V. D. Jhangan

Vs

State of Uttar Pradesh

Criminal Appeal No. 157 of 1964

(K. Subha Rao, J. M. Shelat, V. Ramaswami - I JJ)

03.03.1966

JUDGMENT

RAMASWAMI, J.

The appellant was tried for offences under s. 161, Indian Penal Code and s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act by special Judge, Anti-Corruption, Lucknow who by his judgment dated January 8, 1962 convicted the appellant and sentenced him to three years' rigorous imprisonment and a fine of Rs. 2,000/-. In default for payment of fine the appellant was further ordered to undergo rigorous imprisonment for one year. The appellant preferred an appeal to the Allahabad High Court, Lucknow Bench, which dismissed the appeal by its judgment dated March 20, 1964 and affirmed the conviction and sentence imposed by the Special Judge upon the appellant. This appeal is brought, by special leave, from the judgment of the Allahabad High Court, Lucknow Bench.

The appellant was employed as Assistant Director Enforcement, Government of India, Ministry of Commerce at Kanpur and used to deal with matters regarding the cancellation of licences of cloth dealers at Kanpur. On or about September 5, 1951 the appellant received a confidential letter dated August 30, 1951 from the District Magistrate, Kanpur. On the same date the appellant called one Ram Lal Kapoor who was the legal adviser of New Victoria Mills Ltd. at his house. The appellant showed him the letter of the District Magistrate and on the strength of that letter he demanded through Ram Lal Kapoor a bribe of Rs. 30,000 from Sidh Gopal for saving his licence from being cancelled. It appears that Sidh Gopal was a partner of various firms dealing in cloth and it was suspected that these firms were indulging in black-marketing in cloth. Sidh Gopal came to the appellant on September 9, 1951 to talk over the matter and the appellant made the same demand of bribe from him. On September 11, 1951, the appellant is alleged to have agreed with Ram Lal Kapoor to receive a sum of Rs. 10,000 as first instalment of the bribe from Sidh Gopal through Ram Lal Kapoor. Accordingly on September 11, 1951 at about 8 p.m. the appellant went to the house of Ram Lal Kapoor and accepted the bribe of Rs. 10,000/- in currency notes and also a Than of cloth from the said Ram Lal Kapoor undertaking that in lieu thereof the appellant would not report against Sidh Gopal and thereby save his licence from cancellation. A raid had been prearranged and the raiding party consisting of Shri Satish Chander P.W. 1 and Shri Onkar Singh P.W. 2 the District Magistrate and the Senior Superintendent of Police respectively were lying in wait at the premises of Ram Lal Kapoor. At about 9.45 p.m. the appellant came out of the bungalow of Ram Lal Kapoor and on the agreed signal being given, the raiding party came and on search of the appellant an amount of Rs. 10,000/- was found from his person. At the time of the recovery of the money the appellant made a statement that the amount received by him was as a loan as he wanted to purchase a bungalow. The defence of the appellant was that he never negotiated with Ram Lal Kapoor or

Sidh Gopal regarding the bribe but the appellant had been falsely implicated because he had prosecuted one Bhola Nath of the firm of M/S Mannulal Sidh Gopal under s. 7 of Essential Supplies Act and the District Magistrate had arrested Bhola Nath and kept him under detention under the powers conferred by the Preventive Detention Act. In order to take revenge for the arrest of Bhola Nath, Sidh Gopal and Ram Lal Kapoor had conspired together and falsely implicated the appellant. The Special Judge disbelieved the case of the appellant and held that the prosecution evidence sufficiently established the charges under s. 161, Indian Penal Code and s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act. The findings of the trial court have been affirmed by the Allahabad High Court in appeal which also rejected the case of the appellant as untrue and held that the amount of Rs. 10,000/- was received by the appellant from Ram Lal Kapoor by way of illegal gratification and not as a loan for purchasing a house.

The first question for determination is whether a presumption under sub-s (1) of s. 4 of the Prevention of Corruption Act arises in this case. That provision reads as follows :

> "Where in any trial of an offence punishable under s. 161 or s. 165 of the Indian Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted or obtain, for himself or for any other person, any gratification other than legal remuneration or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said s. 161, or as the case may be, without consideration or for a consideration which he knows to be inadequate."

It was held by this Court in Dhanvantrai Balwantrai Desai v. State of Maharashtra (A.I.R. 1964 S.C. 575) that in order to raise the presumption under this sub-section what the prosecution has to prove is that the accused person has received "gratification other than legal remuneration" and when it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by this section is satisfied and the presumption thereunder must be raised. It was contended in that case that the mere receipt of any money did not justify the raising of the presumption and that something more than the mere receipt of the money had to be proved. The argument was rejected by this Court and it was held that the mere receipt of the money was sufficient to raise a presumption under the sub-section. A similar argument was addressed in C.I. Emden v. State of Uttar Pradesh (A.I.R. 1960 S.C. 548). In rejecting that argument this Court observed :

> "If the word 'gratification' is construed to mean money paid by way of a bribe then it would be futile or superfluous to prescribe for the raising of the presumption. Technically it may no doubt be suggested that the object which the statutory presumption serves on this construction is that the court may then presume that the money was paid by way of a bribe as a motive or reward as required by s. 161 of the Code. In our opinion this could not have been the intention of the Legislature in prescribing the statutory presumption under s. 4(1)."

This Court proceeded to state :

> It cannot be suggested that the relevant clause in s. 4(1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the

> prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of s. 4(1) it would be unreasonable to hold that the word 'gratification' in the same clause imports the necessity to prove not only the payment of money but the incriminating character of the said payment. It is true that the Legislature might have used the word 'money' or 'consideration' as has been done by the relevant section of the English statute;......."

It must therefore, be held that, in the circumstances of the present case, the requirements of sub-s. (1) of s. 4 have been fulfilled and the presumption thereunder must be raised.

The next question arising in this case is as to what is the burden of proof placed upon the accused person against whom the presumption is drawn under s. 4(1) of the Prevention of Corruption Act. It is well-established that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That is, of course, the test prescribed in deciding whether the prosecution has discharged its onus to prove the guilt of accused; but the same test cannot be applied to an accused person who seeks to discharge the burden placed upon him under s. 4(1) of the Prevention of Corruption Act. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. As soon as he succeeds in doing so, the burden is shifted to prosecution which still has to discharge its original onus that never shifts i.e., that of establishing on the whole case the guilt of the accused beyond a reasonable doubt. It was observed by Viscount Sankey in Woolmington v. Director of public Prosecutions ((1935) A.C. 462) that "no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained". This principle is a fundamental part of the English Common Law and the same position prevails in the Criminal Law of India. That does not mean that if the statute places the burden of proof on an accused person, he is not required to establish his plea; but the degree and character of proof which the accused is expected to furnish in support of his plea, cannot be equated with the degree and character of proof expected from the prosecution which is required to prove its case. In Rex v. Carr-Briant, ((1943) 1 K.B. 607) a somewhat similar question arose before the English Court of Appeal. In that case, the appellant was charged with the offence of corruptly making a gift or loan to a person in the employ of the War Department as an inducement to show, or as a reward for showing, favour to him. The charge was laid under the Prevention of Corruption Act, 1916, and in respect of such a charge, s. 2 of the Prevention of Corruption Act, 1916, had provided that a consideration shall be deemed to be given corruptly unless the contrary is proved. The question which arose before the court was : what is the accused required to prove if he wants to claim the benefit of the exception ? At the trial, the judge had directed the jury that the onus of proving his innocence lay on the accused and that the burden of proof resting on him to negative corruption was as heavy as that ordinarily resting on the prosecution. The Court of Criminal Appeal held that this direction did not correctly represent the true position in law. It was held by the Court of Appeal that where, either by statute or at Common Law, some matter is presumed against an accused person "unless the contrary is proved" the jury should be directed that the burden of proof on the accused is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that this

burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called on to establish. The ratio of this case referred to with approval by this Court in Harbhajan Singh v. State of Punjab ((1965) 3 S.C.R. 235). We are accordingly of the opinion that the burden of proof lying upon the accused under the s. 4(1) of the Prevention of Corruption Act will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should established his case by the test of proof beyond a reasonable doubt. In other words, the onus on an accused person may well be compared to the onus on a party in civil proceedings, and just as in civil proceedings the Court trying an issue makes its decision by adopting the test of probability, so must a criminal court hold that the plea made by the accused is proved if a preponderance of probability is established by the evidence led by him.

It is against this background of principle that we must proceed to examine the contention of the appellant that the charges under s. 161, Indian Penal Code and Section 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act have not been proved against him. It was argued that by Mr. Sethi that the circumstances found by the High Court in their totality do not establish that the appellant accepted the amount of Rs. 10,000 as illegal gratification and not as a loan. It was also argued for the appellant that he had adduced sufficient evidence to show that the amount was really given to him as a loan by Ram Lal Kapoor. Having examined the findings of both the lower courts, we are satisfied that the appellant has not proved his case by the test of preponderance of probability and the lower courts rightly reached the conclusion that the amount was taken by the appellant not as a loan but as illegal gratification. It has been found by the High Court that Ram Lal Kapoor was not likely to lend a sum of Rs. 10,000 to the appellant without getting a formal document executed. It is not suggested by the appellant that he executed a hand-note in favour of Ram Lal Kapoor. There was a suggestion that he granted a receipt for Rs. 10,000 to Ram Lal Kapoor but the High Court rejected the case of the appellant on this point. The High Court has observed that, in the first instance, the appellant did not make a statement with regard to the receipt as soon as the amount was recovered from him. It was only after he was taken to Marden Singh's place that he made a belated statement that the amount was advanced to him by Ram Lal Kapoor as a loan and he had granted a receipt. Mr. Sethi contended that it was the duty of the District Magistrate and the Senior Superintendent of Police to have made a search and of the whole bungalow of Ram Lal Kapoor for the alleged receipt and the failure of these two officers to make the search should be taken to prove the appellant's case regarding the grant of the alleged receipt. We do not accept the submission of the learned counsel as correct. The High Court has remarked that the statement of the appellant was highly belated and the District authorities were justified in not making a search and ransacking the whole bungalow of Ram Lal Kapoor for the recovery of the alleged receipt. It was then contended on the behalf of the appellant that no Panchanama was prepared by the District Magistrate or the Senior Superintendent of Police who recovered the money from the appellant. It was also stated that no independent witness was summoned to be the present at the time of the search. It was pointed out that the District Magistrate is related to Sidh Gopal and it was suggested by Mr. Sethi that the evidence of the District Magistrate, of the Senior Superintendent of Police and of Sidh Gopal should have not been accepted by the High Court as true. But all the circumstances have been taken into account by the High Court in discussing the testimony of these witnesses and ordinarily it is not permissible for the appellant to reopen conclusion of facts in this Court, especially when both the lower Courts have agreed with those conclusions which relate to the credibility of witnesses who have been believed by the trial Court had the advantage of seeing them and hearing their evidence. It was then contended by the appellant of that the High Court which has taken into account the statement of Ram Lal Kapoor made in a departmental proceeding in coming to a conclusion regarding the guilt of the appellant. We do not think there is any justification for this argument. The

High Court has properly held that the evidence of Ram Lal Kapoor dated December 16, 1952 - Ex. P-11 - was not admissible and has excluded it from its consideration in discussing the guilt of the appellant. It is true that in setting out the history of the case the High Court has referred to the statement of Ram Lal Kapoor but that does not mean that the High Court has used the statement of Ram Lal Kapoor for the purpose of convicting the appellant in the present case. It was also contended by Mr. Sethi on behalf of the appellant that the statements - Ex. P-3 and P-4 - should have been excluded from consideration. It was contended that these statements were made by the appellant to the District Magistrate after the recovery of the money and where hit by the provisions of s. 162 of the Criminal Procedure Code. On behalf of the respondent Mr. Desai said that these statements are admissible because they were made to the District Magistrate and not to a police officer and were not during the course of investigation because the First Information Report was lodged on September 13, 1951 at 8.30 p.m. long after the statements were made. We do not consider it necessary to express any concluded opinion as to whether Exs. P-3 and P-4 are admissible but even if they are excluded from consideration there is sufficient evidence to support the conviction of the appellant on the charges under s. 161, Indian Penal Code and s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act.

It was also submitted by Mr. Sethi that the evidence of Sidh Gopal should not have been accepted by the High Court. It was pointed out that the appellant had received the letter of District Magistrate - Ex. P-1 on September 5, 1951 and it was, therefore, not likely that the appellant should have contacted Ram Lal Kapoor and Sidh Gopal on the 18th or 19th August, 1951. There is, however evidence in this case that Bhola Nath who was a Salesman of M/s Mannulal Sidh Gopal was arrested in August, 1951 on the report of the appellant and Sidh Gopal apprehended that he would also come under the clutches of the law and his licences may also possibly be cancelled. In any event, this is a question regarding the credibility of Sidh Gopal and it is not open to the appellant to contest the finding of the lower courts with regard to the credibility of that witness in this appeal.

Lastly, Mr. Sethi submitted that the appellant was 66 years old and the offence was committed in 1951 and legal proceedings have protracted for 15 years. Mr. Sethi, therefore, prayed that the sentence imposed on the appellant may be reduced. We are unable to accept this argument. We do not consider that the sentence is excessive in the circumstances of the case.

For the reasons already expressed, we hold that there is no merit in this appeal which is accordingly dismissed.

Appeal dismissed.

</html