
(2010) 07 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : CRA No. 817-SBA of 2001

State of Haryana

APPELLANT

Vs

Mam Raj

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313

Citation : (2010) 4 RCR(Criminal) 240

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Kshitij Sharma, AAG, Haryana, for the Appellant; Sanjeev Sheoran, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The State of Haryana has filed the instant appeal against the judgment dated 21.11.2000 passed by the learned Trial Court, whereby the accused/appellant was acquitted of the charge framed against him.

2. The brief facts of the case, as set up by the prosecution in para 2 of the impugned judgment, are that:

...Mam Raj was working as Agricultural Revenue Clerk in the office of Executive Engineer, Lining Division Tohana of Haryana State Minor Irrigation and Tubewell Corporation. Phooljit Singh (PW8) made an application to Divisional Canal Officer, Water Services Division, Tohana for transferring of some area of his agricultural land from outlet RD/47000-Left to outlet RD- 20450-Right Chander Kalan minor irrigation canal for irrigation purposes. Divisional Canal Officer, Water Services Division directed Phooljit Singh to obtain a no objection certificate from Minor Irrigation and Tubewell Corporation. Phooljit Singh met Mam Raj accused who was officiating Zildar on 3rd and 4th September, 1996 for seeking no objection certificate. Mam Raj demanded Rs. 700/- from Phooljit Singh as illegal gratification for issuing no objection certificate. When Phooljit Singh did not pay

Rs. 700/- Mam Raj raised objection against transfer of land belonging to Phooljit Singh from outlet RD-47000-Left to 20450-Right. Phooljit Singh again contacted the Divisional Canal Officer for transferring his land from one outlet to another outlet of Chander Kalan minor. Divisional Canal Officer again sought no objection certificate from Executive Engineer, Minor Irrigation and Tubewell Corporation, Tohana. Phooljit Singh again went to Mam Raj accused and requested him to issue a no objection certificate. This time Mam Raj told Phooljit Singh that if he cannot pay Rs. 700/- to him, he should at least pay him Rs. 500/- if he wanted Executive Engineer, Minor Irrigation & Tubewell Corporation to issue a no objection certificate to him. Phooljit Singh then contacted Sh.Kuldip Singh, D.S.P. Tohana (PW11) and made complaint (Ex. PQ), Sh. Kuldip Singh, D.S.P. organized a raiding party consisting of himself, Sub Inspector Dharam Chand, ASI Parkash Chander and Sh.Sukhdarshan Singh, Tehsildar Tohana. Five currency notes of Rs. 100/- denomination each were taken by Phooljit Singh and signed by Kuldip Singh, D.S.P. These notes were then smeared with phenol pethalein powder and returned to Phooljit Singh through memo (Ex. PQ). Phooljit Singh was instructed to hand over these notes to Mam Raj accused on demand. Application (Ex. PQ) was sent to the police station through Constable Raj Singh by DSP Kuldip Singh with his endorsement (Ex. PO/1) for registration of case. ASI Parkash Chander was appointed as shadow witness and instructed to give signal to other members of the raiding party by waving his hand over his head as soon as Phooljit Singh handed over tainted notes to Mam Raj. D.S.P. Kuldip Singh, Tehsildar Sukhdarshan Singh, SI Dharam Chand and ASI Parkash Chand then went to the office of Minor Irrigation and Tubewell Corporation, Tohana by jeep. DSP Kuldip Singh, Tehsildar Sukhdarshan Singh and SI Dharam Chand took position outside the building housing office of Minor Irrigation & Tubewell Corporation where from main gate of the office was visible. While ASI Parkash Chander took position at the main gate of the office. Phooljit Singh went inside the office. He found accused Mam Raj sitting on chair in the office. Mam Raj told Phooljit Singh that he had done his work. Phooljit Singh also told Mam Raj that he too has done his work. Mam Raj then demanded an amount of Rs. 500/- as agreed and Phooljit Singh handed over five currency notes of Rs. 100/- denomination each bearing signatures of DSP Kuldip Singh which were treated with phenol pathalein powder. Mam Raj counted the currency notes after taking these in his hands and then put currency notes in the front pocket of his pants. ASI Parkash Chander who was watching Mam Raj from the gate gave the appointed signal to the remaining members of the raiding party. DSP Kuldip Singh, SI Dharam Singh and Tehsildar Sukhdarshan then entered the room in which Mam Raj was sitting. When search of Mam Raj accused was taken, five currency notes bearing signatures of DSP Kuldip Singh were recovered from the front pocket of the pants of Mam Raj. A solution of sodium carbonate and water was prepared in a bucket. The solution was taken out from the bucket in small quantity with the help of a tin container. Mam Raj accused was asked to wash his hands with the water in the tin container. When Mam Raj washed his hands with the solution of water and sodium Carbonate, the solution turned pink. The wash P was poured into empty

bottles which were marked and sealed with the seal KSS. Some more solution of Sodium carbonate and water was taken out from the bucket with the help of same tin container and the notes recovered from the front pocket of pants of Mam Raj dipped in that solution. The solution turned pink when these notes were dipped in it. The solution was then poured into two empty bottles which were also sealed with the seal of KSS. Some more solution was taken out from the bucket and pants of the accused was dipped in it. This time also the solution turned pink of light shade and this light shade pink solution was put in two empty bottles which were also sealed with the seal of KSS. The notes, pants, bottles containing pink solution were taken by DSP Kuldip Singh in his possession vide seizure memo (Ex. PR) which was attested by Sukhdarshan Singh, Tehsildar, SI Dharam Chand and Phooljit Singh. No objection certificate bearing initial of Mam Raj which was to be signed before issuing to the complainant by Executive Engineer, M.I.T.C. lying on the table of Mam Raj accused was also taken by DSP Kuldip Singh in his possession alongwith an affidavit sworn by Phooljit vide seizure memo, (Ex. PS). Site Plan (Ex. PT) of the place of crime was prepared. Accused Mam Raj was formally arrested.....

3. On the basis of allegation made in the report u/s 173 Cr.P.C. and the documents sent therewith, charge under Sections 7 and 13(a)(ii) of the Act was framed against the accused/appellant, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution has examined as many as eleven witnesses, namely, Bhushan Parkash, Executive Engineer, HSMITC, Chandigarh as PW1; Sadhu Ram Bansal, Executive Engineer, Tohana Lining Division, MITC, Tohana as PW2; Krishan Pal, SDO MITC, Tohana as PW3; Constable Balbir Singh as PW4; Head Constable Ajad Singh as PW5; Girish Kumar, Draftsman as PW6; Krishan Gopal Bansal, Executive Engineer, Tohana, Water Services Division as PW7; Phooljit Singh (complainant) as PW8; Tehsildar Sukhdarshan Kumar as PW9; ASI Gulshan Kumar as PW10 and S.P. Kuldip Singh, PW11.

5. In the statement recorded u/s 313 of the Code of Criminal Procedure, the accused/appellant denied all the allegations and incriminating evidence against him and pleaded his innocence and also false implication in this case.

6. The present appeal was admitted on 26.7.2001 by this Court.

7. Learned counsel for the appellant has argued that the testimony of Phoojit Singh, PW8, has not been believed by the learned Trial Court. He (PW-8) has given the detailed account as to how the appellant had demanded illegal gratification for issuing no objection certificate. During the raid held on 11.10.1996, the accused/appellant demanded and accepted illegal gratification of Rs. 500/- in the presence of Tehsildar Sukhdarshan Singh, PW9 and DSP Kuldeep Singh, PW11. Learned State counsel has further submitted that Tehsildar Sukhdarshan Singh, PW9 and DSP Kuldeep Singh, PW11, being not the official witnesses, were not hostile to the accused as he was not known to them

previously, therefore, there was no reason with the learned Trial Court not to rely on the statement of complainant Phooljit Singh, PW8. Further, it has been argued that non-examination of ASI Parkash Chander is not fatal to the case of prosecution in view of the fact that case against the appellant is established on the basis of statements made by Tehsildar Sukhdarshan Singh, PW9 and DSP Kuldeep Singh, PW11. There is total corroboration in the statements of these witnesses.

8. Learned counsel for the respondent has argued that material witness, namely, ASI Parkash Chander has not been examined by the prosecution. He has further argued that there are contradictions in the statements of Tehsildar Sukhdarshan Singh, PW9 and DSP Kuldeep Singh, PW11. They were official witnesses and therefore, are interested witnesses. The learned Trial Court, after having noticed contradictions, did not take cognizance of the same.

9. I have heard the learned counsel for the parties and perused the record with their able assistance.

10. Admittedly, in the present case, there are contradictions in the statements of Sukhdarshan Kumar, PW9 and DSP Kuldeep Singh, PW11. According to the statement of Phooljit Singh, PW8 and Tehsildar Sukhdarshan Kumar, PW9, personal search of the appellant was conducted by Sh. Kuldeep Singh, PW11, who was then posted as DSP Tohana and five currency notes of Rs. 100/- denomination each were recovered from the pocket of the appellant. However, DSP Kuldeep Singh, PW11, has deposed that personal search of the appellant was conducted by ASI Parkash Chander under his supervision in the presence of Tehsildar Sukhdarshan Singh, PW9 and SI Dharam Chand.

11. As per the prosecution case, ASI Parkash Chander was a shadow witness. The amount of bribe was demanded and paid in his presence. It was on the signal made by him that members of the raiding party swung into action and the alleged amount of illegal gratification was recovered from the possession of the accused/appellant. In the circumstances, ASI Parkash Chander holds a very crucial position in the raiding party. He saw and heard the accused/appellant demanding illegal gratification from the complainant Phooljit Singh, PW8. Therefore, this witness has seen the sequence emanating from the demand culminating into acceptance of the bribe by the appellant. In my considered opinion, non-examination of such a crucial witness particularly in the fact when no reason for non-examination has come forward, is fatal to the case of the prosecution because without his testimony and corroboration the chain of events remained uncompleted.

12. Keeping in view the facts and circumstances of the present case, I am of the considered view that there are material improvements and non-examination of ASI Parkash Chander, who actually witnessed the transactions of giving and accepting of gratification between the complainant and the appellant completely shakes the credibility of prosecution version and therefore, cannot be relied upon.

13. Accordingly, the present appeal is dismissed. The judgment and order dated 21.11.2000 passed by the learned Special Judge, Fatehabad, is maintained.