

Hira Lal S/o Kesho Ram

Vs

The State of Haryana

Criminal Appeal No. 60 of 1969

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

04.12.1970

JUDGMENT

BHARGAVA, J. -

1. Hira Lal appellant was tried by the special Judge of Rohtak for an offence punishable under Section 165-A of the Indian Penal Code on the charge that he offered to pay a sum of Rs. 1,100/- to Kundan Lal Sahwney, Station House Officer, Police Station City Rohtak, for allowing him and his associates to carry on Satta gambling. The prosecution case was that on 9th July, 1967 at 9.45 a.m. the appellant approached Sub-Inspector Kundan Lal at the Police Station, told him that he was carrying on Khaiwali Satta in association with Mangtu, Omi and Jagga and offered to pay him a sum of Rs. 1,000/- per mensem as illegal gratification, provided Kundan Lal promised to shield him and his associates in these gambling activities. Kundan Lal kept quiet and the appellant left promising to come to the Police Station at 3 p.m. give the sum of Rs. 1,100/-. According to Kundan Lal, he made an entry of this incident in the daily diary of the Police Station and also took into confidence the Superintendent of Police, Rohtak, Thereafter, he organised a trap party which included three persons, Amir Singh, Chaudhary Ram and Ram Rang. These members of the party sat in an adjoining room at about 2.45 p.m., while Kundan Lal continued in his own office where the appellant came at 3 p.m. The appellant again told Kundan Lal that he would continue to pay Rs. 1,100/- on the first of every month, while he and his associates should be allowed to indulge in Khaiwali Satta. Thereafter, the appellant took out a bundle of currency notes from his pocket and offered them to Kundan Lal. As this money was being passed on, the three persons associated in the trap, viz., Amir Singh, Chauthary Ram and Ram Rang entered the office. In their presence, Kundan Lal counted the currency notes which were found to contain nine currency notes of the denomination of Rs. 100/- each and twenty currency notes of Rs. 10/- each, making up a total of Rs. 1,100/-. Kundan Lal took the currency notes into possession and recorded a recovery report. He detained Hira Lal, while he recorded a First Information Report of this incident. Thereafter, Harinder Singh, Deputy Supdt. of Police, Rohtak, came to the Police Station on a telephone call at about 3.30 p.m. He then investigated the case which was sent to Court after investigation. The Special Judge accepted the case of the prosecution, convicted Hira Lal appellant for the offence under Section 165-A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year. He also ordered confiscation of the sum of Rs. 1,100/- which, according to the prosecution, was given by him as bribe to Kundan Lal. On appeal, the High Court of Punjab and Haryana upheld the conviction, but reduced the substantive sentence of rigorous imprisonment from a period of one year to six months. The appellant then applied for a certificate under Article 134(1) (c) of the Constitution. The High Court granted the certificate on two grounds, one ground was that the appeal in this Court would involve consideration of the question whether Kundan Lal, Amir Singh and Ram Rang, who were the only witnesses examined, were accomplices and required

corroboration by independent witnesses before their evidence could be believed. The second ground related to the question whether Kundan Lal in taking the step, after he was approached in the morning by the appellant, of laying the trap, carried on investigation which he was not authorised to do under Section 5-A of the Prevention of Corruption Act, 1947, which required that the investigation must be by an officer of rank not below that of a Deputy Superintendent of Police unless there was an order of the magistrate of the First Class authorising him to investigate; and there was no such order of the magistrate in this case. The appeal has thus been brought up to this Court on the basis of the certificate granted under Article 134(1) (c) of the Constitution. In this appeal, we had passed orders on November 17, 1970, allowing the appeal and acquitting the appellant after stating that the reasons will be given later. We now proceed to give the reason.

2. In this case, the main point of law that was argued before us was that Kundan Lal, in taking the step of laying the trap in the afternoon, after he had been approached earlier in the morning and had been offered a bribe, did carry on investigation of the offence of offer of bribe which had been committed earlier in the morning. It was urged that this illegality in the investigation would totally vitiate the trial for that offence. It appeals to us that it is necessary in this case to go in this question of law which has been contested on behalf of the State Government on the ground that Kundan Lal was himself the person to whom the bribe was offered and, if he made arrangements merely to ensure that some persons were present when the bribe was given to him, this step taken by him cannot be said to be a part of the investigation. In our opinion, the circumstances that Kundan Lal, who was merely a junior officer of the status of a Sub-Inspector of Police, himself laid the trap itself makes the evidence of Kundan Lal and the witnesses procured by him unreliable.

3. Kundan Lal, according to his own version, was approached by the appellant in his office who came and immediately made by offer of bribe at 9.45 a.m. on the 9th July, 1967. It appears to us that no person like the appellant could have dared to approach Kundan Lal in this manner at the Police Station itself, unless he had some belief that Kundan Lal was a person who would be amenable to such a offer. In case he had any doubt that Kundan Lal would refuse the offer, he would not have taken the courage to go to the Police Station itself for his purpose. Then it is significant that, according to Kundan Lal, when the offer was made to him, he neither at 3 p.m. with the money. When Kundan Lal gave no reply at all to him the appellant could not be expected to come again and try to trust the money on Kundan Lal, because even a person with some common sense would be afraid that subsequent offer may be witnessed by other persons and the might thus render himself liable to prosecution. It might have been different if Kundan Lal had accepted the offer in the morning. When Kundan Lal remained silent, it seems to us highly improbable that the appellant would go and actually offer money in the officer at the Police Station with all the attendant risks,.

4. Kundan Lal was himself a participant in the offence as the offer was made to him and he accepted the offer though, according to him, it was with the object of working out a case against the appellant of offering a bribe. He was, therefore, an interested witness. The other two witnesses examined a Amir Singh and Ram Rang. Amir Singh, on his own admission, had appeared as a prosecution witness four of five time in police cases pertaining to this Police Station. The evidence of such a witness can hardly carry any value in Court. The other witness Ram Rang, no doubt, was a Municipal Commissioner; but it is significant that, while Amir Singh according to his evidence, became a witness as he happened to come to the police Station for a purpose of his own, Ram Rang was specially sent for by Kundan Lal. The fact that Kundan Lal particularly chose Ram Rang as the person to be called to be a witness itself makes the evidence of Ram Rang of doubtful value.

5. It is further to be noted in this connection that according to the defence, the appellant, who had

earlier been convicted for carrying on gambling activities was stopped by a constable when he had gone to catch a bus in the company of one Bale Ram carrying a sum of Rs. 1,510/- with him. He was told that he was wanted by the Station House Officer.

When he came to the Police Station accompanied by Bale Ram, Kundan Lal, Station House Officer, was standing in the verandah and the appellant's associates Omi and Jaggu were also there. Kundan Lal told him that he was indulging in Khaiwali Satta and, when the appellant repelled the assertion, Kundan Lal searched his person and recovered the entire sum of Rs. 1,510/-. The appellant was then made to sit at the Police Station and, later on, this case was foisted on him by Kundan Lal. It is obvious that, according to the appellant's version, Kundan Lal stood to gain considerably if he could secure the conviction of the appellant for the offence of offering a bribe. Kundan Lal would not only get the credit for working out such a case, but if the defence version is true, he could also pocket a sum of Rs. 410/-, while producing Rs. 1,100/- out of the money recovered from the appellant's possession representing the amount of bribe offered to him. It is true that the evidence of defence witnesses, who came to prove this version, had been concurrently disbelieved by the Special Judge and the High Court but the appellant got an opportunity to put forward such a version. Even if it is untrue, merely because Kundan Lal took the extraordinary step of laying the trap himself, instead of the trap being arranged by some senior officers.

6. According to Kundan Lal, he took the Superintendent of Police into confidence before the trap was actually laid and after he had been approached by the appellant in the morning. The Superintendent of Police had not been examined to prove that such information was conveyed to him before 3 p.m. On the other hand, there appear to be circumstances which indicate that no such information could have been conveyed to the Superintendent of Police. According to Kundan Lal, the Deputy Superintendent of Police Harinder Singh was informed by telephone after the money had been recovered by him at 3.00 p.m. and, thereafter, he came to the police station to investigate the case at 3.30 p.m. On the other hand, according to Harinder Singh himself he came to the police station under the instructions of the Superintendent of Police. He does not bear out the statement of Kundan Lal that he came on information given by Kundan Lal on the telephone. His statement that he came under the instruction of the Superintendent of Police clearly leads to the inference that the Superintendent of Police must also have received information after 3 p.m. and that is why instructions were issued at that time and not earlier. No explanation is forthcoming why the Superintendent of Police did not send the Deputy Superintendent of Police or some other senior officer for the trap in case he did receive information after the morning offer and before the money was actually paid at 3 p.m. These circumstances throw very considerable doubt on the evidence of Kundan Lal and the witnesses procured by him.

7. In these circumstances, we consider that no conviction could be safely based on the evidence of Kundan Lal and his witnesses, Amir Singh and Ram Rang. That is why we allowed the appeal acquitting the appellant.

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