

Lachman Dass

Vs

State of Punjab

Criminal Appeal No. 118 of 1960

(CJI M.Hidayatullah, A.N. Grover JJ)

10.10.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. The appellant Lachman Dass who was an accountant of the Municipal Committee, Budhlada has been convicted under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 250/- (in default to undergo rigorous imprisonment for six months). His appeal to the High Court failed and he now appeals to this Court by special leave granted by this Court.

2. Ordinarily, this Court does not consider a case after the High Court and the Court below have concurrently found the accused guilty on facts. In this case, however, the judgment of the High Court merely brushes aside the entire defence version in one sentence which defence in our opinion merited close consideration with the prosecution case, to see which was believable. The learned Judge in the High Court who heard the appeal merely endorsed the findings of the Special Judge without attempting to weigh the evidence as was necessary in the appeal. We have accordingly allowed the appellant to read to us certain portions of the material evidence and have appraised it for ourselves. It is for these reasons that we shall narrate the facts a little more fully and then discuss the evidence in detail.

3. The incident is said to have taken place on the 24th March, 1964, at about 10 a.m. The complainant in the case is one Kishori Lal who was a plumber working in the Budhlada Municipality. For the work which he had done, he had submitted bills which it was the duty of the appellant to check and verify these bills and reduced them from Rs. 935/- to Rs. 683/- and odd. In fact a cheque in payment of all the dues had been prepared and handed over to the complainant as far back as 16th March, 1964. The case of the complainant was that the appellant had made demands on him for bribe and had also told him that Rs. 10/- should be paid to him after the cheque had been encashed, threatening him at the same time that if the amount was not paid, the bills would be further scrutinised and reduced. This amount, it was stated, was paid by the complainant on 24th March in furtherance of this suggestion of the appellant and that is the foundation of the charge.

4. Before this amount was paid, the complainant made his report to the Sub-Divisional Magistrate who asked a police officer to arrange for a trap. The usual procedure for such traps was followed, the currency note of Rs. 10 which was the amount in demand was initialled by the Sub-Divisional Magistrate and the number of the note was taken down before it was made over to the complainant for passing it to the appellant in furtherance of his demand for bribe. The Sub-Inspector with the

complainant, accompanied by two witnesses, went to the office of the appellant. None of the witnesses entered the office of the appellant. The complainant alone entered it. After some time, the complainant came out and raised his turban which was the signal that the amount had been paid. The raid followed and the currency note was found in the left hand pocket of the bush-shirt of the appellant. He was thereupon arrested. The two witnesses who accompanied the Sub-Inspector stated that the appellant had become pale and was trembling and that he gave no explanation at that time. It is however not clear whether any opportunity was given to him to explain how this money came to be with him.

5. The appellant admitted receipt of Rs. 10 in one currency note from the complainant. His explanation was that the complainant had complained to his superior officer about the strict scrutiny of the bills by the appellant. The bills were ordered to be scrutinised again. The last bill was found to be correct, but in the previous bill the appellant found an over-payment to the complainant of Rs. 8.12 p. Therefore the appellant was asked to recover this amount from the complainant or pay it himself. He thereupon sent a notice to the complainant to bring Rs. 8.12 p. and pay it into the Municipal account. The complainant came and gave a currency note of Rs. 10. The appellant returned Rs. 1.88 p. from the imprest with him and prepared a receipt for Rs. 8.12 p. and gave to the complainant. This statement the appellant mentioned was borne out by numerous circumstances appearing in the evidence in the case.

6. First, there were two witnesses who claimed to be present when the money was paid. They are, Chaman Lal (D.W. 1) and Ambresh Narain (D.W. 2). Chaman Lal is the Municipal Commissioner of the Budhlada Municipality. He stated that he had gone to the office of the appellant on the morning of the 24th March to enquire from the appellant what rent was payable by his friend Hans Raj towards the 90 years lease of the site in front of his house. The appellant told him that the question could properly be answered only by Shri A. N. Dhanoka, Secretary of the Municipal Committee. He therefore brought Shri Dhanoka to the office and at that time, one person whom he identified as Kishori Lal the complainant, came to the office and gave a currency note of Rs. 10 to the appellant. The appellant then started preparing a receipt for him. This receipt according to the witness was given to Kishori Lal. This part of the statement of Chaman Lal was corroborated by the evidence of Ambresh Narain (D.W. 2). He is the Secretary of the Municipal Committee, Budhlada and he also stated that at that time, Kishori Lal came to the office and gave a currency note of Rs. 10 to the appellant saying that that was the amount which he had demanded through the peon. The appellant took the currency note and issued a receipt to Kishori Lal. Immediately afterwards, a Sub-Inspector came and arrested the appellant and conducted his search.

7. These two witnesses were disbelieved by the Special Judge who tried the case on the ground that the first witness-Chaman Lal seemed to be a chance witness and the second witness-Ambresh Narain Dhanuka need not have been called in, because the information could have been supplied by the appellant himself. There was no other reason assigned why these persons should have perjured themselves in support of the appellant. As we shall show presently, there is further corroboration of the testimony of these witnesses from quite an independent source and in documentary records of the Municipal Committee's office. The next defence witness is Siri Pal Jain. He is the Executive Officer of the Municipal Committee. He proved that the appellant had checked the bills of the complainant and reduced it from Rs. 935 to Rs. 683 and odd. He proved Exs. DE/1 and DE/2 which were the bills and his endorsements. He also proved that on 16th March, 1964 a cheque of about Rs. 216 was given to the complainant in full and final settlement of his account. After this bill was given, says the witness, the two bills were again checked and the witness told the appellant that he should ascertain what was the amount due. The appellant then went to him at 3.30 p.m. the same

evening and told him that he had checked the account and that the second bill was correct, but that there was some over-payment in the first bill Ex. DE. The witness then asked him to make a report in writing and the report Ex. DF was made to him that Rs. 8.12 P. had been overpaid. The witness then passed an order Ex. DF/1 on 17-3-1964. Ex. DF has been produced before us. The endorsement of the Executive Officer on the report is :

"This is certainly very bad. It shows the lack of proper care and diligence. Either the recovery be made or deposit yourself."

As a result of this, the notice Ex. DG/1 was issued by the appellant. The witness proved the signature of the appellant on Ex. DG/1. This notice demanded from the complainant the sum of Rs. 8.12 p. as excess payment to him. This notice had an endorsement on it of the office peon that the copy was attempted to be served upon Kishori Lal but he was not present in his house, that the peon met him in the Bazar but he refused to accept the notice and that the notice was pasted this house. There was a cash receipt which was purported to be prepared on 24th March, 1964 Ex. DH on which the signature of the appellant was found. This receipt was the counterfoil in the office of the Municipality and it bore the name of the contractor Kishori Lal and the fact that excess payment was made to him vide Entry No. 48, dated 24-1-1964 and the amount shown was Rs. 8.12 p. This was followed by a letter which Siri Pal Jain purports to have written to the appellant bringing to his notice that the amount of the cash was checked against the cash-book and it was found by the Cashier that the receipt for Rs. 8.12 p. existed but it had not been entered nor had the amount been deposited with the Cashier and what his explanation was. This explanation was given to the Executive Officer by the appellant on 25th March, 1964 in which he stated that it was true that a receipt No. 31/34 had been issued in the name of Kishori Lal for Rs. 8.12 p. He also stated that he had been given Rs. 10 in currency note by Kishori Lal and he paid Rs. 1.88 p. as change to him from his imprest but that the Sub-Inspector immediately came and took away Rs. 10 note from him and it could not be deposited with the Cashier. All this evidence is certified to be existing by the Executive Officer. The Executive Officer also stated that after the arrest of the appellant, he got the office locked and left the key with the peon. He had questioned the peon if he had parted with the key to anybody else and the peon satisfied him that the key had not been handed over to anybody. All this evidence fitted in with the explanation of the appellant that he had received a Rs. 10 note towards payment of Rs. 8.12 p. which had been demanded from the contractor, that he had paid Rs. 1.88 p. as change to him and that the entry could not be made because both the money and the appellant were taken away by the police. There is evidence to show that on the checking of the money on the 26th March, 1964, there was a short-age of Rs. 1.88 p. between the amount in the cash-book and the amount found in the imprest. This shortage clearly shows that the amount of Rs. 1.88 p. had been paid.

8. To this explanation of the appellant and the evidence adduced by the defence witnesses, the comment of the Special Judge was that all these witnesses were falsely supporting the appellant and trying to shield him. We have not been able to find why three persons including the Executive Officer should go out of their way to shield the appellant. Nothing has been suggested before us which would show that the Executive Officer in particular had any reason to forge documents and to give false evidence to extricate the appellant. In fact the learned Judge in the High Court tried more the case of the Executive Officer than the case of the appellant and after reasoning it fully, exonerated the Executive Officer but maintained the conviction of the appellant. If the Executive Officer is to be believed, it would be difficult to hold that all this story about Rs. 8.12 p. being sought to be recovered from the complainant is entirely false. There is too much documentary evidence which has the support of the Executive Officer's sworn testimony to be brushed aside as

the learned Judge in the High Court has done. If that story is accepted and if we compare it with the evidence of the Cashier that a sum of Rs. 1.88 P. was found short in the cash and that a receipt for Rs. 8.12 p. had already been prepared, we reach the conclusion that the explanation of the appellant is probably true. As against this, there is only the sworn testimony of Kishori Lal to compare, because none of the witnesses for the said ever heard any conversation. There is no other witness to support Kishori Lal in what he says. Kishori Lal had reason to harm the appellant as he had twice reduced his bills substantially. There ought to be some other evidence before his word can be accepted with overhear the conversation or see something to which they can depose. In this case as against Kishori Lal's evidence we have circumstantial and documentary evidence and the evidence of the Executive Officer, of Chaman Lal and of Ambresh Lal. On the whole, therefore, we are satisfied that there is considerable room for doubt in this case and that the statement of Kishori Lal which alone is the foundation of the charge against the appellant cannot be accepted without corroboration. We are satisfied that his conviction and sentence should be set aside. We order accordingly. The appellant is acquitted. The appellant is on bail. His bail bonds are cancelled. If the fine has been paid by the appellant, it shall be refunded to him.

Appeal allowed.

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