Y) (d) of the Act. The sentences have been, ordered to run concurrently.

2. Briefly, the case is that complainant Ranjit Singh, "Klianna-Damad" (son-in-law) of Gangu Ram, used to cultivate the land of his father-in-law. A will (Ex. P. 1) was executed in his favour. The complainant, being in actual and physical possession and cultivation of the landed property belonging to his father in-law, had been approaching the accused for effecting changes in re column of possession in his favour. The accused was then Halqua Patwari of village Badain where under the landed property in question fell.

3. The further case is that the accused had accepted Rs. 100/- on an earlier

occasion and was demanding Rs. 300/- more by way of illegal gratification for doing necessary changes in the revenue papers. Instead of paying it straight away, the complainant approached the Deputy Superintendent of Police (Vigilance) and First Information Report (Ex. P. 2) was recorded on the statement of the complainant. Currency notes to the tune of Rs. 301/- (of the denomination of 2x 100=200 and 5x20=100, Ex. PX/1 to Ex. PX/7) were produced and their numbers noted, memos, prepared, treated with phenolphthalein powder and were then returned to the complainant who was instructed to give settled signal pointing out the acceptance of the same by the accused.

4. Accordingly, the raiding party went to the village where the Patwarkhana was situated. During the night, it stayed at the house of Punnu and his brother located at a short distance from the Patwarkhana. Next morning the complainant went to the Patwarkhana. Punnu was deputed to receive the settled signal from the complainant by standing outside the premises of the Patwarkhana. The accused, as per the plan, accepted Rs. 300/- and placed the same in the pocket of his shirt (Ex. PX/8) that he was wearing at that time. On hearing coughing sound of the complainant from inside the Patwarkhana-the settled signal-the raiding party came to the scene and nabbed the accused in his kitchen on the first floor of the Patwarkhana building. The accused produced the trap money at the asking of the Deputy Superintendent of Police who was holding the accused by his forearm. Water in a lota was brought colour of which did not change after mixing sodium carbonate but when the accused was made to wash his hands after pouring the water, it became pinkish. This water was collected in a tashla where from it was taken into a quarter (Ex. PX/9). The shirt (Ex. PX/8) was also taken into possession vide recovery memo (Ex. PY). Statements of witnesses were recorded. Articles were sent to Forensic Science Laboratory, Chandigarh. The report (Ex. PZ) of the Expert is that the pinkish water contained sodium carbonate and phenolphthalein powder and that the currency notes (Ex. PX/1 to Ex. PX/7) were treated with phenolphthalein powder and the pocket of the shirt also contain phenolphthalein powder. After collecting necessary evidence, prosecution was launched against the accused.

5. The accused pleaded not guilty and claimed to be tried. His explanation u/s 313 of the Code of Criminal Procedure is that he was posted as Patwari in Patwar Circle, Badain. The complainant visited him only once in connection with the sanction of mutation in his favour but he did not give him Rs. 100/-. The complainant was asked to bring the landlord with him for this purpose. Demand of Rs. 300/- from the complainant has been denied. On the relevant day, the complainant visited him at 7a.m. when he was preparing tea in his kitchen. He denies that he asked the complainant whether he had brought the money and then he was given the aforesaid currency notes and after receiving the same they were kept in the left side pocket of the shirt (Ex. PX/8), he was wearing at that time. The accused explains that he was not wearing the shirt and trouser at that time. They were kept hanging on a peg in the kitchen and he was wearing only an underwear and under vest. The Deputy Superintendent of Police and the

complainant Came upstairs where the Deputy Superintendent of Police caught him by the arms. He was made to wear the shirt and the trouser and was brought down-stairs. He has denied having taken out the currency notes when asked by the Deputy Superintendent of Police. He has also stated that the numbers on the currency notes were not tallied in his presence. He further states that the colour of the water changed into pinkish as soon as the powder was mixed in it and not that he was made to wash his hands with the water in the lota. Finally, he states that he was involved in this case because the complainant wanted an illegal favour from him while other independent witnesses were inimical towards him since they had once managed his transfer from the village which was got cancelled by him.

6. Ranjit Singh (P. W. 1) is the complainant. His position is that of an accomplice. His version has, therefore, to be corroborated in material particulars before the same is acted upon (See: 1980 SCC 121 (Panalal Damodar Rathi v. State of Maharashtra)). He states that he lives in the house of Gangu Ram as his Gharjawain and cultivates his land. At the time of his marriage to the divorced daughter of Gangu Ram, Smt. Bhukro, he was told by his father-in-law that he will transfer his share of land in his favour. Accordingly, a will (Ex. P. 1) was executed in his favour. He visited the accused 3/4 times for effecting mutation of the Girdawari of the land in his favour. On the first occasion, the accused got Rs. 100/- from him by way of fee for effecting the change and then demanded Rs. 300/- again on 12-4-1984. He went to the office of the Anti Corruption Unit, Chamba, along with Pradhan Maheshu Ram and Punnu Ram and on his information. First Information Report (Ex. P.I) was recorded and he signed the same authenticating its correctness. He further states that the police took the steps, as already observed, while giving narration of the facts hereinabove.

7. On the day of the occurrence, he went to the Patwar-khana. The accused was preparing tea in the first floor of the Patwar khana building at that time. On his demand, he gave him the aforesaid currency notes which were kept in the left side pocket of his shirt which the accused was wearing at that time. He coughed loudly and the Deputy Superintendent of Police climbed up the stairs while others, including Mahashu Ram and Punnu Ram, remained on the ground floor. The accused was brought by his forearm by the Deputy Superintendent of Police down where the remaining members of the raiding party were present. Two more witnesses, namely, Sant Ram and Karam Chand, were also summoned. On being asked by the Deputy Superintendent of Police, the accused took out the currency notes and their numbers tallied with the notes that were there on the previous day. Some powder was mixed in the water that was brought in a lota, but its colour did not change. However, when it was poured on the hands of the accused, the colour became pinkish. It was collected in a small bottle which was sealed and taken into possession vide recovery memo (Ex. P. 6). In cross-examination, he could not give the dates and the names of the months when he had visited the accused 3/4 times on earlier occasions prior to the incident in question. He further states that he wanted the change in the Girdawari in his

favour since the will had been executed in his favour and that he was cultivating the land. He admits that he did not disclose the payment of Rs. 100/- to the accused to anybody although this payment was neither made two years prior to April 1984 nor he ever complained to any higher authority regarding this fact. He also admits that he did not ever take his father-in-law along with him to the accused. On the day of the incident, he remained with the accused for about ten minutes and they had been discussing regarding the change of Girdawari during this period. The accused had been asking him to arrange something. Again said, that nothing transpired between them at that time. He came to Chamba where he met Maheshu and Punnu whom he told that the accused was demanding money and he was not willing to pay the same and they went to the office of the Anti Corruption Department. On the day of the occurrence, when he went to the accused he was in the process of lighting his stove and denies that he was wearing only an tmdervest at that time. He also denies that he put Rs. 300/- currency notes stealthily inside the pocket of the shirt (Ex. PX"8) of the accused when it was hanging on the peg in the kitchen. He denies the suggestion that the currency notes were taken out of the pocket of the shirt of the accused by the Deputy Superintendent of Police (Roshan Lal) and that the water inside the Iota turned pinkish when powder was mixed in the same and was pinkish even before the hands of the accused were got washed with it. He admits that many people from the village had collected when the accused was brought to the ground floor from the kitchen.

8. He admits that the accused had told him that he would change the entries in the revenue record with respect to the Girdawari after making inquiry from his father-in-law regarding the execution of the Will (Ex. P. 1) but denies that he was insisting upon making the changes in his favour without inquiring anything from his father-in-law and despite knowing that it was his wife who was the sole heir of his father-in-law and he also denies that he got annoyed with the accused when he was not: obliged by him. Finally, he states that he stayed in the kitchen of the accused for 10 minutes and no talk, except the above, took place between them. However, the accused continued to prepare tea himself during this time.

9. There are certain basic flaws and contradictions in [the statement of this witness. There is no doubt that he is the complainant in the case and is an interested person in the litigation against the accused for he failed to get the mutation changed although he had been trying hard to convince the accused. It is not easy to believe that he had paid Rs. 100/- to the accused about two years back and even then the requisite work was not done by the accused and he demanded Rs. 300/- again. No grievance was ever raised by the complainant during all this period which shows that the story of payment of Rs. 100/- to the accused on an earlier occasion is baseless. Similarly, the second story appears to be thoroughly incredible for the reason that the accused had no authority to cause the necessary changes in the revenue entries showing his cultivation, more particularly, in the absence of the landlord. The explanation of the accused appears to be correct when he says that the complainant wanted an illegal favour

from him and the same could not be done in the absence of the landlord who was the father-in-law of the complainant. The complainant was not prepared to bring his father-in-law and wanted the changes to be done in his absence and without his consultation since it was not a rightful action on his part. When he failed to get the same done, he was after the accused, it is very clear. It cannot be believed that the accused demanded and accepted the money, as stated by this witness. Evidence on this aspect is thoroughly weak, shaky and unworthy of credence. The complainant appears to have gone to the kitchen where the accused was busy in preparing tea and during this time the money was inserted into the pocket; of his shirt that was hanging on the peg. This inference can be easily drawn when one looks to the explanation of the accused as well as the kind of evidence given by the complainant on this aspect. It is strange that independent witnesses were not taken to the place by The Deputy Superintendent of Police. They were kept down below where many others were also present. Why this was done, has not been satisfactorily explained. Therefore, even if it is accepted that the money was recovered from the pocket of the shirt of the accused, that is not enough. Evidence of demand and acceptance on the part of the accused! is not at all satisfactory in the present, case. In view of thesej suspicious circumstances, it is difficult of believe the statement of the complainant. In such a situation, it is to be seen what other witnesses have said about this matter.

10. Punnu Ram (P.W.2) contradicts Ranjit Singh (P.W.1) when he says that he was told by the complainant that the accused was demanding money in connection with some revenue work. So what kind of revenue work it was, this witness does not know nor he was conveyed the same. Further, as to the laying of the trap, he states that he reached the Patwarkhana alongwith two constables after the Deputy Superintendent of Police was standing on the ground floor alongwith the accused and other persons. At this time, the Deputy Superintendent of Police was holding the arms of the accused. By this time, the currency notes had already been placed on the table and he saw them lying there. They were not taken out from the accused in his presence. In cross-examination, he admits that the accused had been transferred twice or thrice prior to the incident but it was stayed. He admits that he had gone to meet the revenue minister to cause the transfer of the accused along with Mahesh (P.W. 3), Pradhan Gram Panchayat, and 100 other deputationists.

11. Mahesh (P.W. 3) contradicts P.W. I and P.W. 2 when he says that he was told by the complainant that the accused was demanding Rs. 300 for the supply of a copy of a revenue document. However, he says that the accused was caught by the Deputy Superintendent of Police and the Inspector from his arms and it was then that the Deputy Superintendent of Police took out the currency notes from the side pocket of the shirt which the accused was wearing at that time. He contradicts other witnesses when he admits that the water in the Iota turned pinkish the moment the powder was mixed in it and the hands of the accused were got washed with this pinkish water. He repeated this version when he was

confronted with his earlier two versions. This is also the statement of the accused u/s 313 of the Code of Criminal Procedure.

12. Statement of Karam Chand (P.W. 4) is not of much relevance since he has made number of improvements in his version.

13. Sant Ram (P.W.5) has turned hostile to the prosecution. However, he states that he reached the place of occurrence when the proceedings had already been finished.

14. N.T.R. Negi (P.W.6) is Tehsildar, Chamba. He states that as per para-9 of Chapter IX of the Himachal Pradesh Land Record Manual, a Patwari can change the entries in the Khasra Girdawari only in undisputed tenancy cases. This position, according to him, has been reiterated in the instructions issued by the Government in the year 1983 vide letter No. Raj-KA(KHA) 15-41/80, dated 4/11th October, 1983, issued by the Under Secretary to the Government of Himachal Pradesh to the Divisional Commissioner, Kangra, and Ors.

15. Prem Singh (P.W. 8) is the Sub-Inspector who was one of the members of the raiding party. Although he states that the accused produced the trap money himself, but his version is not understandable when he says: "Dy S.P. had searched the person of the accused. His pockets were searched. Accused had produced the trap money before his personal search was conducted by the Dy. S.P." When his person and pockets were searched, trap money, if it was available in the pockets, could have been found only by the Deputy Superintendent of Police. There was no occasion to ask the accused to produce the money when his person had already been searched. This witness has made improvements on this aspect of the matter since he had not given this kind of version to the police when his statement u/s 16 of the Code of Criminal Procedure was recorded. Further, as per his version, neither lie nor any other witness went inside the kitchen and they remained outside on the stairs where other witnesses were also present.

16. The head of the raiding party, Roshan Lal, has not been examined in this case due to his death.

17. None of the witnesses had said about the washing of the pocket of the shirt of the accused to establish that the trap money was kept in the pocket of the shirt, although this appears to be the prosecution case.

18. From the versions of the various prosecution witnesses, it is difficult to assume and conclude that the prosecution has been able to establish the charge against the accused. Mere recovery of bribe money in the absence of clear, cogent and convincing evidence pointing out the circumstances under which it was paid, is not sufficient to convict the accused [See: 1979 (4) SCC 125, Suraj Mai v. State (Delhi Administration)]. The case of the prosecution becomes suspicious right from the beginning when the factum of payment of Rs. 100/- two years prior to the present occurrence has been introduced in the prosecution

case. It cannot be believed that this had happened and the complainant did not raise voice against the inaction on the part of the accused for nearly two years before the second incident. It cannot be said that the accused could have demanded the money for doing a favour which he could not otherwise have done legally. Further, the conduct of the complainant himself is reprehensible since he wanted to cause changes in the revenue entries to his advantage and that too without letting it be known to his father-in-law who had executed a will in favor of both the complainant and his wife. The complainant could not have succeeded in effecting the change in the cultivation column of the revenue entries without the support of his father-in-law and the complainant was trying to do all this in his absence. It appears that he was trying to hoodwink both his wife and his father-in-law by causing the change in their absence and when, the accused refused to do so, he turned hostile. Acceptance of bribe by the accused is not established. He denies having received the same. His explanation that the money was inserted into his pocket stealthily when the same was hanging on the peg, cannot be rejected. Further, the manner in which the raid was conducted and processed, create many more doubts as to the incident. The incident was witnessed by number of villagers who had collected there but only a few, who appeared to be interested and inimical towards the accused, have been picked up to be witnesses for the prosecution. The is easily drawn, is that it is hazardous to conclude that the accused [is guilty of the offence. The trial Judge has failed to see through all these infirmities in the prosecution case with the result that wrong conclusions have been drawn thereby causing miscarriage of justice. It is a trap case which calls for more vigilance and acuteness while appreciating the prosecution version of the case.

19. The result of the aforesaid discussion is that there is merit in this appeal and the same is allowed. The judgment of the trial court is set-aside and the accused is acquitted of the charge. Fine, if any paid, be refunded to him. His bail bonds and surety bonds are hereby discharged.