
(1981) 11 GUJ CK 0005
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Mangabhai Jethabhai Vaghela and Others

RESPONDENT

Date of Decision : 13-11-1981

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66
Penal Code, 1860 (IPC) — Section 161

Citation : (1982) CriLJ 1317 : (1982) GLH 271

Hon'ble Judges : S.L. Talati, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

S.L. Talati, J.

1 and 2 x x x x.

3. The prosecution case is that the respondent at the relevant time was serving as police constable at Mandal Police station in Viramgam Taluka. P,

W. L. Jehaji Ajuji was the resident of Mandal. According to the prosecution¹ case, the respondent accused approached Jehaji and told him that he

was dealing in illicit liquor and, therefore, should pay him an instalment of Rs. 100/- per month. On this demand being made P. W, 1, Jehaji told

the accused that he was a poor person and was not dealing in liquor and, therefore, it was not proper for him to pay him anything. Thereafter on

that very day the complaint u/s 66(1)(b) of the Bombay Prohibition Act was filed against the complainant. He was arrested and released on bail.

The accused had also asked the complainant as to when he would pay him the amount and he had ultimately told him that he would pay the amount

within a day or two. The accused told him to keep the amount ready and that he would collect it from his house at 8-0 p.m. Thereafter according

to the prosecution case after taking advise of one Bhagwandas the complainant filed a complaint at Ahmedabad with Anti Corruption Bureau (A, C B.) office which complaint was recorded at Ex. 23 by P.W. 3 Police Inspector Vaghela. An amount of Rs. 75/- was produced by the complainant before Police Inspector Vaghela and two panchas were brought. The panchas were apprised of the facts of the complaint and the currency notes were treated with anthracene powder. Necessary instructions were given to the two panchas, the complainant and the members of the raiding party. After completing the necessary formalities the required preliminary panchnama was completed at the A. C. B. office. At about 4-30 P. M. the members of the raiding party started to go to village Mandal in a jeep. They went to the house of the complainant. Thereafter the prosecution case is that the complainant and panch No. 1 sat on a ..cot just near the house of the complainant. At about 10-15 P. M. the accused came and there was some talk. The accused left the place and he went on the road and he called the complainant there. Panch No. 1 followed the complainant on the road. The accused accepted the currency notes and placed the currency notes in the back pocket of his pant. The compla"nan1 gave agreed signal by lighting a bidi and the members of the raiding party rushed to the spot where the accused was caught by two constables by both of his hands and ultimately he was taken to police station where the currency notes were recovered from the pocket of his pant and with the help of ultra violet lamp the pocket of the pant of the accused, the currency notes and his hands were seen and it was found that they were all stained with anthracene powder. The pandhnama was completed. The numbers of the currency notes tallied with the numbers noted in the preliminary panchnama. A yadi was prepared in regard to the articles seized from the accused and the signatures of the panchas were obtained and the copy of the yadi was given to the accused. The statements of the members of the raiding party were recorded. The statement of the accused was also recorded and after obtaining the sanction the charge-sheet was filed against the accused and one another police constable. Ultimately at the trial three witnesses were examined; P.W. 1, Jehaji, the complainant at Ex. 22, panch No, 1 Ranjising was examined as P.W. 2 at Exh. 24 and Police Inspector Vaghela was examined as prosecution witness No. 3 at Exh. 36.

4. xx xx xx xx

5. The learned Public Prosecutor Shri Mehta read before us the entire evidence of the three witnesses. He strenuously urged before us that in this

case panch witness Ranjising was an independent and respectable witness. In his presence the accused accepted the amount and the money

ultimately was recovered from him. Police Inspector Vaghela who was present during the raid also testified in regard to the fact that the money was

recovered from the back pocket of the pant of the accused. The complainant Jehaji supported the prosecution case in examination-in-chief while in

cross-examination he deposed in an entirely different manner and gave a complete contradictory version. On the basis of the above evidence the

learned Public Prosecutor Shri Mehta submitted that when the evidence of the panch was such on which reliance could be placed the prosecution

did establish the case that the accused accepted the amount and once it was established that the accused accepted the amount the presumption u/s

4(1) of the Prevention of "Corruption Act would arise. The learned Public Prosecutor Shri Mehta submitted that the learned Special Judge misread

the two rulings referred to in his judgment and he thought that corroboration was necessary to the evidence of the panch witness and, therefore, he

recorded the acquittal. It was submitted that the view taken by the learned Special Judge is not sustainable and it was not at all a possible view.

6-7. Having gone through the judgment what we find is that the learned Special Judge thought that as the version given by the complainant differed

with the version given by the panch witness, the entire evidence was required to be thrown away and the learned Special Judge went to the extent

of coming to the conclusion that unless there was corroboration in regard to the evidence of the panch witness, his evidence cannot be accepted.

8 to 11. xx xx xx xx

12. The learned Special Judge referred to two cases in his judgment. The first case is a case of Sat Paul Vs. Delhi Administration, . The learned

Special Judge quoted the following from that judgment:

Conviction based on the uncorroborated testimony of trap witnesses and in the circumstances of case, is held improper.

We may only say that if the learned Special Judge had referred to the facts of that case he would have come to a correct conclusion. In that case

on 16-1-1970, Ramesh alias Kaka (P.W. 1, Mst. Maya (P.W. 2) and Jayna (P.W. 8) were apprehended at Delhi Railway Station who had

allegedly gone there to receive one Mumtaz a dancing girl. It was found on evidence that the witnesses of the trap had turned hostile to the

prosecution and were thoroughly cross-examined with the leave of the Court to impeach their credit. The further evidence showed that there was

an accommodation, comprising of one Hall, and side-rooms on G, B. Road which was known as the Kotha (brothel) of Mst, Maya. Mst. Jayna,

Mst. Maya and one Mst. Lachmi had been living together in those premises for the previous 8 or 9 years. Mst. Lachmi was the mistress of

Ramesh and the latter lived on her "professional" income. Mst. Maya was the keep of Dal Chand who maintained her servant, Mst. Jayna also.

Ramesh also claimed to be a servant of Mst. Maya and he also lived in that Kotha (Brothel). Witness Dal Chand admitted that he had been

frequently visiting that Kotha of Maya and on the day of occurrence, also he was there when, according to the witness, Mst. Maya came and

informed him about the demand of the bribe by the appellant. It was found that three witnesses were loitering to procure customers for their

immoral business. If in such circumstances where there was no independent evidence and the panch witnesses were turned hostile, if the word of

the interested witness was not accepted without corroboration one cannot come to the conclusion that it is held by the Supreme Court that

corroboration is necessary to the evidence of every trap witness. In fact the panch is not a trap witness at all.. He is not interested in the success of

the raid. The members of the raiding party only could be interested in the success of the trap. The complainant could be considered to be a person

who is an accomplice and, therefore, his testimony may not be accepted without corroboration. There is no law which requires that an independent

and reliable panch also should be corroborated before his evidence is required to be accepted.

13. In the case of Sat Paul Vs. Delhi Administration, there was defence evidence which, established that at the time of occurrence, the accused

was in police uniform and was not wearing the civilian clothes, including the pants from which the tainted currency notes were alleged to have been

recovered. As many as 5 defence witnesses were examined and the prosecution version sought to be examined was completely discounted. D. W.

5 established that he was throughout present in his room from 1-30 P. M. to 5-55 P. M. and during that period he did not see any stranger or

suspect in the room of the accused. The witness deposed that between 5-30 P. M. and 6-00 P. M. the accused was on patrol duty. He further

stated that at about 5-45 P. M. a telephone call was received from the sister of the accused from Kiriti Nagar, whereupon he sent Constable Dan

Rai to inform the accused about it. In response to the message sent by the witness, Sat Pal accused, in Police uniform came from the side of the

Railway platform to the Post, At that time, the witness, was attending to another telephone message; consequently the accused went into his room.

The witness then left for patrol duty, after telling the accused about the telephone message. In fact the Supreme Court in that case held as under

(Para 23):

There is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration. But where the witnesses have poor

moral fibre and have to their discredit a load of bad antecedents which indicates their having a possible motive to harm the accused who was an

obstacle in their immoral activities, it would be hazardous to accept the testimonies of such witnesses without corroboration on crucial points from

independent sources.

Thus it is clear that the learned Special Judge totally misread the above ruling and did not clearly grasp the ratio which was laid down,

14. The second case to which the learned Special Judge referred was the case of Shantilal Vs. State of Rajasthan, , From that case the learned

Special Judge picked, up the following sentence:

Conviction based on the sole testimony of the panch witness could not stand.

Now this is stated in paragraph 6 of the judgment and what is stated is as under:

But the evidence of Dhanna Lai and Bam Nath is that of interested witnesses because they were the persons responsible for laying the trap and so

far a3 Pushpa Kumar is concerned, we do not think it safe to act on the sole testimony.

Now this Pushpa Kumar was the panch witness. What is further stated is as under :

More so, when we find that though the Deputy Superintendent of Police was waiting in the compound under the tamarind tree from where he could

see what was happening in the first floor varandah, he did not depose to having seen the appellant coming out of the room, talking to Dhanna Lai

and then going back inside the room with him." That was a case where according to the prosecution the accused had demanded the bribe through

a peon who was co-accused. There was absence of evidence to establish that the accused ever demanded bribe or even made suggestion about it

to the complainant. In that case the currency note/? were not also seized from the accused but they were seized from the co-accused. The eye

witnesses did not speak that they saw the complainant talking personally with the appellant. The arrest of the accused was made after the currency

notes were seized from the co-accused. In those circumstances it was held that the prosecution evidence was insufficient to establish beyond

reasonable doubt that the appellant demanded bribe from the complainant through co-accused.

15. Reading the two cases referred to above, the learned Special Judge while not fully grasping the Authorities and the ratio laid down in those

cases in paragraph 8 of his judgment observed as under:

It has been laid down by the highest Court of the land that in a corruption case, conviction cannot be based on the sole testimony of the panch

witness and the complainant is an interested witness And his evidence requires corroboration and it has also been laid down that though a panch

witness may be an independent witness but his evidence re-; quires corroboration in material particulars and corroboration from the interested

witness is not sufficient for order of conviction. This has been the latest trend of the Supreme Court in various decisions under the Prevention of

Corruption Act.

The learned Special Judge further observed as under:

In view of this latest position of the law laid down by the highest Court of land, the implementation of the Prevention of Corruption Act has become

ineffective.

We may only say that the observation made above is not at all justified and is based on not proper reading of the two cases referred to above, j

16. The learned advocate Shri Desai referred to a case of Raghbir Singh Vs. State of Punjab, . The following passage was read over to us from

that judgment:

The Officers functioning in the anti-corruption department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the Court and the Court is not left in any doubt as to whether or not any money was paid to the public servant by way of bribe. They should insist on observing this safeguard for the protection of public servants against whom a trap may have been laid. In the present case the search witnesses were interested witnesses and, therefore, their evidence with regard to the giving of bribe and the recovery of the amount from the person of the accused was not relied upon.

In reference to this case what we find is that Arjun Das who was chosen as panch was a relative of Jagdish Raj who was the complainant. This was admitted by Jagdish Raj in his evidence. Further it was found on fact that Arjun Das was not secured as a witness to the raid by Inspector Hardas Singh. He was picked up by Jagdish Raj when he was going to meet his sister in Putlighar and taken to the Special Enquiry Agency. It was also found that Arjun Das had taken leave for the purpose of assisting Jagdish Raj in arranging the raid and he was clearly and indubitably an interested witness. It was found on fact that the functioning of the anti-corruption department in that case was such that the only safeguard against false implication in the offence of bribery which is provided by the presence of independent and respectable witnesses was completely ignored and two witnesses were taken one of whom was a relative of Jagdish Raj and the other a sweeper in the whole-time employment of the police. Now in this case the panch witness is a witness not known to the complainant. The panch witness was not secured, by the complainant but he was secured by Police Inspector Vaghela from Dafnala where he was taking tea with his friend. In this case, therefore, what we find is that the panch witness is an independent person.

17. The learned advocate Shri Desai referred to a case of *Doma and Another Vs. The State of Maharashtra*, . In that case it was held that the panch was an interested witness and thus he being a partisan witness his version cannot be accepted. In para, 17 of that judgment, the learned, Judges who decided that case stated as under:

17. Panch witness Pralhad (P.W. 2) no doubt deposed as per the prosecution

version, but being a panch witness he was interested in the trap and he was a partisan witness. In the absence of any other evidence it is difficult to accept his version that the papers were handed over by accused

No. 2 Diwan to Sitaram at the time of the trap, that the accused No, 2 had accepted the amount and that he executed the chit, at Ex. 31

voluntarily.

With respect we cannot agree to the proposition laid down that the panch witness is interested witness in the trap and that his evidence cannot be

accepted without corroboration. In fact the laying down of a trap becomes necessary when the complainant files a complaint that a particular

public servant has agreed to accept a particular amount at a particular time and place. In that event a trap is required to be laid. Therefore, the

members of the raiding party in company of the complainant go the place fixed by the public servant and the trap is laid. There are safeguards by

which it is provided-that the senior officer arranges, the trap and if he is not available the trap is to be arranged after the sanction is obtained from

the Magistrate, As the complainant is a person who could be considered as an accomplice and as police officers could be considered interested in

the success of a trap it is provided that two independent persons are taken with them to act as panchas. Now that, therefore, from the start the

trap begins with choosing of two independent persons. They are apprised of the contents of complaint. In their presence currency notes are treated

with anthracene powder and the whole demonstration is made and the preliminary panchanama is prepared. One of the panchas is kept throughout

with the complainant in order that he might see the passing of the currency notes and hear that what transpired between the complainant and the

public servant. Now that, therefore, the only thing which is required of the Judge to first find out is as to whether that person in fact is an

independent person, in the sense that he neither acts on behalf of the complainant nor acts on behalf of the police. He, therefore, should not be a

person either chosen by the complainant or chosen by the police as their own man. If that person is found to be an independent person and if his

evidence is read as a whole and the testimony inspires confidence and the person is found to be reliable his evidence is required to be accepted

and there cannot be any necessity for corroborating a person who is an

independent and reliable person and the learned Judge finds that his evidence is required to be accepted as coming from reliable and independent source.

18. The learned advocate Shri Desai referred to a case of Panalal Damodar Rath Vs. State of Maharashtra, . That case will not at all help the

defence. It was a case where a Police Prosecutor was prosecuted. The complainant was being tried for an offence under the Bombay Prohibition

Act and the complainant offered to pay Rupees 25/- to the Police Prosecutor in order that this previous conviction was not brought on record. On

facts it was found that the account of the conversation as spoken by the panch witness was not in conformity with the version given by the

complainant. The whole case depended upon the facts as to whether the accused demanded a bribe. The reason was that, (the marked currency

notes were not recovered from possession of the accused, but they were recovered from possession of the second accused. The r complainant

was found to be thoroughly unreliable and the marked currency notes were not found from the" accused. Therefore, the whole case depended

upon the oral testimony on the question as to whether the demand was made or not and in that case it was found that the evidence was insufficient

to come to the conclusion that the demand was ever made.

19. Another case which was referred to by the learned advocate Shri Desai was a case of Suraj Mal Vs. State (Delhi Administration), . It was

held as under (Para 2):

Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes

.unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.

Further it was held as under :

In a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when

the substantive evidence in the case is not reliable.

It was a case where in the F. I. R. the case of demand was not stated., After implicating three accused in examination-in-chief, in cross-

examination the witnesses tried to save Ram Naran and made out a different story be for Bam Naran was concerned and they went to the extent

of stating that he did not demand any money and that he refused to accept the money which was offered to him. What was held was that mere recovery in absence of evidence to prove payment of bribe or to show that the appellant would voluntarily accept the money would not be sufficient. Now that, therefore, if in a given case it was not established "that the money passed from the hand of the complainant to the hand of the accused and it is not established that the accused willingly or voluntarily accepted the bribe in absence of such proof if only recovery of money is proved it could as well be that the money might have been planted. Therefore, the prosecution case must rule out the possibility of planting and that possibility of planting can be ruled out by leading cogent reliable evidence to the effect that the complainant in fact parted with money and that the accused in fact willingly accepted the same. If these two facts are established recovery from the accused would further guarantee the prosecution case that in fact not only that the amount was given and accepted but it was found also. It is true that if it is not established that the amount was given, it is not further established that the amount was accepted and in absence of such evidence if only evidence was that the money was recovered, then in that case the prosecution must fail. In this case the evidence of the panch witness established that there was a talk about the money, that the accused went on the road, he called the complainant on the road, the panch witness followed him, the accused accepted the money, he placed the money in his pocket of the pant and that money was recovered from his person at the police station. In such a situation this ruling cited by the learned advocate Shri Desai would not be of any help.

20. The last case which was cited by the learned advocate Shri Desai is the case of *Banshi Lal Yadav Vs. State of Bihar*, . It was also a case where the currency notes were thrust in the pocket of the accused. It was also a case where the acceptance was not voluntary. In that case it was held that before presumption can be raised, the burden is on the prosecution to prove that the accused has accepted or obtained, or has agreed to accept or attempted to obtain, for himself any gratification other than " legal remuneration etc.

21. The learned Public Prosecutor drew our attention to a case of *Hazari Lal Vs. State (Delhi Administration)*, . The following passage from

paragraph 8 was read before us :

Where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration, There ""is no

rule of prudence, which has crystallized into a rule of law, nor indeed any rule of prudence, which required that the evidence of such officers should

be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a

particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the fact and

circumstances of another case the Court, may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and

on such matters there can be no hard and fast rule, nor can there be any precedential guidance.

In that case it was also held that the respectability and the veracity of a witness was not necessarily dependent upon his status in life and the Judges

stated that they were not prepared to say that Clerks are less truthful and more amenable than their superior officers.

22. Having regard to the facts and circumstances of this particular case we may say that the evidence of Police Inspector, Vaghela also inspires

confidence. -He came out with the truth when he stated that he did not see passing of the money. He was at a distance of about 15 or 20 paces

and there was no obstruction. If he wanted to tell a lie he could have as well said that he could see passing of the money. Passing of money was

established by the evidence of the panch-witness. Police Inspector Vaghela immediately rushed to the site on seeing signal of lighting the bidi. He

took the accused to Police Station and there the amount was recovered from the back pocket of the pant of the accused. This fact is fully

established by the evidence of the panch witness and also by the evidence of Police Inspector Vaghela. This of course is recovery of money from

the person of the accused. It is nobody's case that the amount was thrust or placed in his pocket though he never desired to accept the amount.

The amount was not thrust on him. He in fact demanded the amount. He never wanted to accept in presence of a third person. He, therefore chose

to go on the road. He called the complainant there. He accepted the amount which the panch witness witnessed. The accused after accepting the

amount himself placed the money in the pocket of his pant from where the amount was recovered. When the evidence is so overwhelming and convincing and the panch witness inspires confidence, on appreciation of the evidence, it clearly appears that the panch was an independent and reliable person. There is no reason to discard his evidence on the ground that he requires independent corroboration. only say that the learned Special Judge not only misread the two Supreme Court judgments but relying upon the incorrect appreciation of those rulings he looked at the evidence with wrong angle and, therefore, he came to the conclusion which was not a possible view. The view which is not. possible is taken and, therefore, the result arrived at is not only erroneous but perverse.

23. In the result, therefore, the acquittal of the respondent is required to be set aside. The appeal of the State is required to be allowed. The accused-respondent is held guilty for an offence punishable u/s 161 of the India Penal Code and also u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act.

XX XX XX XX