SUPREME COURT OF INDIA

Bhanuprasad Hariprasad Dave

Vs.

State of Gujarat

Crl.A.No.155 of 1965

(G. K. Mitter, C. A. Vaidialingam and K. S. Hegde, JJ.)

19.04.1968

JUDGEMENT

HEGDE, J.:-

1. The appellants in this appeal are two police officers. The first appellant Bhanuprasad Hariprasad Dave was the police Sub-Inspector and the second appellant, Rajuji Gambhirji, was his writer constable in February 1963. At that time both of them were attached to the Navrangpura police station, Ahmedabad. They were tried and convicted by the Special Judge, Ahmedabad, for offences under S.161 read with S.165-A of the Indian Penal Code and S.5(1)(d) read with S.5(2) of the Prevention of Corruption Act (No.2 of 1947), and for those offences each of them was sentenced to suffer rigorous imprisonment for two and half years and a fine of Rs. 1,000 in default to suffer further rigorous imprisonment for one year. The judgment of the learned Special Judge was affirmed by the High Court of Gujarat. It is against that judgment, this appeal has been filed, after obtaining special leave from this Court.

2. To state briefly, the prosecution case is as follows: Ramanlal, the complainant in this case, wrote

a postcard on February 11, 1963 to one Madhukanta, a lady teacher, requesting her to ask Chandrakanta, another lady teacher working with her, to meet him in connection with certain work. Therein he also wrote that he would be glad if Madhukanta could accompany Chandrakanta. The headmaster of the school where Madhukanta and Chandrakanta were working happened to read that postcard. She took Madhukanta to task for allowing strangers to write to her in that manner. Piqued by the conduct of Ramanlal, Madhukanta made over the postcard in question to the first appellant, probably with a request that Ramanlal might be pulled up for his conduct. On February 16,1963, the first appellant sent the second appellant to fetch Ramanlal to the police station. On his arrival at the police station. Ramanlal was abused and slapped by the first appellant. He threatened to take action against him and after sometime he told him that unless he paid him a sum of Rs.100 he would be harassed. With a view to get out of the situation, Ramanlal agreed to pay the sum demanded. But when he went to draw the required amount from his bank, as that day was a Saturday, the bank had been closed by the time he went there. He therefore asked the first appellant time for payment till the 18th. The first appellant agreed to the same. On the morning of 18th, Ramanlal met the Deputy Superintendent of Police, Anti-Corruption Department and complained to him about the incident in question. He was asked to give a written complaint in that regard which he did. Thereafter he produced before the Dy. S. P. ten currency notes of Rs.10 each. The numbers of those notes were noted and then those notes were treated with anthracene powder. Ramanlal was asked to give those notes to the first appellant if he made any further demand for bribe. Thereafter he was sent to the police station with the panch witness, Dahyabhai. But when they went to the police station they found that the first appellant was not there. They were told that he had gone to attend court. Hence Ramanlal and Dahyabhai returned to the office of the Anti-Corruption Department and reported to the Dy. S. P. about the same. Under instructions from the Dy. S. P. he again went to the office of the Anti-Corruption Department on the evening of that day with fresh currency notes. Those notes were again treated with anthracene powder and their numbers noted. Ramanlal was again sent to the police station with Dahyabhai on that evening at about 5-30 p.m. When they went there, the first appellant was not there, but the second appellant was there. He told them that the first appellant was expected in the station at any moment. Thereafter the second appellant, Ramanlal and Dahyabhai went to a nearby teashop and took tea. By the time they returned to the police station the first appellant was there. Ramanlal told the first appellant that tie had brought the money. Then he asked him to pay the same to the second appellant who was in one of the room of the police station. When Ramanlal went to pay the money to the second appellant, the first appellant took out the postcard written by Ramanlal to Madhukanta, showed it to Dahyabhai and thereafter tore it to pieces and burnt it. Meanwhile Ramanlal went and paid the currency-notes in question to the second appellant. While Ramanlal and Dahyabhai were in the police station, police Sub-Inspector Erulker and constable, Santramji, both belonging to the Anti-Corruption Department, were observing from a nearby compound the happenings in the police station. The second appellant immediately on receiving the notes in question left the police station. But he was followed by constable Santramji. From the police station the second appellant first went to the shop of one Sanghvi and changed one of the currency-notes. From there he went to the pan shop of Sendhalal and there changed three more currency-notes. Thereafter constable Santramji was not able to keep track of him. Meanwhile when things did not go according to plan, Ramanlal was somewhat confused. He after paying amount to the second appellant straight rushed back to the Dy. S. P. and told him what had happened at the police station. Immediately, the Dy. S.P. rushed to the police station and there he searched the person of the first appellant, but nothing incriminating was found. He seized the burnt pieces of the postcard. Some of the unburnt pieces were recognised by Ramanlal as portions of the postcard written by him to Madbukanta. From there the Dy. S. P. proceeded to the shop of Sanghvi and Sendhalal and seized the currency-notes changed in their shops by the second appellant. Their

numbers tallied with the numbers of the notes earlier handed over to Ramanlal after being treated with anthracene powder. Those notes were full of anthracene powder. The same night the second appellant was arrested and at the time it was found there was considerable anthracene powder on his person. After investigation the appellants were prosecuted for the offences mentioned earlier.

3. Both the trial court and the High Court have accepted the prosecution case. This Court being a court of special jurisdiction does not examine the evidence afresh except under exceptional circumstances. No good reasons were shown to us for departing from the ordinary rule. Hence we proceed on the basis that the findings of fact reached by the High Court are correct.

4. Before proceeding to examine the various contentions advanced on behalf of the appellants it is necessary to mention that in this case there were two investigations. As seen earlier the trap in this case was laid by the Dy. S. P. Anti-Corruption Department. He was the person who investigated the case and laid the charge-sheet. But when the case came up for trial before the learned Special Judge objection was taken to the trial of the case on the ground that in view of the provisions of the Bombay State Commissioner of Police Act. 1959, the investigation in this case should have been made by a Superintendent of Police as there was a Police Commissioner for the city of Ahmedabad. The learned Special Judge accepted that contention and directed a fresh investigation to the extent possible by one of the Superintendents of Police. A fresh investigation was accordingly made; but naturally nothing afresh could be done so far as the trap was concerned Because of the fresh investigation, in respect of most of the prosecution witnesses, the police diary contained, two statements one recorded by the Dy. S. P. and the other by the S. P.

5. In the course of the trial of the case several prosecution witnesses were alleged to have gone back on the statements given them during investigation. With the permission a of the court some of them were cross-examined with reference to their statements recorded during the investigation. While deposing in court Madhukanta asserted that she had destroyed the postcard written by Ramanlal as soon as she read the same whereas both Ramanlal as well as the panch witness Dahyabhai had deposed that the first appellant had shown them the postcard in question. With the permission of the court the learned Public Prosecutor cross-examined Madhukanta with reference to her statement given before the Dy. S. P. wherein she appears to have stated that she had given the postcard in question to the first appellant. Mr. Barot learned counsel for the appellants strenuously contended that in view of the order of the Special Judge, directing re-investigation, in law, the record of the investigation made by the Dy. S. P. stood wiped out, and therefore Madhukanta should not have been cross-examined with reference to the statement alleged to have been made by her during the first investigation. We are unable to accept this contention as correct. It is true that the first investigation was not in accordance with law, but yet it is in no sense non est. Investigation, as held by this Court in S. N. Bose v. State of Bihar, Criminal Appeal No. 109 of 1967, D/- 26-3-1968 = (reported in AIR 1968 SC 1292) includes the laying of trap. That part of the investigation was admittedly done by the Dy. S. P. The statements recorded by the Dy. S. P. in the course of his investigation, though the investigation in question was illegal (see H. N. Rishbud v. State of Delhi, 1955 SCR 1150 = (AIR 1955 SC 196) are still statements recorded by a police officer in the course of investigation under Chapter XIV of the Code of Criminal Procedure and consequently they fall

within the scope of Sections 161 and 162 of the said Code. Neither in Rishbud's case, 1955 SCR 1150 = (AIR 1955 SC 196) nor in S. N. Bose's case, Criminal Appeal No.109 of 1967, D/-26-3-1968 = (reported in AIR 1968 SC 1292) where investigations had been carried on in contravention of S.5-A of the Prevention of Corruption Act, this Court considered those investigations as non est. Both the trial court and the High Court have accepted the evidence of Ramanlal and Dahyabhai in preference to that of Madhukanta that the first appellant was in possession of the postcard in question on February 18,1963. This is essentially a finding of fact. In our judgment in coming to that conclusion those courts did not ignore any legal principle.

6. It was next contended by the learned counsel for the appellants that the appellants were convicted solely on the basis of the testimony of Ramanlal, the Dy. S. P., Erulker and Santramji, who, according to him, are all interested witnesses and their evidence not having been corroborated by any independent evidence, the same was insufficient to base the conviction of the appellants. Before examining this contention it may be mentioned that so far as Dahyabhai was concerned he appeared to have turned hostile to the prosecution at the trial. He supported, the evidence of Ramanlal in some respects, but in most important respects he did not support the prosecution case. He admitted to have accompanied Ramanlal both in the morning and on the evening of the 18th. He also admitted that he and Ramanlal met a Police Sub-Inspector in the police station who showed them the postcard written by Ramanlal to Madbukanta. He also corroborated Ramanlal about the talk that Ramanlal had with that Sub-Inspector, in connection with the payment of bribe. But when it came to the question of identifying that Sub-Inspector, he denied that it was the first appellant. He also did not identify the second appellant. It was obvious that he had been gained over. So far as Sanghvi is concerned he admitted that a police constable in uniform came to his shop on the evening of the 18th and changed a ten-rupee currency-note. But he stated that he was not able to say whether that constable was the second appellant. Sendhalal deposed that a person came to him on the evening of the 18th and changed three ten-rupee currency notes. He also stated that he was unable to say whether it was the second appellant who changed those notes; he went a step further and stated that the person who came to his shop was not in uniform. But the fact remains that the currency-notes seized from the shops of Sanghvi and Sendhalal are the very notes whose numbers had been earlier noted by he Dy. S. P. and further treated with anthracene. There is the evidence of constable Santramji to establish that the notes in question were changed at the shops of Sanghvi and Sendhalal by the second appellant. The trial court as well as the High Court accepted the evidence of Dabyabhai, Sanghvi and Sendhalal to the extent it supported the prosecution case and rejected the rest. It was open for those courts to do so.

7. Now coming back to the contention that the appellants could not have been convicted solely on the basis of the evidence of Ramanlal and the police witnesses, we are of opinion that it is an untenable contention. The utmost that can be said against Ramanlal, the Dy S. P. Erulker and Santramji is that they are partisan witnesses as they were interested in the success of the trap laid by them. It cannot be said-and it was not said- that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction. This position is placed beyond controversy by the decision of this Court in The State of Bihar v. Basawan Singh, 1959 SCR 195 = (AIR 1958 SC 500) wherein this Court laid down, overruling the decision in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, 1954SCR 1098 = (AIR 1954 SC 322) that where the witnesses are not accomplices but are merely partisan or

interested witnesses, who are concerned in the success of the trap their evidence must be tested in the same way as any other interested evidence is tested and in a proper case, the court may look for independent corroboration before convicting the accused person. We are unable to agree that any different rule was laid down in E. and Barsay v. State of Bombay, (1962) 2 SCR 195 = (AIR 1961 SC 1762). It must be remembered that the decision in Basawan Singh's case, l 959 SCR 195 =(AIR 1958 SC 500) was given by a Bench of Five Judges and that decision was binding on the Bench that decided Barsay's case, (1962) 2 SCR 195 = (AIR 1961 SC 1762). Some of the observations in Barsay's case, (1962) 2 SCR 195 = (AIR 1961 SC 1762) no doubt support the contention of the appellants. But those observations must be confined to the peculiar facts of that case. It is now well settled by a series of decisions of this Court that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence, if it is satisfied that that evidence is reliable. But it may in appropriate case look for corroboration. In the instant case, the trial court and the High Court have fully accepted the evidence of Ramanlal, the Dy. S. P., Erulker and Santramji. That being so, it was open to them to convict the appellants solely on the basis of their evidence. That apart, their evidence is substantially corroborated by the evidence of Dahyabhai, Sanghvi and Sendhalal. In the case of partisan witnesses, the corroboration that may be looked for is corroboration in a general way and not material corroboration as in the case of the evidence of accomplices.

8. It was next contended that even if we accept the prosecution case in full, no offence can be said to have been made out under Section 161 of the Indian Penal Code. We are unable to accept that contention. To establish the offence under Section 161 of the Indian Penal Code all that prosecution had to establish was that the appellants were public servants and that they had obtained illegal gratification for showing or for bearing to show, in the exercise of their official functions, favour or disfavour to Ramanlal. The question whether there was any offence which the first appellant could have investigated or not is irrelevant for that purpose. It he had used his official position to extract illegal gratification the requirement of the law is satisfied. This position is made clear by the decision of this Court in Mahesh Prasad v. State of U.P. (1955) 1 SCR 965 = (AIR 1955 SC 70) and Dhaneshwar Narain Saxena v. Delhi Administration, (1962)3 SCR 259 = (AIR 1962 SC 195).

9. Lastly we come to the question whether the prosecution was barred by Section 161 (1) of the Bombay Police Act, 1951 (Bombay Act 22 of 1951), which to the extent material for our present purpose, says that in any case of alleged offences by a police officer or of a wrong alleged to have been done by such officer by any act done under colour or in excess of any such duty or authority as mentioned in that Act, the prosecution shall not be entertained or shall be dismissed if instituted, more than six months of the act complained of. Admittedly, the prosecution in this case was instituted more than six months after Feb. 18 1963, the day on which illegal gratification was obtained. In support of the contention that the prosecution is barred by limitation, reliance was placed on the decision of this Court in Virupaxappa Veerappa Kadampur v. State of Mysore, 1963 Supp (2) SCR 6 = (AIR 1963 SC 849). Therein a head-constable was charged under Section 218 of the Indian Penal Code. The prosecution case was that on February 23, 1954 on receipt of some information that some persons were smuggling ganja, the head constable arrested a person with a bundle containing 13 packets of Ganja and seized them, and in the panchnama he incorrectly showed the seizure of nine packets of ganja, and that on the next day he however prepared a new

report in which it was falsely recited that the person with the bundle ran away on seeing the police after throwing away the bundle containing nine packets of ganja. The allegation against the head-constable was that he prepared a false report with the dishonest intention of saving the person concerned from whom the ganja was seized and who had been actually caught with ganja, from legal punishment. This Court held that under Section 161 of the Bombay Police Act, 1951, the words "under colour of duty" have been used to include acts done under the cloak of duty, even though not by virtue of the duty; that when the head-constable prepared a false report he was using the existence of his legal duty as a cloak for his corrupt action and that' therefore, the act thus done in dereliction of his duty must be held to have been done "under colour of duty". The rule laid down in that decision is inapplicable to the facts of the present case. In Virupaxappa Veerappa Kadampur's case, 1963 Supp (2) SCR 6 = (AIR 1963 SC 849) the head-constable in question had a duty to prepare the panchnama and the report. He by talking advantage of that duty prepared a false panchnama and false report and therefore it was held that what he did was under the colour of duty. In the present case the appellants cannot be said to have received the bribe under the colour of their duty. There was no connection between the duties to be performed by them and the receipt of the bribe in question. The facts of the present case bear some similarity to the facts in State of Andhra Pradesh v. N. Venugopal, (1964) 3 SCR 742= (AIR 1964 SC 33) and the rule laid down therein bears on the question under discussion. All that can be said in the present case is that the first appellant a police officer, taking advantage of his position as a police officer and availing himself of the opportunity afforded by the letter Madbukanta handed over to him, coerced Ramanlal to pay illegal gratification to him. This cannot be said to have been done under colour of duty. The charge against the second appellant is that he aided the first appellant in his illegal activity.

10. For the reasons mentioned above, this appeals fails and the same is dismissed. The appellants who are on bail shall surrender forthwith to serve the remaining portion of the sentences imposed on them.

Appeal dismissed.