
(1997) 10 AHC CK 0031
In the Allahabad High Court
Case No : Govt. Appeal No. 549 of 1993

State of U.P.

APPELLANT

Vs

Ravindra Pal Singh Lekhpal

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 313
Penal Code, 1860 (IPC) — Section 161, 216, 354
Prevention of Corruption Act, 1947 — Section 5(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B

Citation : (1998) CriLJ 4190

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : A.G.A, for the Appellant; R.K. Asthana, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jain, J.—Heard learned Additional Government Advocate and Sri R.K. Asthana, learned counsel for the respondent.

2. The respondent was tried in Special Case No. 2 of 1987 for offences under Sections 161, I.P.C. and 5(2) of the Prevention of Corruption Act and acquitted by the trial Court (Vth Addl. Sessions Judge, Aligarh) by judgment and order dated 26-11-1992. It is this judgment and order of the trial Court which is being challenged in this appeal.

3. On 16-1-1986 an application (Ex. Ka-1) was given by Virendra Singh and Tej Pal Pal to Sri Ram Kumar Tyagi, Inspector Vigilance, district Aligarh. The said application contained endorsement of Sri D.P. Mishra, A.D.M. Aligarh regarding arranging of trap. The allegations in the complaint were that both Virendra Singh and Tej Pal had applied loan from the Bank under the free boring scheme for small land holders. When the complainants did not receive any information about sanction of loan for 7 months they approached Gram Sewak who told them that they will have to obtain share certificates from Lekhpal of their area. At the

relevant time Ravindra Pal Singh was Lekhpal of the area of the complainants. The complainants approached Ravindra Pal Singh and asked him to prepare and issue Share certificates for which he demanded Rs. 50/- each. Both the complainants returned back after promising the Lekhpal to pay the said amount the next day. After the said complaint was received by Inspector Sri Ram Kumar Singh Tyagi he fixed 17-1-1986 for paying the trap. He obtained two currency notes of Rs. 50/- each from Tej Pal and Virendra Singh and made his initials thereon and also treated them with Phenolphthalein powder. He also observed other formalities and thereafter handed over the notes to each of the complainants with instructions that the said currency notes shall be given to Sri Ravindra Pal Singh at the time of the trap. On 17-1-1986 according to the plan the trap was arranged in the tea shop of Jayanti in Shasni town. At about 12.10 p.m. according to the plan Ravindra Pal Singh, Tej Pal and Virendra Singh reached in the tea shop. Both Tej Pal and Virendra Singh asked the accused to do their work and told him that they have brought the money. Thereafter the accused took out two forms from his bag and obtained thumb impressions of Tej Pal and Virendra Singh separately and thereafter demanded bribe. Both Tej Pal and Virendra Singh gave currency notes of Rs. 50/- each which were bearing initials of Inspector Sri Ram Kumar Tyagi. The accused as apprehended to the presence of the witnesses. Both the currency notes were recovered from his possession. One was recovered from the pocket of his coat and the other from his hand. The Trap Inspector thereafter completed other formalities and prepared memo Ex. Ka-3. On the dictation of Inspector Sri Rani Kumar Singh Tyagi report (Ex. Ka-4) was registered and case u/s 161, I.P.C. and 5(2) of the Prevention of Corruption Act was registered against the respondent.

4. Investigation of the case was done by P.W. 7 Sri Rajendra Singh Yadav who was then Inspector Vigilance district Etah. After completion of usual investigation he obtained sanction (Ex. Ka-9) dated 9-3-1997 to prosecute the respondent. The sanction was accorded by Sri Chakrapani Sub-Divisional Magistrate, Hathras, district Aligarh. After submission of the charge sheet the respondent was charged u/s 161, I.P.C. and 5(2) of the Prevention of Corruption Act. He denied the charges and stated that he was falsely implicated due to enmity. In his statement u/s 313, Cr.P.C. he stated that he was apprehended from the bus stand when he was awaiting for the bus to go to Hathras and was falsely involved in the present case on account of enmity.

5. The prosecution in support of its case examined P.W. 1 Tej Pal, P.W. 2 Khajan Singh, P.W. 3 Virendra Singh, P.W. 4 Khacher Mai, P.W. 5 Devendra Singh, P.W. 6 Sri Ram Kumar Singh, the Inspector, P.W. 7 Inspector Rajendra Singh Yadav and P.W. 8, Dr. O.P. Taneja. The respondent did not examine any witness in his defence. He however, filed 7 papers per list 55-C which are Ex.Kha-1 Ex.Kha-7. On consideration of the entire evidence the trial Court came to the conclusion that the witnesses were partisan witnesses and were inimical to the accused and had motive to implicate him falsely. The trial Court also found that the prosecution evidence was not reliable and consequently, acquitted the accused

holding that no such incident had occurred as alleged by the prosecution.

6. The judgment and order of the trial Court is challenged mainly on the ground that the trial Court has committed error in appreciation of the evidence and that the evidence of the prosecution witnesses could not have been rejected on the ground that the witnesses were inimical. Learned counsel for the respondent supports the judgment and order of the trial Court and submits that the prosecution has failed to establish its case beyond shadow of doubt and the accused respondent was rightly acquitted by the trial Court.

7. At the outset it may be pointed out that the case of the prosecution is that the complainants Tej Pal and Virendra Singh had applied for loan under the Free Boring Scheme for small agriculturists. It is also the case of the prosecution is that the said applications of the complainants were pending for the last 7 months and on enquiry it was disclosed by the Gram Sewak that the loan could not be granted for want of share certificates. Except oral evidence of Tej Pal PW 1 and Virendra Singh PW 3 no other witness has been examined by the prosecution. No documentary evidence in this regard has been adduced by the prosecution. Although the Investigating Officer appears to have taken into possession photocopies of the same documents but none has been produced nor exhibited during the trial. There is no evidence on record to the effect that the loan was not being granted to the complainants for want of share certificates. The said Gram Sewak who is said to have told the complainants that the loan was not being granted for want of share certificates has not been examined by the prosecution during the trial. No any witness concerned with the grant of loan has been examined who could have stated as to why the loan was not being sanctioned to both the complainants. Therefore, it is difficult to rely upon the story of the prosecution that both the complainants needs share certificates in connection with their applications for grant of loan. The theory of their having approached the accused respondent for issuing share certificates also therefore, becomes doubtful.

8. The trial Court has given cogent reasons holding that witnesses Tej Pal PW 1, Khajan Singh PW 2 and Virendra Singh PW 3 were highly inimical to the accused and had motive to falsely implicate him. PW. 1 Tej Pal has admitted that a case u/s 122B of the U.P.Z.A. and L.R. Act was initiated against him but he stated that the case was lodged after the present incident. He has also admitted that Khajan Singh PW 2 who is a witness in the present case, was village Pradhan, had appeared as a witness from his side, PW 2, Khajan Singh has admitted in his cross-examination that a report u/s 122B of the U.P.Z.A. & L.R. Act was submitted by Ravindra Pal Singh, although he stated that he does not remember if the report was given prior to the present incident. The respondent has filed Ex.Kha-1 certified copy of the report u/s 122B of the U.P.Z.A. & L.R. Act which is dated 17-12-1985. The trap was laid on 17-1-1986. Thus the case u/s 122B against Tej Pal was initiated soon before laying of the trap against the respondent. Ex.Kha-3 is the copy of statement of Khajan Singh which he had

given to favour of Tej Pal in the said case. PW 2 Khajan Singh has admitted during cross-examination that on the report of Ravindra Pal Singh proceedings under the Ceiling Act were initiated against him and his 45 bighas of land was taken away under the Ceiling Act. Although the witness has stated that he does not remember as to when the report was submitted by Ravindra Pal Singh but the accused has filed copies of complaints dated 30-11-1985 Ex. Kha-4 by one Har Prasad and Ex.Kha-6 dated 7-12-1985 by one Ram Prakash respectively about excess land possessed by Khajan Singh on which Tahsildar Hathras was directed to make an enquiry and report. He has also filed copy of the statement dated 1-12-1987 before the Ceiling authorities in which he proved his reports Ex.Kha-5, Ka-6 and Ka-7 which were prepared by him during the period 1984-86 when he was Lekhpal of the village. It appears that the first report was prepared on 26-12-1985 and the thereafter on 3-1-1986 and 4-1-1986. Thus the reports were submitted by the respondent about excess land in possession of the PW 2 prior to the alleged trap in the instant case. It is also admitted fact that PW 2 Khajan Singh had contested the election of Pradhanship against Ram Prakash who had made complaint regarding his excess land. There was suggestion to PW 3 that he had sided Khajan Singh in the said election. PW 3 has denied to have sided Khajan Singh in the said election. He however, admitted that there was Paritibandi in the village at the time of the said election. One party belonged to Khajan Singh and other belonged to Charan Singh and Ram Prakash. This witness stated that he was in the party of Charan Singh but this part of the statement of PW 3 docs not appear to be correct. PW 2 Khajan Singh is the person who had scribed, the complaint (Ex.Kha-1). If Virendra Singh belonged to the party of Charan Singh and Ram Prakash who were opponents of Khajan Singh, Virendra Singh would have never gone to the house of Khajan Singh for getting the complaint scribed by him. It is admitted fact that PW 1, Tej Pal, PW 2 Khajan Singh and PW 3 Virendra Sing are Jat by caste whereas Ram Prakash who contested the election against Khajan Singh was Brahmin by caste. PW 4 Khacher Mai is the so-called independent witness but from his cross-examination he appears to have affinity with Khajan Singh PW 2. He is a witness who resides at a distance of about 3 1/2 kms. from the village of the complainants and the Pradhan. This witness has admitted that Khajan Singh often ploughs land of this witness by his Tractor. The defence case is that the Khajan! Singh was instrumental in concoction of the false case against the accused. It transpires from the cross-examination of the witnesses that Khajan Singh was present through out during the proceedings of the case till PW 1, PW 2 and PW 3 were examined.

9. Besides this the antecedents of the complainants and other witnesses are established to be bad. PW 1 Tej Pal has admitted in his cross-examination that illicit Arms Factory was discovered at his house about 12 years prior to the date of his deposition and in that connection he had been in jail for about 2-1/2 years. He has also admitted that he was also challaned under the Excise Act. Similarly, PW 2 Khajan Singh has admitted that he was challaned for theft for felling forest

trees. He was also challaned u/s 216, IPC and his lincenced gun was deposited at the police station. He further admitted that he and witness Sardar Singh of this case were challaned u/s 354, IPC. This witness had also litigation under Sections 107/116, Cr.P.C. with Ram Prakash. Thus besides the affinity between the witnesses they have also bad antecedents and their evidence was required to be examined with great caution.

10. Ex. Ka-1 is the report which is said to have been scribed by Khajan Singh PW 2 at the dictation of PW 1 Tej Pal and PW 3 Virendra Singh. During the cross-examination PW 3 Virendra Singh has, however admitted that on his instance as well as on the insistence of Tej Pal the Pradhan had scribed the report but it was not read over to them. He has also stand that on the said report thumb imprisions of Tej Pal and signatures of Virendra Singh were obtained. On seeing Ex. Ka-1 the witness has categorically staled that this was not the report which was scribed by the Pradhan. He has further stated that Ex.Ka-1 did not bear his thumb impression. This witness has stated that the thumb impression on the application written by the Pradhan were from Ink pad. A perusal of Ex.Ka- 1 would, however, show that it does not bear thumb impression of Virendra Singh PW 3. The thumb impression on this report is also not in the Ink of pad. Therefore, it appears that the report was written by the Pradhan PW 2 Khajan Singh without its contents being known to PW 3 or it was changed subsequently since it does not be the thumb impression of PW 3 nor the thumb impressions upon it are in the ink of the pad. There are material contradictions on the point as to where the accused was actually apprehended and where the seizure memo etc. were prepared. There are also other infirmities in the prosecution evidence. The case of the defence is that the accused was apprehended at Shasni Bus stand while he was awaiting for the bus to go to Aligarh. Although the prosecution case is that the accused was apprehended in the tea shop of Jayanti but there are material contradictions in the testimony of the prosecution witnesses with regard to the manner in which the accused was apprehended and also the manner in which the seizure memo etc. were prepared. PW 1 Tej Pal has stated in his deposition that Inspector had told him that Lekhpal shall not be apprehended at his house and he shall be trapped at some other place but the place was not settled on 16-1-1986. The Inspector had asked him as well as Virendra Singh to meet him at the Bus stand at 10.00 a.m. and it was agreed that the place of trap shall be decided later on. According to PW 1 after reaching Shasni he first went to the house of Lekhpal, he had asked the accused to prepare and issue share certificates and told him that he had brought the money. He has further stated that the Lekhpal first and thereafter money shall be given to him. He has further stated that he had asked the Lekhpal to come at the shop of Jayanti and the money shall be paid to him there. PW 3 Virendra Singh, however, stated that he and Tej Pal went to the house of Lekhpal and Lekhpal himself told them that they should meet him at the shop of Jayanti where he would be reaching soon. He does not state that at his house there was any talk of preparing and issuing of share certificates and the demand of bribe by the

accused. According to this witness the accused had himself suggested to go to the shop of Jayanti whereas according to PW 1 it was his suggestion that the Lekhpal agreed to come at the shop of Jayanti where money was to be paid to him. PW 1 has stated during cross-examination that when he reached the shop of Jayanti besides him there were 6-7 other persons who were taking tea at the tea shop of Jayanti. He has also stated that two constables and Inspector Tyagi had come to the shop along with Sardar Singh. He has also stated that Lekhpal had also accompanied them to the shop of Jayanti. PW 3 during the cross-examination, however, stated that he alone had gone to the house of Lekhpal. Tej Pal had not gone to the house of Lekhpal. The accused did not accept the money at his house and had told that he was reaching at the shop of Jayanti where he will do their work. He has also stated that when he returned from the house of Lekhpal then Tejpal met him at the Bus stand. About half an hour thereafter the accused came to the Bus stand from where all of three with them went to the shop of Jayanti. He further stated that 20 minutes after they reached the shop of Jayanti Inspector Tyagi arrived there. He further stated that Lekhpal had seated inside the shop where he and Tejpal had come out of the shop and awaited for Inspector Tyagi. He further stated that after alighting at the Bus stand Tyagi had gone to the police station and till Tyagi returned from the police station they waited for him near the Bus stand and that place was at a distance of about 50 paces from the shop of Jayanti. According to this witness almost 10 persons including Inspector Tyagi, Virendra Singh and Tej Pal had entered the shop of Jayanti simultaneously. Lekhpal was sitting on a bench in one corner. He and Tej Pal and two unknown persons went towards the Lekhpal and sat with him whereas Inspector Tyagi and others sat another bench in front of Lekhpal. Thus this witness materially contradicts the statement of PW 1. If both Tej Pal and Virendra Singh had entered the shop of Jayanti with Inspector Tyagi S.O. Shasni, constable and other witnesses and had come 20 minutes after Lekhpal was made to sit inside the hotel, it was sufficient to raise a suspicion in the mind of the Lekhpal that there was something wrong and he would have never demanded any bribe in presence of such circumstances. It is further to be pointed out that according to the statement of PW 1 after apprehending the Lekhpal inside the shop he was taken out side the shop and thereafter entire proceedings took place on the road out side the shop whereas according to PW 3 the Lekhpal was taken inside the room in a tin shed and at that time Tyagi was holding currency notes in one hand and was holding Lekhpal by another hand. Thus there are material contradictions in the testimony of these witnesses as to the manner and the place where the accused was apprehended and the place where the seizure memo etc. were prepared. According to PW 4 Khacher Mal there was none inside the hotel except the Lekhpal where they had entered the shop. He has further stated that Tyagi had shown him two currency notes of Rs. 50/- at the Bus stand and the notes were taken out from the pockets of Virendra Singh and Tej Pal. He thus materially contradicts the evidence of other witnesses.

11. One of the most important circumstances, which belies the prosecution

evidence regarding the manner in which the accused is alleged to have been arrested, is that on personal search of the accused no Ink pad was recovered. The prosecution case is that in the hotel the accused lookout two forms Ex.Ka-5 and Ka-6 and on them thumb impressions of Tej Pal and Virendra Singh were obtained in order to prepare share certificates. If thumb impressions on Ex.Ka-5 and Ka-6 were obtained by the Lekhpal at the time of the alleged occurrence the Ink pad should have also been recovered from his possession. Perusal of seizure memo Ex. Ka-3 would show that a bag was recovered from the possession of the accused which contained government papers only and there is no mention of any Ink pad or pen etc. being recovered from the possession of the accused. It is further noteworthy that there is nothing on these two forms in the hand writing of the accused. If the accused had obtained thumb impressions on Ex.Ka-5 and Ka-6 he would have at least written the names of the persons whose thumb impressions were obtained by him on these two forms. The absence of any handwriting of the accused on these forms Ex.Ka-5 and Ka-6 further substantiates the defence version that the accused had not at all obtained thumb impression of the two complainants on the said forms. It has already been pointed out above that the version of the accused respondent is that he was apprehend from the bus stand. The admission of PW 3 that the accused was brought inside the tin shed and that it was Inspector Tyagi who was holding currencies notes in his one hand and accused in his another hand and admission of PW 1 that the entire seizure proceedings took place on the road infront of the shop of Jayanti to a great extent create suspicion about the the revision of the defence being true that the accuse was apprehended from the Shasni Bus stand. 1 is further noteworthy that even though it is admitted to the prosecution witnesses that more than 7-8 persons were present inside the shop yet none was made a witness of arrest and seizure This further indicates that the arrest of accuse was not made inside the shop of Jayanti. It is further noteworthy that PW 1 has admitted during cross-examination that about two months after the incident the Investigating Officer had obtained affidavits of witnesses. This indicates that the witnesses were bound down by the Investigating Officer to make a statement in the Court in accordance with the contents of the affidavits.

12. Thus considering the fact that the witnesses were inimical to the accused and ha strong motive to implicate him falsely, that the antecedents of the witnesses specially, PW 1 and PW 2 who were shown to have played main role in the entire episode were bad and they were involved in several criminal cases and that evidence with regard to the place and manner of arrest and seizure from the possession of the accused is highly contradictory and some admissions have been made by the witnesses which create grave suspicion and preponderance in the plea of the accused being true, in my view, the trial Court has committed no error in disbelieving the prosecution story and acquitting the accused. The appeal has no merit and is hereby dismissed.