R. C. Mehta

Vs

The State of Punjab

Criminal Appeal No. 76 of 1970

(G. K. Mitter, C. A. Vaidialingam, P. Jagmohn Reddy JJ)

04.05.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, by the accused, is directed against the judgment and order, dated March 11, 1970, of the High Court of Punjab and Haryana dismissing Criminal Appeal No. 1138 of 1968, and confirming his conviction under Section 5(1)(d) of the Prevention of Corruption Act, 1947 (hereinafter to be referred as the Act) as also the sentence of rigorous imprisonment for one year and the fine of Rs. 100/- imposed on him for the said offence. There is a direction that in default of payment of fine, the appellant has to undergo rigorous imprisonment for one month.

2. The prosecution case as placed before the Special Judge, was as follows : The appellant at the material time was Loco Inspector, Locoshed, Jullundur city. One Sutlej Co-operative Society had obtained contract for the clearance of cinder coal and ash from the fire pits of the railways yard of Jullundur city. Jagira, P.W. 2, was the representative of the Society supervising the work of clearance of coal. The appellant was frequently complaining about the performance by P.W. 2 of his work and further threatened to report about his conduct to the railway authorities. P.W. 2, got the impression that the appellant's object in so harassing him was that he wanted money to be paid to him as bribe so that he may not take further action in the matter. On May 18, 1968, the date of the incident, Inspector Chandrabhan, P.W. 1, of the Special Police Establishment had came to Jullundur and was staying in the Railway Subordinate Rest House. P.W. 2 contacted him and complained to him about the attitude of the appellant. P.W. 1 recorded his statement Ex. P-A and arranged to lay a trap for that purpose and in that connection contacted Waryam Singh and Madan, P.Ws. 3 and 4, who were working as Inspectors in the Post Office at Jullundur city. In their presence P.W. 1 took two ten rupee currency notes from P.W. 2 and after noting their numbers and treating them with Phenolpthalein powder handed them back to P.W. 2 with instruction to pay the same to the appellant and to give a required signal. P.W. 2 along with the police party comprised of P.W. 1 and P.Ws. 3 to 5 reached the Parcel Office at about 5.30 or 6 p.m. and on seeing the appellant coming out from the Parcel Office, P.W. 2 was allowed to proceed further to meet him while the others stood behind. The appellant and P.W. 2 after greeting each other went to a Pan shop nearby and after purchasing Pans proceeded further. At that time P.W. 2 gave the two marked ten rupee currency notes to the appellant, who received the same and put it in the pocket of his bush-shirt. P.W. 2 gave a pre-arranged signal on which the police party came there and on searching the accused, the marked currency notes were recovered from the pocket of his bush-shirt. P.W. 1 took the appellant along with P.Ws. 2 to 5 and after his hand was dipped in a chemical solution, it turned pink. P.W. 1 after preparing the seizure and recovery memos registered a case against the appellant of receiving illegal gratification. After obtaining the necessary sanction, the appellant was prosecuted for having

obtained from P.W. 2 a sum of Rs. 20/- as illegal gratification by corrupt and illegal means and by abusing his post as a public swevant. He was accordingly charged with an offence under Section 5(1)(d) of the Act punishable under Section 5(2) of the Act.

3. The accused denied the offence and also refuted the allegation that he ever demanded from P.W. 2 any bribe. He further stoutly denied having received any amount as bribe from P.W. 2. He pleaded that he had been falsely involved in the case at the instance of certain representatives of the Railway Men's Union, namely, Gurubax Singh, Trikha and Sehgal. According to the accused he was going to the bazar, on the day in question at about 5.15 p.m., when P.W. 2 tried to plant the currency notes in his pocket but he flung it back straight in his face. He made a report to the police Chawki No. 3 at about 6.30 p.m. about the attempt made by P.W. 2. After making the report when he was coming back, he was again stopped by P.W. 2, who offered him the currency notes, which he refused to accept and resisted him. At this time P.W. 1 came there and took him away to the Rest House. Immediately thereafter seven or eight persons including the three representatives of the Railway Men's Union, mentioned above, joined P.W. 1. The accused further pleaded that when he was questioned by P.W. 1, he vehemently denied having accepted any bribe from P.W. 2 Though he was asked to wash his hands in a solution, he refused to comply with the demand of P.W. 1, on which the latter threatened to arrest him. After 20 or 25 minutes, he was allowed to go away. He reported this matter to the higher authorities including the Divisional Mechanical Engineer and the Superintendent Engineer and the Station Master, D.W. 1.

4. The prosecution mainly relied on the evidence of P.Ws. 1 to 5 to prove the offence against the appellant. P.W. 1, the prime mover of the dramn turned hostile. The answers given by him were such that he not only let down the prosecution case but even supported the plea of the appellant. P.W. 3 was also giving answers favorable to the appellant or denied certain suggestions made by the prosecution and he was also attempted to be treated as hostile by the prosecution, but the Special Judge did not permit the same. P.Ws. 1 and 3 to 5 have more or less substantially given the evidence supporting the prosecution version.

5. The appellant adduced defence evidence. D.W. 1 was the Station Master of Railway Station Jullundur city and he has referred to the fact that the Divisional Mechanical Engineer had come to Jullundur city on May 18, 1968, in connection with the work in the station yard. The appellant was with the witness from 2 to 5 p.m. on the day in question having discussion about verious matters. The appellant was also informed by the witness that he has been instructed by the Divisional Mechanical Engineer to meet him and other officers at 6 p.m. on that evening. This witness has further stated that Gurubax Singh and Trikha were active workers of the Railway Men's Union at Jullundur. He has further referred to the fact that the appellant left him only at about 5 p.m. and met him the next day. D.W. 2 the booking clerk, Locoshed, Jullundur, was examined to show that on May 18, 1968, Gurubax Singh was absent from duty as shedman from 4 p.m. to midnight, and that Gurubax Singh and Trikha were active members of the Northern Railway Men's Union.

6. D.W. 3, head constable of police post No. 3, Jullundur city was examined to produce the daily diary of the police post No. 3, Jullundur city, particularly the entries of May 18, 1968. This was to prove the complaint made by the appellant at 6.30 p.m. about the attempt of P.W. 2 to thrust the two currency notes into his pocket.

7. The Special Judge and the High Court are of the opinion that P.W. 2 has made contradictory and inconsistent statements and in view of this no reliance has been placed on his evidence. Even before us, Mr. V. C. Mahajan, learned counsel for the State, did not place any reliance on his evidence.

Both the courts also felt considerable hesitancy in accepting the evidence of P.W. 3, who was also attempted to be treated as hostile by the prosecution. Both the courts ultimately rest the conviction of the appellant on the evidence of P.W. 1 and they found corroboration for his evidence from the testimony furnished by P.Ws. 4 and 5. Even here the view of the courts appear to be that both P.Ws. 1 and 5 have to be considered as partisan or interested witnesses and that their evidence has to be treated very carefully. But they are of the view that by and large their evidence can be accepted. Regarding the plea of the appellant based upon the complaint Ex. D.W. 3/A made by him at 6.30 p.m. in the police station, the High Court has not dealt with it properly excepting making a very passing reference. Such a reference is made by the High Court when it observes that when the incident has happened as spoken to by P.W. 1, and when the appellant was with P.W. 1 from about 6 p.m. till 7.30 p.m., he would not have been allowed to go, to lodge the report at 6.30 p.m. as claimed by him. There is no discussion by the High Court about the evidence of D.W. 3, who has spoken to the entries found in the register produced by him from the police station for that particular evening. On the other hand, the learned Special Judge has come to the conclusion that the report must have been given by the appellant after 7.30 p.m. when he was allowed to go away by P.W. 1. The timing in Ex. D.W. 3/A must have been advanced intentionally and therefore the fact that the appellant made a report to the police does not affect the case of the prosecution. As we will show later that this reasoning of the learned Special Judge is full of speculations and surmises and without any basis whatsoever. Ultimately the case of the prosecution was accepted by the learned Special Judge is full of speculations and surmises and without any basis whatsoever. Ultimately the case of the prosecution was accepted by the learned Special Judge and the appellant was convicted, as mentioned above. The High Court has also agreed with the Special Judge. We may also say that according to the High Court the task of the prosecution has been made easy by the legal presumption arising from Section 4(1) of the Act.

8. Mr. A. N. Mulla, learned counsel for the appellant has very strenuously criticised the approach made by both the Special Judge and the High Court with respect to the complaint Ex. D.W. 3/A made by the appellant at 6.30 p.m. in the police Chawki No. 3. The evidence of D.W. 3 in regard to the various entries clearly establishes that the view of the Special Judge that the time when the complainant gave the report must have been intentionally advanced is erroneous. The counsel further pointed out that the legal presumption referred to by the High Court does not apply to a prosecution for an offence under Section 5(1)(d) of the Act. The erroneous assumption made by the High Court in this regard has vitiated its approach in appreciating the evidence of the prosecution. The counsel further urged that the complainant P.W. 2 has turned hostile and has further supported the defence plea. P.W. 3 has not been considered to be a safe witness though he was not actually permitted to be treated as hostile. P.Ws. 1 and 5 have also been characterised as partisan and interested witnesses and hence their evidence is valueless. He further stressed and that P.Ws. 3 and 4 have admitted that they have been associated in similar traps laid by the Special Police Establishment. That clearly shows that those two witnesses would have been prepared to subscribe to anything that is being done by P.W. 1. P.W. 5 is also a member of the police party being on deputation with the Special Police Establishment. In view of all these circumstances, the counsel urged that the prosecution case has not been proved beyond reasonable doubt.

9. Mr. V. C. Mahajan, learned counsel for the State, in view of the various circumstances pointed out above, on behalf of the appellant, found considerable difficulty in supporting the conviction of the appellant. But he pressed before us for acceptance of the evidence of P.W. 5. He further urged that even according to the prosecution and the accused an incident did take place at about 5.15 p.m. and, if so, it is highly improbable that the second incident, as pleaded by the appellant, would have happened. The inference, according to the learned counsel, has been correctly drawn by the Special

Judge that the complaint Ex. D.W. 3/A must have been given later to create evidence, if possible in favour of the appellant. The counsel further urged that though P.W. 2 has turned hostile, nevertheless, as the evidence of P.Ws. 1 and 3 to 5 has been accepted, the conviction of the appellant, in the circumstances is proper.

10. We have considered the various aspects presented to us by the learned counsel on both sides and we are of the view that the conviction of the appellant cannot be sustained. The High Court has made a very serious mistake in proceeding on the basis that the legal presumption under Section 4(1) of the Act applies and in this view it has practically thrown the burden of proving his innocence on the appellant. But it is not necessary for us to pursue this aspect further as we are satisfied that even otherwise the prosecution case cannot be accepted. It is to be noted that the evidence of P.W. 1 is to the effect that P.W. 2 met him in the Rest House at about 2.30 p.m. on May 18, 1968 and complained to him about the conduct of the appellant. The witness asked P.W. 2 to go and contact the appellant and to arrange with him for giving bribe sometime later in the day. P.W. 2 came back within 15 or 20 minutes (which will be about 3 p.m. and informed him that the appellant had agreed to come near the Parcel Office in the evening at about 5.30 or 6 p.m. to receive the bribe.

11. On the other hand, P.W. 2 has stated that he told P.W. 1 that when he met the appellant at about 2.45 or 3 p.m., the latter had refused to come for receiving any bribe. But P.W. 1 nevertheless proceeded on the basis that the accused will receive the bribe and stated that he proposed to lay a trap.

12. It is in this connection that the evidence of D.W. 1 assumes much importance and this has been missed by both the courts. According to D.W. 1 on May 18, 1968, the appellant in connection with the visit of the Divisional Mechanical Engineer had come to discuss matters about the coal yard with him. His further evidence is that the appellant was with him from 2 to 5 p.m. on that day. Both the Special Judge and the High Court have not rejected the testimony of this witness. If so, it falsifies the evidence of P.W. 1 that P.W. 2 met the appellant at about 3 p.m. and that the appellant had agreed to come in the evening to receive the bribe. Though P.W. 2 gives a slightly different version that when he met the appellant at about 3 p.m., the latter refused to come to receive the bribe, nevertheless, the evidence of D.W. 1 falsifies his evidence and makes it clear that there was no possibility of his having met the appellant between 2 and 5 p.m. In fact D.W. 1 is very categorical when he says that between 2 and 5 p.m. the appellant was with him and no body else came to meet the latter or the witness. P.W. 5 speaks to having been present at the Rest House when P.W. 2 came and complained to P.W. 1 about the conduct of the appellant. The witness states that P.W. 1 recorded the statement Ex.P-A, from P.W. 2 and asked the latter to meet the appellant and fix up the time and place where the bribe money is to be given. He has further deposed that P.W. 2 left the Rest House and came back at about 3 p.m. and informed P.W. 1 that the appellant had agreed to come for receiving the bribe money at about 6 p.m. in the evening near the Parcel Office. The same criticism levelled against the evidence of P.Ws. 1 and 2 applies to this witness also. P.Ws. 3 and 4 have referred to P.W. 2 mentioning to P.W. 1 about the appellant having agreed to come in the evening. That P.W. 2 could not have contacted the appellant at about 2.45 or 3 p.m. that afternoon, is established by the evidence of D.W. 1 and from it follows that P.Ws. 1 and 3 to 5 are not stating the truth. In fact P.W. 5 has admitted that his duty is to give technical assistance to the Special Police Establishment and to collect intelligence for them. He has also stated that he was on deputation with the said Establishment and he was not doing any work in the Railway Department. Being attached to the Special Police Establishment, naturally he was interested in supporting P.W. 1.

13. We have laid some emphasis on the above aspect to show that the evidence of P.Ws. 1 and 3 to 5

about P.W. 2 having met the appellant between 2.45 or 3 p.m., fixed up the place and time for giving the bribe was relied on by the prosecution that it was in view of this pre-arranged meeting that was to take place between P.W. 2 and the appellant that evening, the trap was organised. Once this part of the evidence of these witnesses is not accepted, it follows that there was no arrangement between P.W. 2 and the appellant about the latter's receiving the bribe at about 6 p.m. near the Parcel Office. P.W. 2 has categorically stated that when he tried to put the money in the pocket of the appellant, the latter resisted and refused to take the same. It was at that time that the police party arrived and confronted the appellant.

14. The association of P.Ws. 3 and 4 with P.W. 1 for the purpose of witnessing P.W. 2 giving the money to the appellant strike us to be very suspicious. They cannot, on their own evidence be characterised as independent witnesses not amenable to the influence of the Special Police Establishment. P.W. 3 has admitted that on one or two prior occasions he has been associated with the traps laid by the Central Bureau of Investigation. Similarly, P.W. 4 has also admitted that he has figured as a witness on two or three occasions along with P.W. 3 when a trap was laid by the Special Police Establishment. P.W. 2 has completely given the go by to his statement Ex. P-A. Both P.Ws. 1 and 5 have been characterised as partisan witnesses and P.W. 5 on his own statement appears to be highly interested in supporting P.W. 1.

15. It is the evidence of P.Ws. 1, 4 and 5 that the appellant came near the Parcel Office at about 6 or 6.15 p.m. and that they saw the money being given by P.W.2. P.W.3 who is also stated to be a witness to the giving of money has admitted that the money was not passed in his presence or within his sight. P.W. 4 has stated that when P.W. 2 was searched at the Rest House, he had no other money except the two marked currency notes. But he stated that at the Pan shop near the Parcel Office where the appellant met P.W.2, the latter took out a ten rupee note from his pocket and offered to pay the price of the Pan. If the police authorities searched P.W.2 and satisfied themselves that he had no other money with him except the two marked currency notes, it is difficult to appreciate as to how he was able to produce another ten rupee note from his pocket. The evidence of P.Ws. 1 and 3 to 5 regarding the giving of money by P.W.2 and acceptance of the same by the appellant appears to be artificial.

16. This takes us to the question to the credibility to be given to the report Ex. D.W. 3/A made by the appellant at the police Chawki No. 3 at 6.30 p.m. on the same day. P.Ws. 1 and 3 to 5 have spoken to the fact that the appellant was with them from about 6.15 p.m. till 7.30 or 7.45 p.m. If this evidence is true, the appellant could not have gone to the Police Station and given the report Ex. D.W. 3/A at 6.30 p.m. We will now refer to the evidence bearing on this aspect.

17. We have already referred to the fact that the plea of the appellant is that at about 5.15 p.m. when he was going in the bazar, P.W.2 tried to plant the currency note in his pocket and that he flung it at his face. According to him, he made a report at the Police Station at 6.30 p.m. regarding this incident. The report has been recorded at the Police Station at 6.30 p.m. The entry in the Roznamcha of police Chawki No. 3 is report No. 18. The entry is as follows.

> "Report, dated May 18, 1968, Time 6.30 p.m. - The informant presenting himself at the P. Post, made a report to this effect, 'I am working as an Inspector in the Loco Shed, while Jagira is working as a Cinder Jamadar. I accompanied him to the Bazar, today. After chewing the Pan (Betal leaf) when I got near the railway post, the above-named put Rs. 20/- in my pocket by way of mistake. I took it ill and this led to displeasure between us. He has disgraced me in doing such act. I, therefore, complain

against the said individual. The report may please be lodged.'

Today, the report has been entered in the Roznamcha, at the instance of the applicant (informant). From his statement, no cognizable offence is made out. The applicant has been spared after handing over him, the copy of the report."

From this report it is seen that the accused has proceeded to accompany P.W. 2 to the bazar and after chewing Pan when he got near the railway post, P.W. 2 put rupees twenty in his pocket by mistake. The appellant was displeased with the same and he felt he was disgraced. The complaint itself is against P.W.2. The question is whether the appellant made the itself is against report at 6.30 p.m. as pleaded by him and as found from the record of the police station. D.W. 3, head constable of the said police station, on summons produced the daily diary. He has also referred to the report made by the appellant as having been entered as serial number 18 and he has produced a copy of the report. He has also stated that the report preceding the report No. 18 was at 6 p.m. and the report subsequent to report No. 18 was made at 6.35 p.m. In cross-examination by the Public Prosecutor, the witness has stated that at 6 p.m. an entry is made in the Roznamcha about the roll call and then at 8 p.m., another report is made, that everything is alright. He further states that if no one comes for making a report in the intervening period, the Roznamcha remains vacant. He has further stated that ever since he joined duty at the police station about 15 days prior to his giving evidence, the clock has not been in working order. From the evidence of this witness it is evident that an earlier report by a third party had been given at 6 p.m. and another report by another party has been given at 6.35 p.m. In between these two reports, the complaint of the appellant has been recorded as Sr. No. 18 at 6.30 p.m. The answers given in the cross-examination are only regarding the general practice obtaining in the police station. So far as we could see there is no suggestion that the recording of the report made by the appellant at 6.30 p.m. has been interpolated or that though the report was given long afterwards, a wrong timing has been given. From the sequence of the entries in the diary as spoken to by D.W. 3, it is clear that the appellant has made a report at 6.30 p.m. which is the time noted in the police diary. The High Court does not at all seem to give any importance to this complaint made by the appellant. On the other hand, it proceeds on the basis that the appellant was with the police officers between 6.30 p.m. and 7.30 p.m. and therefore he would not have been permitted to make the report at the police station at 6.30 p.m. This approach made by the High Court is really begging the question. The High Court had to find out the truth of the version given by P.W. 1 and the appellant. Instead of doing so, the High Court has merely made assumptions against the appellant, which are not justified.

18. The Special Judge, no doubt, has considered the weight to be given to Ex. D.W. 3/A. It is the view of the Special Judge that though the entry is recorded at 6.30 p.m. in the daily register of the police station, it must have been actually recorded after 7.30 p.m. when the accused was allowed to go away from the Rest House by P.W. 1. The Special Judge further states that the time 6.30 p.m. must have been recorded with the connivance of the police official posted at the police station and in this connection he has totally misunderstood the evidence of D.W. 3, that if no reports are received between 6 and 8 p.m. the Roznamcha remains vacant during this period. The Special Judge has held that it must have continued to remain vacant even at 7.30 p.m. and when the accused made the report, the time has been given as 6.30 p.m. The Special Judge has further held that the time of recording the report must have been advanced intentionally. Alternatively the Special Judge holds that P.W. 1 may have allowed the accused to go away even earlier and that he was making a mistake that the appellant was with him till 7.30 p.m. The Special Judge winds up the discussion on this aspect that the report made by the appellant is only a device to create evidence in his favour.

19. We are constrained to remark that the above reasoning of the learned Special Judge is entirely fallacious and without any basis. P.Ws. 1 and 3 to 5 are categorical in their statements that the appellant was with them from 6.15 p.m. till 7.30 p.m. or 7.45 p.m. There is no suggestion made by the prosecution to any of these witnesses that the appellant left them earlier than 6.30 p.m. In fact if the incident had happened as spoken to by them, it commenced only at 6.15 p.m. when the appellant came near the parcel office and it must have taken at least 1 1/2 or 2 hours for the necessary seizure and recovery memos to be prepared. There is also the evidence of these witnesses that some time was taken for dipping the hands of the appellant in the solution to find out whether he handled the currency notes. In any event as the accused himself came to the parcel office, according to the prosecution only at about 6.15 p.m., the whole matter could not have been finished within 6.30 p.m., so to as enable the appellant to rush up to the police station to give the report D.W. 3/A at 6.30 p.m. The learned Special Judge has thoroughly misunderstood the evidence of D.W. 3. We have already referred to his evidence and it follows that the entries have been made in the normal course and the recording of the report of the appellant is accepted, it appears very probable that when the attempt of P.W. 2 to trap the appellant by offering him money failed, between 5 and 6 p.m. P.W. 1 and others were waiting for an opportunity to somehow or the other bring the appellant to trouble by making it appear that he received the money voluntarily from P.W. 2. Once it is accepted that the statements in Ex. D.W. 3/A are true, it is improbable that the appellant would have agreed to receive any amount as bribe immediately thereafter.

20. In view of all these circumstances, we are of the opinion that the evidence of P.Ws. 1 and 3 to 5 cannot be accepted.

21. We have pointed out the very serious errors and omissions committed by both the Special Judge and the High Court and we are of the opinion that it cannot be said that the prosecution has proved the case against the appellant beyond all reasonable doubt.

22. In the result the appeal is allowed. The judgment and the order of the High Court confirming the conviction of the appellant for an offence under Section 5(1)(d) of the Act as well as the sentence of imprisonment and fine imposed for the said offence are set aside. The accused is acquitted of the offence with which he was charged. The fine, if paid, will be refunded. The bail bond of the accused will stand cancelled.

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