

Mohammed Moinuddin

Vs

The State of Maharashtra

Criminal Appeal No. 226 of 1968

(CJI S. M. Sikri, J. S. K. Hegde, A. N. Grover, G. K. Mitter, P. Jagmohan Reddy JJ)

16.02.1971

JUDGMENT

VAIDIALINGAM, J. -

1. In this appeal by special leave, on behalf of the first accused, the judgment, dated August 3, 1968 of the Bombay High Court in Criminal Appeal No. 1749 of 1966 confirming the appellant's conviction and sentence, is challenged. The appellant, at the relevant time was the Sub-Registrar at Kannad. The appellant along with two others namely, the clerk, accused No. 2, and the peon, accused No. 3, were tried by the Special Judge, Aurangabad and convicted on the offences under Section 161 read with Section 34 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The appellant was sentenced to 18 months, rigorous imprisonment and a fine of Rs. 500/-. In default of payment of fine he was sentenced to undergo six months' rigorous imprisonment. Accused No. 2 was sentenced to one year's rigorous imprisonment and a fine of Rs. 250/-. Similarly in default of payment of fine he was sentenced to undergo three months' rigorous imprisonment. Accused No. 3 was sentenced to nine months' rigorous imprisonment and to pay a fine of Rs. 50/- and in default was to undergo one month's rigorous imprisonment.

2. The prosecution case in brief was as follows : One Shaikh Amin, who was the owner of Survey No. 35 had contracted to sell some time in 1962, 10 acres from and out of that survey number to Keshav for and on behalf of his joint family for a price of Rs. 3,000/-. On Atyaji had four brothers and Ramrao was one of them. Bhikan, complainant (P.W. 2) was the son of Atyaji and Keshav was the son of Ramrao. All of them were members of a joint family. The sale could not be finalised immediately because of the requirement of permission being given by the Collector under Bombay Tenancy Act for effecting sales of lands. Later on the Act was amended and the Collector's permission was no longer necessary. The parties decided to complete the transaction; and accordingly on February 8, 1966, Bhikham purchased the requisite stamp paper for the sale deed. The sale deed Ex. 20, is finalised, and engrossed on the stamp paper was prepared by the document writer Devidas (P.W. 3) on February 9, 1966. After the sale deed was executed by Shaikh Amin, it was taken to the Sub-Registrar's Office at Kannad on February 9, 1966 at about 3 or 3.30 p.m. by Bhikham. He was accompanied by Keshav, Atyaji the scribe Devidas, Ramdas, the vendor Shaikh Amin and one Punjiaji. Keshav presented the sale deed Ex. 20 to the appellant for registration and inquired about the registration charges to be paid by him. The appellant is stated to have replied that the registration charges would be about Rs. 30/-. The appellant is further alleged to have stated that unless the parties pay an additional sum of Rs. 30/- the document will not be accepted for registration. As Bhikan and Keshav did not have with them a sum of Rs. 60/- and as they further did not desire to pay any amount over registration charges, they came out of the Sub-Registrar's office.

At that time accused No. 2, who was the clerk, working under the appellant, followed them and is stated to have asked them to bring the sum of Rs. 60/- as demanded by the Sub-Registrar and that if the amount is not brought, the registration of the document could not be done.

3. P.W. 2 Bhikan approached the Anti-Corruption Police on February 10, 1966 at Aurangabad and made a complaint Ex. 32 to the Deputy Superintendent of Police, Sri Aimen (P.W. 6). P.W. 6 applied anthracene powder on the six currency notes of Rs. 10/- each, brought by Bhikan and returned those notes to the latter with instruction to pay the same to the appellant when the demand for money was again made by him. P.W. 2 was also instructed to give the suitable signal as soon as the money was paid, P.W. 2 accompanied by the police party and the panchas came to the Sub-Registrar's office the same evening, but as the said office had by then closed, they went away. The next day, that is, on February 11, 1966, Keshav. Bhikan (P.W. 2), Panch witness Ramrao (P.W. 1), the scribe Devidas (P.W. 3), Shaikh Amin and others went to the Sub-Registrar's office at about 12 noon. Being a Friday, the appellant and his clerk, accused No. 2, had gone for namaz and they came to the office only at about 2.30 or 3.00 p.m. Keshav along with others, mentioned above, went to the appellant and presented Ex. 20 for registration. The appellant inquired whether they had brought the amount. After P.W. 2 answered in the affirmative the document was received by the appellant and on scrutiny of the document, he wrote out the receipt Ex. 21 in regard to the registration charges and handed it over to Keshav, who in turn gave it to P.W. 2. P.W. 2 offered the amount as required by the appellant; but the latter directed him to pay the amount to the clear accused No. 2 and also pointed out the place where the clerk was sitting. P.W.2 accordingly went to accused No. 2 and handed over to him the six ten rupee notes. As the registration charges came to Rs. 27.80P. P.W.2 required accused No. 2 to return the balance due to him. Accused No. 2 accepted the sum of Rs. 60/- and handed them over to accused No. 3 with a direction to refund the sum of Rs. 2.20 P. to to the complainant. As change had to be obtained, one of the ten rupee note was given by accused No. 3 to Prem Shetti (P.W. 4) who had come to the Sub-Registrar's office. P.W. 4 took one ten rupee note and gave two five rupee notes to accused No. 3. Accused No. 3 retained one of the said notes and gave the other to P.W. 2. P.W. 2 came out of the office for the ostensible purpose of getting the change for Rs. 5/-. After coming out of the office, he gave the signal to the police party, who were waiting outside. P.W. 6, the Deputy Superintendent of Police along with the Panch witnesses came to the office of the Sub-Registrar. There was no trace of anthracene powder found under ultra violet light in the hands of the appellant. But the presence of anthracene powder was found in the hands of accused No. 3., five currency notes of rupee ten each bearing anthracene powder and one currency note of Rs. 5/- were recovered. After investigation and obtaining the requisite sanction, the appellant, his clerk and the peon were charge-sheeted for various offences. Substantially the charge was to the effect that on February 9, 1966, the appellant and the accused No. 2 demanded Rs. 30/- by way of bribe from P.W. 2 and they agreed to accept the same for themselves and the accused No. 3. as illegal gratification for registering the sale deed Ex. 20 and that on February 11, 1966, the appellant once again demanded the bribe which was directed to be handed over to the accused No. 2. Accused No. 2. Accused No. 2 accepted the same for himself, the appellant and accused No. 3.

4. All the three accused denied the charges and pleaded not guilty. According to the appellant, P.Ws. 2 and 3 along with the Keshav came to his office at about 5 or 5.30 p.m. on February 9, 1966 and wanted the registration of the document Ex. 20 to be done. But as the office time was over and as many as 28 documents had been registered that day, the appellant asked the scribe P. W. 3 and others to present the document for registration on the next day. Earlier that day the appellant had found fault with the scribe P.W. 3 for the faulty manner in which another sale deed Ex. 55 had been prepared by him. In view of the criticism made by the appellant, P.W. 3, felt offended and therefore became very irritated when the appellant was not inclined to accept Ex. 20 for registration when it

was presented very late in the evening of February 9, 1966. P.W. 3 felt annoyed at the refusal of the appellant to register the document at such late hour and he entered into a very heated argument with the appellant. In consequence the appellant had asked his peon, accused No. 3 to send P.W. 3 and others out of his office. In view of this incident P.Ws. 2 and 3 and others grudge against the appellant and they have made a false allegation against him.

5. The appellant admitted that on February 11, 1966, when the document Ex. 20 was presented for registration, he inquired P.W. 2 whether the amount was brought and on registered. But according to the appellant, the query made by him regarding the bringing of the amount related not to any additional amount to be paid as bribe. On the other hand, it was usual for him to ask the parties who present documents for registration whether they have brought all necessary amount to cover registration charges and such amount also is to be received by the Head Clerk. The appellant denied having made any demand for payment of illegal gratification. He further denied all knowledge as to what happened between P.W. 2 and accused No. 2.

6. Accused No. 2 also supported the appellant with regard to the incident on February 9, 1966. But regarding the incident on February 11, 1966, his plea was that the amount was in the hand of accused No. 3, who came along with P.W. 2 and others. After counting the currency notes he gave back that money to P.W.3. to get the receipt and the produce the money before him. But by the time the money and then receipt were produced again before him, the police party had arrived and seized the money from accused No. 3. He denied having demanded any illegal gratification from P.W. 2, either for himself or on behalf of the appellant.

7. Accused No. 3 pleaded that the appellant instructed him to take P.W. 2 to accused No. 2 along with the receipt Ex. 21. But before he could deliver the receipt to accused No. 2, P.W. 2 took it from him and gave the currency notes to him for being delivered to accused No. 2. He accordingly handed over the sum of Rs. 50/- to accused No. 2, who returned the same with the instruction to produce the money along with the receipt Ex. 21. He went in search of P.W. 2 and in the meanwhile the police party came and took the money from him. He pleaded that he was innocent.

8. The prosecution relied upon the evidence of the complainant Bhikan, P.W. 2, Panch witness Ramrao, P.W. 1, Prem Shetti, P.W. 4, the scribe Devidas, P.W. 3 and Upendra Rao Narayan Tamne, Advocate, P.W. 5. The appellant examined four witnesses on his side and one Pundlik Laxman Pathak was examined as witness jointly on behalf of the appellant and his clerk accused No. 2. The third accused did not examine any witnesses.

9. The defence witnesses were examined to support the appellant's plea that he was in the habit of asking every person presenting a document for registration whether he has brought the money and if so to give the registration charges to accused No. 2 or to speak about the exchange of words between the appellant and P.W. 3, the scribe on February 9, 1966.

10. The learned Sessions Judge did not believe the defence witnesses. On the other hand, placing reliance on the evidence of P. Ws. mentioned above, convicted the appellant and the other two accused, as mentioned earlier.

11. The appellant and the two other accused challenged their conviction before the High Court. The High Court has confirmed the conviction and sentence passed on the appellant and accused No. 2, but has acquitted accused No. 3. As accused No. 2 has not challenged his conviction and as accused No. 3 has been acquitted, it is not necessary for us to consider their case any further.

12. Mr. Nuruddin Ahmed, learned counsel for the appellant, very strenuously urged that the incident as spoken to by P.Ws. 2 and 3 did not take place on February 9, 1966. On the other hand, the plea of the appellant that the document was brought for registration only late in evening on that day and that the appellant declined to receive the same on the ground that it was very late, is probable and should have been believed by the courts. In this connection the learned counsel placed considerable reliance on the evidence of D.W. 1 who was admittedly an attesting witness to the document Ex. 55, which was registered on February 9, 1966. Devidas P.W. 3 was the scribe of the said document and the appellant had found fault with him for the bad drafting of the said document.

13. The evidence of this witness D.W. 1 was relied on by Mr. Nuruddin Ahmed to support the plea of the appellant that earlier in the day on February 9, 1966, he had criticised P.W. 3 for the mistakes committed by him in preparing Ex. 55 and therefore P.W. 3, was annoyed when Ex. 20 was declined to be accepted for registration by the appellant on that day. It is no doubt true that P.W. 1 is an attester to Ex. 55, but the mere fact that the Sub-Registrar may have criticised P.W. 3 is no ground for rejecting the evidence of the latter when he spoke to the incident of February 9, 1966. Further it is not correct to say that the Trial Court as well as the High Court have based the conviction of the appellant merely on the basis of the evidence of P.W. 3.

14. The first and foremost question to be considered is whether the the incident as spoken to by P.Ws. 2 and 3 did take place on the evening of February 9, 1966. So far as that is concerned, both the learned Sessions Judge and the High Court have accepted the evidence of P.Ws. 2 and 3. Mr. Nuruddin Ahmed has not been able to satisfy us that their evidence in any manner discloses any hostility between them and the appellant.

15. The plea of the appellant that the document was brought for registration only at about 5 or 5.30 on the evening of February 9, 1966 has been rejected by the Trial Court as well as the High Court and the evidence adduced in that regard on behalf of the appellant has also been rejected.

16. It is in this context that question put by the appellant to P.W. 2 on February 11, 1966, whether he has brought the money assumes considerable significance. The appellant has admitted that he did ask P.W. 2, whether he has brought the money. His plea, no doubt, is that it is his practice to ask everybody, who presents a document for registration, whether he has brought the money. Here again his plea has been rejected and the evidence adduced by the appellant in that regard has also been rejected. That the appellant did ask P.W. 2 whether money has been brought is spoken to not only by P.Ws. 2 & 3 but also by an advocate namely, P.W. 5, who was admittedly present at that time. When once the evidence of P.Ws. 2 and 3 that a demand for payment of additional sum of Rs. 30/- for having the document registered was made on February 9, 1966, the question put by the appellant on February 11, 1966, whether the amount has been brought must only be considered as a query made by the appellant whether the extra amount asked for by him has been brought by P.W. 2.

17. P.W. 2 had contracted the Anti-Corruption Police at the earliest occasion, that is, on the morning of February 10, 1966 and the Deputy Superintendent of Police had arranged to have the six ten rupee notes treated with anthracene powder. These were the notes that were recovered from accused No. 3. It is no doubt true that the hands of the appellant examined under ultra violet light did not reveal any trace of anthracene powder. That is but natural. Even according to the prosecution witnesses the appellant did not handle those currency notes. On the other hand, he desired the amount to be given to his clerk, accused No. 2. The evidence of the prosecution witnesses, as rightly held by the High Court, conclusively establishes that the appellant did make a demand for payment of a sum of Rs. 30/- as bribe on February 9, 1966 and this was followed up by his clerk, accused

No. 2. In the face of the overwhelming evidence, Mr. Nuruddin Ahmed was not able to satisfy us that the conviction of the appellant is not legal.

18. Mr. Nuruddin Ahmed urged that the High Court on the very same evidence has chosen to give the benefit of doubt to accused No. 3 and, if so, the appellant also should be given the benefit of doubt. We are not inclined to accept this contention of the counsel. Even according to the prosecution case, accused No. 3, has not in any manner been a party to making a demand for payment of bribe either for himself or on behalf of the appellant and accused No. 2. On the other hand, according to the prosecution the amount was given by the Accused No. 2 to accused No. 3 with a direction to pay any balance amount that may be due to P.W. 2. There is no overt act attributed to the 3rd accused either on February 9, 1966 or on the date when the bribe was given, namely, February 11, 1966. Therefore, the case of accused No. 3 stood entirely on a different basis.

19. The counsel finally urged that as the appellant will lose his job, some consideration should be shown in the matter of sentence. We find on a reference of the judgment of the Special Judge that it was after consideration of all these circumstances, that a sentence of 18 months' rigorous imprisonment together with a fine of Rs. 500/- has been imposed on the appellant.

20. In the result the appeal fails and is dismissed.

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