Jaswant Singh

Vs

State of Punjab

Criminal Appeal No. 200 of 1971

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

21.11.1972

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal by special leave is against the judgment and order, dated April 28, 1971, of the High Court of Punjab and Haryana in Criminal Appeal No. 1310 of 1969 confirming the conviction of the appellant for an offence under Section 5(2) of the Prevention of Corruption Act, read with Section 161 of the Indian Penal Code. The appellant was sentenced by the Special Judge to undergo two and a half years rigorous imprisonment and also to pay a fine of Rs. 500/-. But the High Court has reduced the sentence to one year's rigorous imprisonment; the fine levied by the Special Judge has, however, been maintained.

2. The case of the prosecution was briefly as follows :

> "One Kaku Singh, P.W. 1, was allotted surplus land belonging to one Hazura Singh, situated in the village of Dhakrabba. Two other persons, Jagan Nath and Amar Nath, had also been allotted surplus land of the same owner along with P.W. 1. These persons had authorised P.W. 1 to take possession of their land also on their behalf. The effort made by Kaku Singh to take possession of the land was not successful. The appellant was the Naib Tehsildar (Agrarian) Patiala, at the relevant time. Kaku Singh approached the patwari in this connection for helping him to get possession of the lands. He was assured that possession will be delivered on April 15, 1968. But as the revenue patwari was not available on that day, Kaku Singh could not get possession, though he had gone to the spot along with police help. On the morning of April 30, 1968, P.W. 1 contacted the appellant at the latter's residence and requested him to assist him in getting possession of the property. The appellant made a demand of Rs. 100/- as illegal gratification for rendering such assistance. P.W. 1 agreed to give the bribe later in the day. P.W. 1 later contacted P.W. 11, the Inspector of Police, and informed him about the demand of the appellant. P.W. 11 took him to the Deputy Superintendent of Police, P.W. 10, who took a statement from him. P.W. 10 took the ten-rupee currency notes of the total value of Rs. 100/- given by P.W. 1 and after noting the numbers returned the same to P.W. 1 asking him to give the amount to the appellant and give a signal to the police party, who will be waiting near about the place. P.W. 1 accordingly contacted the appellant near the court house and both of them got into a rickshaw. While proceeding in the rickshaw, P.W. 1 gave the accused the sum of rupees one hundred and gave the pre-arranged signal. On this, the police party headed by P.W. 10 arrived in a jeep and stopped the rickshaw. On seeing the

police party, the appellant threw the notes from his pocket on the foot-board of the rickshaw which were seized.

The accused also was arrested and a statement taken from him by the police."

3. The appellant was prosecuted for the offence mentioned earlier. The prosecution relied on the evidence of P.W. 1, the complainant, P.W. 2, who has signed the seizure memo regarding the currency notes, P.W. 3 the ricksaw-puller, P.W. 10, the Deputy Superintendent of Police who organised the trap and P.Ws. 9 and 11, two police officers, who were in the police party at the time of the raid. The plea of the appellant was one of complete denial. He further added that as there was a stay order passed on April 30, 1968, by the appellate authority, and as P.W. 1 could not get possession in consequence, he was embittered and hence had foisted this false case of payment of bribe.

4. The learned Special Judge accepted the evidence of P.Ws. 1, 2 and 9 to 11. P.W. 3, the rickshaw-puller, though in his statement before the police had referred to the accused asking for a bribe and receiving the same from P.W. 1, went back upon the statement when giving evidence in court. The version given by him in court was that P.W. 1 offered to pay Rs. 100/- to the accused but the latter refused to accept the same saying that a stay order had been granted. P.W. 3 was cross-examined by the State and he admitted the statement made by him to the police under Section 161 of the Criminal Procedure Code supporting the case of the prosecution. Believing the evidence of P.Ws. 1, 2 and 9 to 11, the learned Special Judge came to the conclusion that the appellant had made a demand for payment of bribe on the morning of April 30, 1968, and that he did receive, in the afternoon of that day, the sum of rupees one hundred, as bribe from P.W. 1. When the police party suddenly appeared on the scene, the appellant threw the currency notes, which were seized by the police. Accordingly he found him guilty of the offence and sentenced him accordingly.

5. The High Court, on appeal by the appellant has also accepted the evidence of P.Ws. 1 and 9 to 11. The High Court, however, did not choose to rely on the evidence of P.W. 2. According to the High Court, the evidence of P.W. 3, is absolutely worthless as he has completely gone back, from his statement given to the police under Section 161. While confirming the conviction, the High Court, however, reduced the sentence.

6. On behalf of the appellant, Mr. D. Mukherjee, learned counsel, urged that, apart from the police witnesses, P.Ws. 9 to 11, there is only the solitary evidence of the complainant, P.W. 1, who is a totally unreliable person. P.W. 3 has not supported the prosecution and P.W. 2 was not been relied on by the High Court. The occurrence having taken place, according to the prosecution, in a public thoroughfare at mid-day, there would have been other independent witnesses available and they have not been produced before the court. The prosecution has also withheld Tarlochan Singh, who has attested the seizure memo regarding the currency notes. Non-examination of such an important witness by the prosecution is totally unjustified. The learned counsel also stressed that P.W. 1 himself has given evidence to the effect that when he met the appellant on an earlier occasion, he had deputed the patwari to deliver possession of the land and that between April 15, 1968 and April 30, 1968 he had not met the appellant. On April 30, 1968, P.W. 1 must have been aware that stay orders had been passed by the appellant authority regarding the land in question and that the appellant had nothing further to do with the delivery of possession. Under those circumstances, it was stressed that the evidence of P.W. 1 that he met the appellant at his residence on the morning of April 30, 1968 when a demand for bribe was made and that he paid the amount while going along with the appellant in the rickshaw in the afternoon later in the day, is all false. The sum and

substance of the arguments of Mr. Mukherjee was that no conviction can be based, so to say, on the sole testimony of P.W. 1.

7. On the other hand, Mr. Harbans Singh, learned counsel appearing for the State, has urged that the reasons given by the High Court for not relying on the evidence of P.W. 2 are not supported by the records. The facts taken into account by the High Court have not been put to P.W. 2, when he was in the witness box. The counsel also pointed out that Tarlochan Singh was given up on January 8, 1969 by the public prosecutor making a statement to the court that the said witness had been won over by the accused. The counsel further urged that the seizure of the notes is established by the evidence of the police officers against whom nothing could be stated. The counsel also urged that the evidence of P.W. 1 is amply corroborated by the evidence of the police officers and, therefore, the conviction of the appellant is justified.

8. We have given our consideration to the various aspects mentioned by Mr. Mukherjee, learned counsel for the appellant, but we are not inclined to agree with his contentions. It is no doubt true that, as per the judgment of the High Court, the appellant's conviction has been sustained mainly on the evidence of P.W. 1 the complainant, corroborated by the evidence of the police officers, P.Ws. 9 to 11. As P.W. 1, is the complainant, his evidence will have to be considered with great caution and it will not be ordinarily safe to accept his interested testimony unless there is material corroboration found in the other evidence adduced by the prosecution. Such evidence, in our opinion, is available in this case. No doubt P.W. 3 has turned hostile, but in his statement to the police under Section 161 he has given a version supporting the prosecution case. But in the court he has stated that though P.W. 1 paid the amount to the accused as bribe, the appellant threw the amount thereby implying that P.W. 1 was, so to say, thrusting a bribe on an unwilling taker. It is not as if P.W. 3 's evidence can be discarded altogether. One thing that emerged from his evidence is that P.W. 1 and the appellant travelled together in his rickshaw at about 1.15 p.m. on April 30, 1968. If the plea of the appellant is that P.W. 1 attempted to bribe him and that he threw the amount, then the matter will have to be considered from a totally different angle. One the other hand we have already mentioned that the plea of the appellant was one of total denial.

9. P.W. 10 has stated on the morning of April 30, 1968, P.W. 1 was brought to him by P.W. 11, the sub-inspector of police, on the ground that P.W. 1 wanted to make a complaint. After making the necessary enquiries, the statement of P.W. 1 was recorded. The statement clearly shows that the appellant demanded a bribe of Rs. One hundred for enabling P.W. 1 to get possession of the properties. It is one the basis of this report that P.W. 10 organised the trap. The evidence of P.Ws. 9 to 11 has been referred to by both the courts and we need not think it necessary to cover the ground over again. Their evidence clearly shows that when the police party stopped the rickshaw, the appellant threw currency notes, which fell on the foot-board of the rickshaw. The currency notes were seized and on verification, the numbers of the seized currency notes tallied with the records already made earlier in the day by P.W. 10 on the report made by P.W. 1. Though there is some discrepancy in the evidence of these police officers regarding the actual number of notes that were still in the hand of the accused and the number that had fallen on the foot-board of the rickshaw and as to which officer caught hold of which arm of the accused, in our opinion, those are all very minor discrepancies which do not affect their evidence regarding the throwing of the notes by the appellant an their seizure by the police officers.

10. P.W. 1 no doubt can be stated to be an interested witness, but he had deposed to the effect that he was not aware of any stay orders passed by the appellant authority on April 30, 1968. There is no material on record to establish knowledge of this circumstances on his part. It may be that the

appellant, who was present in the appellant court, was aware of the passing of the stay order and he would not have disclosed the same to P.W. 1.

11. There is no doubt the circumstance that Tarlochan Singh, who was one of the attestors to the seizure memo regarding the currency notes, has not been examined. From the records it is seen that on January 8, 1969, the public prosecutor has made a statement before the court that he was giving up the said witness as he has been won over by the accused. That the said witness may have been won over appears to be quite probable from the manner in which P.W. 3, the rickshaw-puller, has turned hostile. But as there is the evidence of the police officers, P.Ws. 9 to 11 regarding the recovery of the currency notes, the non-examination of Tarlochan Singh is not of much consequence.

12. We have also considered the reasons given by the High Court for not accepting the evidence of P.W. 2. In our opinion, those reasons cannot be sustained, having due regard to the answers given by the said witness in his evidence before the court. In our opinion, the learned Special Judge was justified in acting upon the evidence of this witness also. If that is so, apart from the evidence of the police officers, there is also the evidence of a third party, namely, P.W. 2.

13. Mr. Mukherjee very faintly argued that the authority, who gave the sanction to prosecute the appellant, was not the proper authority. This point appears to have been taken only in this court. But even this contention is of no avail, as it is seen from the letter of the Deputy Secretary, Government of Punjab, dated July 31, 1969, which has been enclosed as annexure 'C' to the Special Leave Petition by the appellant, that the appellant has been finally allotted as Naib Tehsildar for service in the State of Punjab with effect from November 1, 1966. In view of this letter, the counsel did not seriously pursue the contention that the authority, who gave the sanction, had no power in that regard.

14. Considering all the above circumstances, in our opinion, the conviction of the appellant as well as the sentence imposed upon him by the High Court has to be sustained.

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

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