

Jai Narain

Vs

The State of U. P.

Criminal Appeal No. 85 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

15.11.1973

JUDGMENT

DWIVEDI, J. -

1. The appellant appeals from the judgment of the Allahabad High Court affirming the judgment of the Special Judge, Saharanpur. The Special Judge convicted him under Section 161 I.P.C. read with Section 5(2) of the Prevention of Corruption Act and sentenced him to one year's rigorous imprisonment as well as a fine of Rs. 100.

2. He was employed as a lekhpal in the Consolidation Department. In 1964 consolidation operations were initiated in village Nanka in the District of Saharanpur. A chak was allotted by the Consolidation Officer to one Kala Singh. Kala Singh complained to the consolidation authorities that his chak was less than the allotted area. One Om Prakash Kaushal, Kanungo, and the appellant measured its area. It appears that the area of the chak was found to be more than the allotted area.

3. The prosecution case was that the appellant demanded Rs. 20 from Kala Singh for concealing from the Consolidation authorities the excess area in his chak. Kala Singh went to the Deputy Superintendent of Police and made a complaint to him against the appellant. A trap was laid and the appellant accepted initialed currency notes of Rs. 20. The Deputy Superintendent of Police recovered the said notes from the pocket of the appellant.

4. The appellant pleaded not guilty. He, however, admitted recovery of the currency notes of Rs. 20 from his pocket. In this regard his explanation was that some time ago he had paid Rs. 20 to Kala Singh to purchase ghee for him and as Kala Singh could not purchase ghee, he returned the amount of Rs. 20 to him on that date.

5. The prosecution examined in support of its case Sri Hira Lal Sharma, Deputy Superintendent of Police, Kala Singh and Asha Ram. The appellant examined in support of his defence Om Prakash Kaushal and Roda Mal. The Special Judge disbelieved the defence witnesses and has relied on the evidence of prosecution witnesses. The High Court also has believed the evidence of Sri Hira Lal Sharma and Kala Singh. It has pointed out that there was no material discrepancy in the statement of these two witnesses. Accordingly, the High Court affirmed the judgment of the Special Judge.

6. We have heard Counsel for the appellant. Since the appellant has admitted recovery of the amount from his pocket it was incumbent on him to explain that circumstance. No doubt he did give an explanation. The explanation was that the amount of Rs. 20 was given by him to Kala Singh on some earlier date for purchasing ghee for him. As Kala Singh was unable to purchase ghee, he

returned the amount to him on that date. Now Kala Singh is not a ghee dealer. It is strange that the appellant should have asked him to purchase ghee for him. Again, in his statement before the Special Judge he did not give the date on which he had paid the sum of Rs. 20 to Kala Singh for purchasing ghee. He did not examine any witness to prove this alleged payment of Rs. 20 to Kala Singh. His explanation was, therefore, rightly rejected. Moreover, the High Court has believed Sri Hira Lal Sharma and Kala Singh. Sri Hira Lal Sharma has reproduced in his own words the conversation which took place between Kala Singh and the appellant while the former had passed the currency notes of Rs. 20 to the latter.

7. Counsel for the appellant has relied on Ram Prakash Arora v. The State of Punjab. ((1972)3 SCC 652 : 1972 SCC (Cri) 696) In this case the prosecution evidence consisted only of the witnesses who had participated in the trap. For one reason or the other, it was found that the evidence of four witnesses was not free from blemish. The appellant had denied recovery. This Court said : that the evidence of the witnesses who have participated in the trap "should 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". In our view the facts of that case are entirely distinguishable from the facts of the present case. Here the recovery of notes from his pocket is not disputed by the appellant. He offered an explanation therefore but it has not been accepted by the Special Judge and the High Court. On account of the infirmities, already pointed out by us, his explanation was rightly disbelieved.

8. Counsel for the appellant has prayed for reduction of sentence. We do not think that the sentence is severe. It does not call for any interference.

9. There is no force in this appeal and it is hereby dismissed.

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