

Ram Prakash Arora

Vs

State of Punjab

Criminal Appeal No. 164 of 1969

(A. N. Grover, M. H. Beg JJ)

22.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Punjab High Court.
2. The appellant Ram Prakash Arora at the material time was the Line Superintendent, Punjab State Electricity Board, Ludhiana. He was tried by the Special Judge on charges under Section 5(2), read with Section 5(1)(d) of the Prevention of Corruption Act and Sections 161 and 165 of the Indian Penal Code. He was convicted on all the counts and was sentenced to rigorous imprisonment for one year and a fine of Rs. 100/- on the first charge and to rigorous imprisonment for one year on the second charge; both the sentences were to run concurrently. He went up in appeal to the High Court but the same was dismissed.
3. According to the case of the prosecution Jogindar Singh, P.W. 1 had a vegetable shop at Jail Road, Ludhiana. He wanted an electricity connection for his shop. On February 7, 1968, he submitted an application to the Sub-Divisional Officer concerned. According to the rules he was required to file a test report which was duly filed. On February 12, 1968, the appellant went to the shop to see the fitting, etc. On February 15, 1968, Joginder Singh and his cousin Dalbir Singh who also appeared as (P. W. 2) went to the office of the S.D.O. at about noon time. They met the appellant. According to them the appellant raised certain objections about the fittings etc., and demanded an illegal gratification of Rs. 20/- if the connection was to be sanctioned without delay. Jogindar Singh said that he did not have any money with him but the appellant told him that he would visit his shop between 4 and 4.20 p.m. and he could give the money at that time. Jogindar Singh and Dalbir Singh decided to report to the police about the illegal demand which was being made. They went to Mit Singh, Deputy Superintendent of Police in his office and told him the whole story Mit Singh recorded the statement of Joginder Singh which was forwarded to the police station where a formal first information report was registered. Jogindar Singh and Dalbir Singh did not have even Rs. 20/- with them when they met the D.S.P. Therefore they arranged and produced two ten rupee notes when the latter came to a shop in the neighbourhood of Jogindar Singh's shop. The two notes were initialed and their numbers were noted and returned to Jogindar Singh. Thereafter Jogindar Singh and Dalbir Singh went to their shop whereas the D.S.P. Mit Singh remained in the Ganesh Engineering Works Shop. Another police officer Rajender Lal who was an Inspector and witness Arjan Singh stood a little distance from the shop of Jogindar Singh. The appellant is alleged to have gone to Jogindar Singh's shop at about 4.20 p.m. on a bicycle. Jogindar Singh passed on the currency notes of Rs. 20/- to him. The appellant is alleged to have put them in his purse. Dalbir Singh meanwhile made a signal according to the pre-arranged plan. D.S.P. Mit

Singh Inspector Rajender Lal and Arjan Singh reached the spot. The person of the appellant was searched and the notes in question were recovered. Other articles which were recovered from his person were also mentioned in the memorandum which was prepared. After obtaining sanction the appellant was sent up for trial.

4. Now the prosecution evidence consisted only of Joginder Singh and Dalbir Singh P.Ws. 1 and 2 and D.S.P. Mit Singh. Arjan Singh who was joined in the raid was given up. About Arjan Singh a copy of the judgment Ext. DF of the Judicial Magistrate, First Class, Ludhiana, dated July 31, 1968, in another case State v. Tara Singh, had been produced. The Magistrate had expressed the opinion that Arjan Singh was a stock witness of the police who admittedly had appeared in 20 to 30 cases as prosecution witness in his court. Inspector Rajender Lal was also not examined by the prosecution. About him severe strictures had been made by the Magistrate First Class, Ludhiana in his judgment, dated February 12, 1957, in a case State v. Smt. Sheila Rani and he had even directed a notice to issue to show cause why he should not be prosecuted for bringing a false case. Strangely enough D.S.P. Mit Singh on whose evidence the courts largely relied had also received highly prejudicial comment in the judgment of the Additional Sessions Judge, dated August 30, 1968, in a case State v. Hoshiar Singh. Even the public prosecutor in that case had to concede that the investigation had been held by Mit Singh in an arbitrary and capricious manner and that his conduct needed strong condemnation from the court. This is what the court observed :

"It was not expected of an officer of the status of Shri Mit Singh to be swayed by extraneous pressure, may be political or otherwise, and prepare record which on the face of it appears to be false in order to help one accused or the other."

D.S.P. Mit Singh when asked about this judgment admitted that he had appeared as a prosecution witness in the Dholewal Murder case but said that he did not know that any strictures had been passed against him in the judgment of the Additional Sessions Judge.

5. There are certain other facts which must be noticed. It is proved from the evidence of Shri J. S. Vashist, Assistant Engineer, Punjab Electricity Board, that when a connection has to be given it was the duty of the appellant to inspect the spot which was done by him on February 12, 1968, and he had recommended that the connection be given. The orders for giving the connection had to be passed by him. He made an order Ext. PA/1 which was signed by him on February 13, 1968. A separate service connection was also ordered by him on that very day.

6. On behalf of the appellant it has been strenuously urged that the case of the prosecution stands falsified by these facts. If the appellant wanted any illegal gratification for facilitating the giving of the connection he would have done that on or before February 12, 1968, and before the order of sanction was made on February 13, 1968, by the S.D.O. Once this order had been made there was nothing more which was to be done and it is wholly unbelievable that he should have asked for a petty sum of Rs. 20/- on February 15, 1968, by telling Joginder Singh that the fitting was not proper and there were certain other defects and that if delay was to be avoided the amount in question should be paid to him as illegal gratification. On behalf of the State it has been pointed out that Joginder Singh had not been informed about the sanction having been given by the S.D.O. and he must have thought that the fixing of the connection would be delayed until the demand made by the appellant was satisfied. Secondly, a lot of stress has been laid on this, the appellant had no business to go to the shop of Joginder Singh on the afternoon of February 15 unless the story of the prosecution is accepted that he went there in accordance with the arrangement made in the earlier part of the day that he would reach the shop in the afternoon for taking Rs. 20/- from Joginder

Singh. The explanation of the appellant was that he had gone near the shop of Joginder Singh because he was to do some work with which he was entrusted by the S.D.O. in the neighbourhood of Joginder Singh's shop. The S.D.O. gave evidence that a pole mounting sub-station was to be erected which was to be fixed at a place which admittedly was in the same locality as Joginder Singh's shop and the appellant was paid certain amount from the office for the purchase of bricks, etc. for carrying out the work there. He further stated that he had directed the appellant on February 15, 1968, that he should get that work started on the same day, namely, February 15, 1968. At the time when the D.S.P. (Mit Singh) took possession of various articles from the person of the appellant he also took into possession all the files found on the cycle of the appellant. It is significant that among those files the file relating to the giving of the connection to Joginder Singh was not to be found. Mit Singh did not take that file into possession even from the office of the S.D.O. till about the 8th of March. Curiously enough the Special Judge made a point out of it against the appellant that since the file remained in the office of the S.D.O. the orders could be made on that file at any time. He has even made some comments which seem to suggest that he entertained a suspicion that the S.D.O. had made certain entries to help the appellant. We consider it highly unfair that any such inference should have been drawn when the S.D.O. was not properly cross-examined on this point. The learned judge could not legitimately have doubted the bona fides of Shri Vashist in the absence of any material in his cross-examination to cast any doubt on his conduct. There was no suggestion that D.S.P. Mit Singh wanted to take into possession the file relating to the connection applied for by Joginder Singh and any obstruction was placed in his way by the S.D.O. or any one else in the office of the Electricity Department. On the contrary the court should have looked askance at the conduct of investigation by the D.S.P. who had no business to wait till March 8 to take that file into possession.

7. There is a certain amount of force in the suggestion on behalf of the appellant that if he had gone to the shop of Joginder Singh in connection with his matter he would have taken the file with him on February 15, 1968, and not taken other files with him. The other files, according to him, related to the work which had been entrusted to him for being carried out near the shop of Joginder Singh as deposed to by the S.D.O.

8. The most regrettable feature of the case is that the raiding party was headed by the D.S.P. about whose conduct in investigation in another case serious strictures had been passed. He associated with himself, Inspector Rajender Lal and Arjan Singh whose antecedents were equally doubtful. They were not even produced as witnesses at the trial. It is highly incomprehensible why the D.S.P. did not associate some respectable person or persons whom he could take into confidence rather than take with him Inspector Rajender Lal and Arjan Singh.

9. The evidence of Joginder Singh and Dalbir Singh has been naturally relied upon by the counsel for the State and it has been suggested that they had no motive to falsely implicate the appellant. According to the appellant Joginder Singh had come to him on February 15, 1968, about 12 noon and got annoyed and had heated argument with him saying that so many days had passed and the connection had not been given. The statement of Joginder Singh is not at all impressive and his cross-examination shows that he could not be implicitly relied upon. Dalbir Singh is related to him being his cousin. It must be remembered that both Joginder Singh and Dalbir Singh P. Ws. were interested and partisan witnesses. They were concerned in the success of the trap and their evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person. (See *State of Bihar v. Basawan Singh*) (1959 SCR 195 : AIR 1958 SC 500 : 1958 Cri LJ 976). The memo Ext. PE. which was prepared regarding the taking into possession of the currency notes was witnessed by D.S.P. Mit

Singh, Inspector Rajender Lal, Joginder Singh, Dalbir Singh and Arjan Singh. In Basawan Singh's case (supra) corroboration was found in the evidence of the two search witnesses who were independent and had nothing to do with the raiding party. There is no search witness who is independent in the present case and there is no other evidence from which any corroboration could be found of the evidence given by the members of the raiding party including Joginder Singh and Dalbir Singh. This aspect was not present at all to the mind of the High Court or the learned Special Judge.

10. Apart from what has been stated above we cannot overlook the fact as to why the appellant demanded illegal gratification on February 15, 1968, after he had already submitted a report on February 12, by verifying at the spot that the connection be given and that the sanction had actually been accorded by the S.D.O. on February 13, 1968.

11. It is true that this Court does not appraise evidence and accepts the decision of the courts below with regard to the credibility of the witnesses. But neither the correct approach in such cases nor certain important aspects which have been noticed appear to have been present to the mind of the learned Judge of the High Court or of the Special Judge.

12. We are not satisfied that the charges preferred against the appellant were proved beyond all reasonable doubt. The appeal is consequently allowed and he is acquitted.

</html