Sat Paul

Vs

Delhi Administration

Criminal Appeal No. 137 of 1971

(P.N. Bhagwati, R.S. Sarkaria, JJ)

30.09.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of the High Court of Delhi upholding the conviction and sentence of the appellant under Section 5(2) read with Section 5(1)(d) of the prevention of the Corruption Act and Section 161, Penal Code. The facts are these.

2. On January 16, 1970, Ramesh alias Kaka (PW 1), Mst. Maya (PW 2) and Jayna (PW 8) went to the railway station to receive one Mst. Mumtaz, who was expected from Bombay by 1.45 p.m. train. Finding them loitering there, a constable of railway police took them to the appellant the railway police post where he was posted as an Assistant Sub-Inspector. The appellant gave a beating to Ramesh and demanded an explanation as to why they had come to the railway station. Ramesh said that they had come to receive one Mst. Mumtaz, who was expected from Bombay by train at about 1.45 p.m. The appellant questioned if Mumtaz was being brought to Delhi for prostitution. Ramesh and his companions refuted the insinuation and informed the appellant that Mumtaz was dancing girl and not a prostitute. The appellant then demanded a bribe of Rs. 100 from Ramesh and party, warning that in the event of non-payment, they would implicated in some case. Ramesh paid Rs. 30 there and then to the appellant. The latter insisted that they would not released unless they paid the balance of Rs. 70. On the suggestion of the women, the appellant detained Ramesh but let off the women with the direction to send the balance of Rs. 70. Mst. Maya and Mst. Jayna returned to their residence on G. B. Road and informed Dal Chand (PW 7) all about the incident. Mst. Maya then handed over Rs. 70 to Dal Chand for securing the release of Ramesh. Dal Chand, instead, went to the office of the Anti-Corruption Police where Inspector Paras Nath recorded his statement, Ex. PW 3/A. The Inspector organised a raiding party. He summoned Surinder Nath (PW 3) and Sohan Pal Singh (PW 4) two clerks, from the Sales-tax Office. The recorded statement of Dal Chand was then read out to Dal Chand and was admitted to be correct by him in the presence and hearing of panch witnesses. Dal Chand then produced seven currency notes of the denomination of Rs. 10 each. The Inspector treated those notes with phenolphthalein powder. He demonstrated to the witness how the fingers a of a person touching a note treated with such powder would turn violet when dipped in a solution of sodium carbonate. The treated notes were the same to Dal Chand with the direction that he should hand over the same to the appellant, on demand, The panch witnesses were instructed to keep close to Dal Chand to witness the passing of the tainted notes. The raiding party headed by Inspector Paras Nath, including Dal Chand the panch witnesses, then reached New Delhi railway station at about 5.25 p.m. Dal Chand and Sohan Pal Sing were directed to go ahead, while the rest of the party took up positions nearby. Dal Chand and his companions found the appellant talking to some person just outside the police post. After a couple of minutes when the appellant was free

from that talk, and was alone, Dal Chand approached him and said that he was the brother of Ramesh (PW 1) and had been sent by the women to pay him Rs. 70 for getting Ramesh released. The appellant first demanded Rs. 100 but later received Rs. 70 from Dal Chand and put the currency notes in the left-side pocket of his pants which he was then wearing. The appellant then told Dal Chand to go away, and assured the latter that Ramesh would be released. The appellant then went into his room in the police post. Inspector Paras Nath and party followed the appellant into the room. Inside, they found him sitting on cot and Ramesh, PW, squatting on the floor. The Inspector disclosed his identity, and accused the appellant of having received a bribe. The appellant kept mum. The Inspector then recovered the currency notes, Ex. P-1 to P-7, from the pocket of the pants which the appellant was then wearing. He compared the numbers of the notes with those noted in the memorandum. PW 3/P. They tallied. Pointing towards Ramesh, the Inspector asked appellant as to who he was. The appellant replied that he (Ramesh) had been found loitering outside in suspicious circumstances and was brought for interrogation. The left-hand fingers of the appellant were then dipped in a solution of sodium carbonate which turned pink. After preparing the seizure memo and the raid report (PW 9/A), the Inspector sent the same to the police station for registration of the formal first information report.

3. After completing the investigation and securing the necessary sanction for prosecution of the appellant, he laid a charge-sheet against him in the court of the Special Judge, Delhi.

4. Examined under Section 342, Cr. P. C., the appellant denied the prosecution case, and gave this version of the occurrence.

> I left the police at 4.15 p.m. in uniform for patrol duty at the New Delhi railway station platforms because there is a heavy rush to trains at that time. I was sent for by the incharge police post through Dev Raj constable. I came to the police post through an entrance towards the platform. At that time incharge, police post was busy in a conversation on telephone. I was carrying a baton in my hand. I entered my room and placed the baton on the table. My room is hardly 8'x 4 1/2'. Just at that time Inspector Paras Nath came there and secured me near the door of my room. On a few occasions I did not oblige Inspector Paras Nath for getting seats reserved at the railway station for his friends and relatives. He had strained relations with me. I knew Dal Chand and Ramesh. They are pimps. They often used to come to the railway station to solicit customers who were visitors to Delhi. On a number of occasions I saw them accompanied by prostitutes of G. B. Road. I reprimanded them several times not to frequent the railway platforms in that manner. They were out to harm me. The recovered pants was hanging on a peg in my room and it was removed from there by the Inspector. I was wearing my uniform. No proceedings of the type mentioned above took place in my room. I got confused on seeing the anti-corruption staff. I was afraid that they might create trouble for my bail and therefore I did not resist or protest. I have served in the police department for the last 19 years and there is not a single adverse entry, major or minor in my service book. I am innocent.

5. In defence, the appellant examined five witnesses - all members if the police force.

6. Head Constable Jabar Singh (DW 1) testified on the basis of the service record, that there was not a single adverse entry in the character roll of the appellant, and that no less than 60 commendation certificates, some of them accompanied by cash rewards, were awarded to him since his joining the police force on June 7, 1951. Constable Sardar Singh, DW 2 proved with reference to the official

records brought by him, that Ramesh (PW 1) was convicted and fined on January 14, 1966 by a Delhi Magistrate under Section 12 of the Gambling Act. Constable Dev Raj, DW 3, of the railway police post was examined to show that at the time of occurrence, the appellant was in police uniform and was not wearing the civilian clothes, including the pants from which the tainted currency notes are alleged to have been recovered. He testified that on January 16, 1970, at about 5.45 p.m., the incharge, police post directed the witness to convey a message to the appellant that he was wanted on the telephone to receive a call from his sister from Kirti Nagar. Accordingly, the witness went and conveyed the message to the appellant who was then in uniform patrolling the railway platform. Constable Muharrar Sujan Singh, DW 4, produced the daily diary of the police post, containing entry No. 40, showing that on January 16, 1970, the appellant had departed from the police post for patrol duty at 4.15 p.m. He stated that there was a standing order, according to which, all police officers going on patrol were peremptorily required to go in uniform.

7. Om Prakash Sahni, DW 5, is an important witness examined by the defence. He is a Sub-Inspector who, at the relevant time, was incharge of the police post of New Delhi railway station. His room in the police post is on one side of the verandah and that of the accused on the other side at a distance of hardly six feet. The dimensions of the room of the accused are 7'x 6' and it has only one door which opens into the verandah. DW 5 completely discounted the prosecution version. According to him, on January 16, 1970, he was throughout present in his room from 1.30 p.m. to 5.55 p.m. During this period this period he did not see any stranger, or suspect in the room of the accused. The witness swore that between 5.30 p.m. and 6 p.m., the accused was on patrol duty. He further stated that at about 5.45 p.m. a telephone call was received from the sister of the accused from Kirti Nagar, whereupon he sent constable Dev Raj to inform the accused about it. In response to the message sent by the witness, Sat Pal accused, in police uniform, came from the side of the railway platform to the post. At that time, the witness was attending to another telephone message; consequently, the accused went into his room. The witness then left for patrol duty, after telling the accused about the telephone message.

8. The prosecution evidence which is the mainstay of the conviction of the appellant may be catalogued under these captions :

A. Direct evidence

(i) Demand of the bribe : Evidence in regard to this fact was given by Ramesh, PW 1, Mst. Maya, PW 2, and Mst. Jayna PW 8.

(ii) Passing of tainted currency notes, P-1 to P-7 to the accused : Evidence with regard to this fact was given by Dal Chand (PW 7) and Inspector Paras Nath, PW 9.

(iii) Recovery of the tainted notes from the person of the accused : Dal Chand, PW 7, and Inspector Paras Nath, PW 9, are the only witnesses who have deposed to this fact. For proof of this fact, support has also been sought from the evidence of the hostile witnesses, PWs 3 and 4.

B. Circumstantial evidence

(i) The circumstance that Ramesh was found detained by the appellant.

(ii) On being accused by the Inspector, that he had obtained a bribe, the appellant kept mum and did not protest or refute the accusation.

9. It may be noted at the outset, that Surinder Nath, PW, and Sohan Pal Singh PW 4, who were supposed to be independent panch witnesses of the trap, turned hostile to the prosecution and were thoroughly cross-examined by the Public Prosecutor, with the leave of the court, to impeach their credit. In cross-examination, Surinder Nath, however, said that when the Inspector accused the appellant of receiving a bribe, the latter kept mum. He further supported the prosecution to the extent, that when the fingers and the pant pocket of the accused were dipped in a solution of sodium carbonate, they turned pink. Excepting with regard to the reticence of the accused on the query made by the Inspector, Sohan Pal Singh, who was supposed to have kept close company with Dal Chand, did not support the prosecution at all.

10. The learned trial Judge found that the complainant and party are "men of shady and questionable character", but according to him, that was no ground to discard their testimony. Referring to certain observations of Dua, J., in Ram Sarup Charan Singh v. State (1967 Cri LJ 744 : AIR 1967 Delhi 26), he held that persons with such shady characteristics fall easy victims to the illegal exploits of unscrupulous and dishonest officers. The Judge was further of the opinion that the testimony of the panch witness. Surinder Nath (PW 3), also, cannot be discarded straightaway on account of his having been cross examined by the prosecution. He rejected the defence version propounded by DWs 3 and 5 and concluded that the evidence given by the PWs including Dal Chand, and Inspector Paras Nath, coupled with the 'compelling' circumstantial evidence was sufficient to establish the passing of the tainted notes to the accused and the subsequent recovery of the same from him. Calling in aid the presumption under Section 4 of the prevention of Corruption Act, he convicted the appellant under Section 5(2) real with Section 5(1)(d) of the Act and under Section 161, Penal Code.

11. In appeal the High Court affirmed the findings of the trial Court. In seeking support for the prosecution case from the evidence of the hostile witnesses, it went far ahead of the trial Court. The High Court sought assurance from the statements of PWs 3 and 4 thus :

> After detailed reference to the evidence adduced in this case it becomes clear that PWs 3 and 4 in their statements under Section 161(3), duly proved in terms of the proviso to Section 162 of the Code of Criminal Procedure, did support the version which was given at the trial by PWs 1, 7 and 9. If it were open to an accused person to utilise the aforementioned proviso to urge that the contradictions point in a particular direction then it is equally open to the prosecution to urge that the contradictions establish in the record that the statement made earlier to which the statement made in court was contrary, was the one which was the correct statement.
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> Perhaps realising that in making use of the police statements it was going too far, the High Court then switched over to the alternative argument.
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> It is not only on the basis of the statements falling within the purview of the proviso to Section 162 that I am coming to the conclusion that the prosecution has succeeded in proving its case. Even otherwise I am satisfied that Ramesh was kept in custody by the appellant whose hands, when dipped in the sodium carbonate solution turned pink. The same was the result when the pocket of pants Exhibit P-11, was dipped in the sodium carbonate solution.

12. Conceding that the testimony of the trap witnesses was 'interested' testimony, the High Court held that it was not correct to say that their evidence cannot, as a matter of law, be accepted without

corroboration. On this point referred to this Court's decision in Dalpat Singh v. State of Rajasthan (AIR 1969 SC 17 : (1968) 3 SCR 189 : 1969 Cri LJ 262). Even so, according to the High Court, the interested testimony of PWs 7 and 9 "received full corroboration from PW 1". The High Court summarily brushed aside the defence version without adverting to the defence evidence at all.

13. Mr. Frank Anthony, the learned Counsel for the appellant contends : (a) that the courts below erred in law in using the reticence of the appellant as evidence against him. This silence amounted to a statement made to the police in the course of investigation, and as such, it was inadmissible, being hit by Section 162, Cr. P. C. (Reference has been made to Narasimham v. State (AIR 1969 AP 271 : 1969 Cri LJ 1016)). In any case, this reticent conduct of the appellant was not indicative of his guilt; (b) that the courts below have erred in using a part of the testimony of the hostile witness in support of the prosecution case. They had been fully cross-examined by the prosecution to impeach their credit, and indeed their evidence stood thoroughly discredited. (For this proposition reliance has been placed on a recent decision of this Court in Jagir Singh v. State ((1975) 3 SCC 562 : 1975 SCC (Cri) 129)); (c) that the High Court has erred in using the police statement of PWs 3 and 4 for seeking assurance and corroboration of the prosecution story. Such user is not permissible under the proviso to Section 162, Cr. P. C. : (d)(i) that it was clear from the record that PWs 1, 2, 7 and 8 are persons of moral character and were haunting the railway station in connection with their immoral trade, that the appellant was a stumbling block in the way of their immoral pursuits, and consequently, these PWS had a motive to falsely implicate the appellant; (ii) PW 9, who was an Inspector of Anti-Corruption Police, was also a highly interested witness. His overzeal can be gauged from the fact that he investigated this offence under Section 161, Penal Code, although he was not duly empowered to do so; (iii) The evidence of these interested witnesses is replete with material discrepancies, and as a rule of prudence, could not, in the absence of corroboration from independent source, be accepted, particularly when it stood sharply contradicted by qualitatively better testimony of DWs 3 and 5. (Reliance has been placed on R. P. Arora v. State of Punjab ((1972) 3 SCC 652 : 1972 SCC (Cri) 696)); (e) that the trial Court erred in law in invoking the presumption under Section 4 of the Prevention of Corruption Act for convicting the appellant for an offence under section 5(2) read with section 5(1)(d) of the Act. In support of this argument, reference has been made to Sita Ram v. State of Rajasthan ((1975) 2 SCC 227 : 1975 SCC (Cri) 491).

14. As against the above, Mr. V. Mahajan, the learned Counsel for the respondent, submits that the evidence of the interested witnesses has been accepted by the courts below, and consequently, this Court should not, in keeping with its practice, disturb these concurrent findings of fact. It is maintained that there is no rule of law, that the evidence of an interested witness cannot be acted upon without corroboration, that, in any case, the evidence of PWs 1, 7, and 9 was sufficiently corroborated by the circumstantial evidence consisting of conduct of the accused in keeping mum to the accusation made by the Inspector, and by the factum of Ramesh's detention by the appellant. The said conduct of the appellant, proceeds the argument, was relevant under Section 8. Evidence Act and was a definite pointer towards his guilt. Counsel has not tried to support the use of the police statements of PWs 3 and 4 made by the High Court. His point is that even without such support, the evidence on record was sufficient to bring home the charges to the appellant. Counsel has further invited our attention to the copy of the judgment of the Delhi High Court in Criminal Revision No. 505 of 1968 (Raj Kumar v. State) delivered on April 7, 1970 (produced by the appellant's side in this Court) wherein it is recited that all Inspectors of Police in the Anti-Corruption Branch of the Delhi Administration have been authorised by an order dated March 21, 1968, passed under Section 5A(1) of the Prevention of Corruption Act, by the Administrator of the Union Territory of Delhi, to investigate offences under Section 5(1)(d) of this Act. According to Counsel, the mere fact that the

authority given to Inspector Paras Nath did not extend to investigation of offences under Section 161, Penal Code, would not vitiate either the validity of the trial or the probative value of his evidence.

15. It is true that ordinarily, as a matter of practice, this Court does not review the evidence and disturb concurrent findings of fact unless those findings are clearly unreasonable or are vitiated by an illegality or material irregularity of procedure or are otherwise contrary to the fundamental principles of natural justice and fairplay. The instant case is one which falls within the exception to this rule. As shall be presently discussed, the courts below have adopted a basically wrong approach. They have not only used the statement of certain witnesses in a manner which is manifestly improper or impermissible under the law, but have also erred in accepting the testimony of the interested witnesses without due caution and corroboration, requisite in the peculiar circumstances of the case. It is therefore, necessary to have another look at the evidence and the salient features of the case.

16. We will begin with the evidence of the trap witnesses. They are Ramesh, PW 1, Dal Chand PW 7, and Inspector Paras Nath PW 9. It cannot be gainsaid that all the three were concerned with the success of the trap, and, as such were interested witnesses. What the courts below appear to have failed to note is that qualitatively, the evidence of these witnesses, particularly PWs 1 and 7, was far inferior than the testimony of an ordinary interested witness. While the trial Court was unduly indulgent and modest in allowing these witnesses to pass under the euphemistic title of "questionable and shady" characters, the High Court overlooked their antecedents altogether.

17. Evasive denials of Ramesh and 'company ' notwithstanding, sufficient material has been brought on the record from which it is clearly discernible that PWs Ramesh and Dal Chand are pimps and they were haunting the railway station to solicit customers for Mst. Maya and Mst. Jayna

18. The facts which have been elicited from Ramesh and company in cross-examination are these : There is an accommodation, comprising of one hall, and side rooms on G. B. Road which is known as the kotha (brothel) of Mst. Maya. Mst. Jayna, Mst. Maya and one Mst. Lachmi have been living together in these premises for the previous 8 or 9 years. The rent of these premises for all the occupants is being paid by Mst. Maya. Mst. Lachmi is the mistress of Ramesh and the latter lives on her 'professional ' income. Mst. Maya is the keep of Dal Chand who maintains her servant, Mst. Jayna, also. Ramesh also claims to be a servant of Mst. Maya. He also lives in the kotha (vide Dal Chand PW 7). Dal Chand claimed that he was living separately at Pahar Ganj. But he admitted that he has been frequently visiting the kotha of Maya and on the day of occurrence also, he was there when, according to the witness, Mst. Maya came and informed him about the demand of the bride by the appellant. Dal Chand stated that Ramesh was only a brother by courtesy. He admitted that Ramesh Maya and Jayna were arrested by the police under the Suppression of Immoral Traffic Act, and the charge against him and Ramesh was that there were pimps and their women companions were carrying on the profession of prostitution. He further admitted that in 1966, Mst. Maya was convicted under the said Act by a Delhi Magistrate. Ramesh and Maya both were being jointly prosecuted (on the date of their examination) for an offence under the said Act. It is further admitted (vide Ramesh) that one Mst. Mumtaz a dancing girl of Bombay, is their friend and she frequently comes and stays in the kotha of Mst. Maya. Ramesh was convicted for an offence under the Gambling Act, also.

19. Viewed against this background, the suggestion made by the defence in cross-examination, to these witnesses, that they were loitering at the railway station to procure customers for their

immoral business, could not be said to be devoid of substance. The purpose of their visit to the railway station at that busy hour, according to them, was to see Mst. Mumtaz who was then expected to arrive from Bombay by train. This Mumtaz was not produced by the prosecution, though she was repeatedly summoned. In the circumstances, the defence version, that these parsons were roaming there to hawk their "wares" does not fall beyond the orbit of reasonable probability. The above circumstances further lend assurance to the appellant's plea that he had on several occasions, previously, reprimanded these witnesses for visiting the railway station for immoral trade. Even according to the prosecution, the appellant had rounded up Ramesh and Party on the accusation that they were soliciting customers for their immoral business. Dal Chand stated that on being questioned by Inspector Paras Nath, the appellant explained that since Ramesh was found loitering at the railway station in suspicious circumstances, he had been brought for interrogation. This explanation receives confirmation from Ramesh who stated that the accused had questioned him about the purpose of their visit to the railway station, and when the witness told him that they had come to receive Mumtaz, the accused, not being satisfied, asked whether she was also being brought for prostitution. The appellant had also threatened to prosecute and put them behind the bars.

20. The courts below have believed the word of these pimps and women of easy virtue, that the appellant did all this to extort a bribe. The trial Court with reference to certain observations of Dua, J. in Ram Sarup's case (supra), treated the "shady and questionable characteristics" of these witnesses as a point in favour of the prosecution. It argued that persons with such antecedents can be easily exploited by corrupt police officers for extorting bribes. Thus, in a way, what was a stigma, was considered a badge of honour. We are, with respect, unable to appreciate this reasoning. The observations in Ram Sarup's case, were not intended to lay down a rule of universal application. Indeed, for weighing evidence there can be no specific canon. No generalisation is possible in such matters. Each case has its own features and each witness his own peculiarities. Here was police officer with an unblemished record, rather an outstanding record of 19 years' service. Such an officer would be least disposed to countenance pimping within his territorial jurisdiction. He must therefore have been an eyesore to them. It could not therefore be said that these witnesses had no motive whatever to falsely implicate the appellant.

21. Thus the conduct of the appellant in restraining Ramesh for interrogation, could be the innocent act of an honest and duty-conscious police officer.

22. Then the evidence of these witnesses was replete with discrepancies, contradictions and improbable versions. PW 1 stated that they were all taken by a constable to a room and there the appellant gave him a beating. This was in sharp conflict with the version of Mst. Jayna, that it was PW 1 alone who was first rounded up by the constable. Again, PW 1 would have it believed that he had Rs. 30 in all with him which he gave to the appellant. This was sharply contradicted by Mst. Jayna, according to whom, it was Mst. Maya and not PW 1 - who had given this money to the appellant. In the context, it may be noted that apart from Rs. 70 in tainted notes, the further sum of Rs. 30 as not recovered from the appellant or from anywhere in the police post. The story of the advance payment of Rs. 30, therefore, does not inspire confidence. Further, the conduct of the appellant in not releasing Ramesh forthwith even after the alleged receipt of Rs. 70 as gratification, was not the natural conduct of a person whose demand for a bribe had been satisfied. Dal Chand has said that the appellant did not, on receiving the amount, allow Ramesh to go away, but said that Dal Chand could go, and that Ramesh would be sent later on. Ordinarily, such discrepancies and small improbabilities in the evidence of witnesses are not of much consequence. But when the witnesses are manifestly disreputable persons, their testimony before it can be acted upon, must pass the test

of severe scrutiny and in the process and in the context of the case even minor infirmities may assume importance.

23. It is true that there is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration. But where the witnesses have poor moral fiber and have to their discredit a heavy load of bad antecedents, such as those of PWs 1, 2, 7 and 8, having a possible motive to harm the accused who was an obstacle in the way of their immoral activities, it would be hazardous to accept their testimony, in the absence of corroboration on crucial points from independent sources. If any authority is needed reference may be made to R. P. Arora v. State of Punjab (supra), wherein this Court ruled that in a proper case, the Court should look for independent corroboration before convicting the accused person on the evidence of trap witnesses.

24. Well then, was such corroboration of the testimony of the interested witnesses forthcoming in the present case ? In this connection, Mr. Mahajan referred to two circumstances : (i) the detention of Ramesh, and (ii) the conduct of the appellant in keeping mum to the charge that he had received a bribe. Both these circumstances were not of a determinative tendency. Both were compatible with the innocence of the appellant. We have already discussed the first, and found that instead of advancing the case for the prosecution, it lends assurance to the explanation of the appellant that Ramesh had been brought for interrogation as he was roaming there in suspicious circumstances.

25. As regards the reticence of the appellant on the query made by the Inspector, we do not think it necessary to burden this judgment with a discussion of the question whether this conduct amounts to a statement made to a police officer in the course of investigation and as such is hit by Section 162 of the Code of Criminal Procedure. Suffice it to say that even on the assumption that it was admissible as conduct - and not as a 'statement' - under Section 8. Evidence Act, its probative value in the circumstances of this case would be almost nil. The appellant explained that he did not protest and resist out of fear, that the Inspector might make matters worse for him, even for getting bail. It would not be unusual even for an honest officer to be frightened out of wits on being suddenly accused of bribe-taking by a superior officer.

26. Thus, these two circumstances do not lend any assurance to the testimony of the trap witnesses. Nor could such assurance be sought from the evidence rendered by Inspector Paras Nath. True, that it has not been shown that he had any hostile animus against the appellant, though such an allegation was made. Nor has it been shown that he had long acquaintance or friendship with Dal Chand and party. But we cannot lose sight of the stark fact he was an Inspector of the Anti-Corruption Staff of Police. He was the architect of the trap and the head of the raiding party. Although the power conferred on him under the order, dated March 21, 1968 by the Administrator of the union Territory of Delhi, did not extend to the investigation of an offence under Section 161, Penal Code, yet, with zeal outrunning discretion, he went ahead with the execution of the trap and the investigation. Being deeply concerned with the success of the case, he was also an interested witness. Not being an independent witness, his evidence could not furnish the kind of corroboration requisite in the circumstances of the case.

27. This takes us to the evidence of the independent witnesses, PWs 3 and 4. Both have not, in the main, supported the prosecution. With the leave of the court, the public Prosecutor cross-examined and confronted them with their contradictory statements which they has made to Inspector Paras Nath during investigation. The question is, could the court validly pick out tiny bits from their evidence and use the same to support the prosecution case ?

28. Relying on Jagir Singh v. State (supra), Mr. Anthony submits that when a prosecution witness, being hostile, is cross-examined by the Public Prosecutor with the leave of the Court, his entire evidence is to be discarded, as a matter of law.

29. Since this vexing question frequently arises, and the observations made by this Court in Jagir Singh's case (supra) do not appear to have been properly understood, it will be appropriate to clarify the law on the point.

30. The terms "hostile witness", "adverse witness", "unfavourable witness", "unwilling witness" are all terms of English law. At Common Law, if a witness exhibited manifest antipathy, by his demeanour answers and attitude, to the cause of the party calling him, the party was not, as a general rule, permitted to contradict him with his previous inconsistent statements, nor allowed to impeach his credit by general evidence of bad character. This rule had its foundation on the theory that by calling the witness, a party represents him to the Court as worthy of credit, and if he afterwards attacks his general character for veracity, this is not only mala fide towards the Court, but, it would enable the party to destroy the witness if he spoke against him, and to make him a good witness if he spoke for him with the means in his hand of destroying his credit if he spoke against him. (See Best on Evidence, P. 630, 11th Edn)

This theory or assumption gave rise to a considerable conflict of opinion as to whether it was competent for a party to show that his own witness has made statements out of court inconsistent with the evidence given by him in court. The weight of the ancient authority was in the negative.

31. In support of the dominant view it was urged that to allow a party directly to discredit or contradict his own witness would tend to multiply issues and enable the party to get the naked statement of a witness before the jury, operating in fact as substantive evidence, that this course would open the door wide open for collusion and dishonest contrivance.

32. As against this, the exponents of the rival view, that a party should be permitted to discredit or contradict his own witness who turns unfavourable to him, argued that this course is necessary as a security against the contrivance of an artful witness, who otherwise might recommend himself to a party by the promise of favourable evidence and afterwards by hostile evidence ruin his cause. It was reasoned further

that this is a question in which not only the interests of litigating parties are involved, but also the more important general interests of truth, in criminal as well as in civil proceedings, that the ends of justice are best attained by allowing a free and ample scope for scrutinising evidence and estimating its real value, and that in the administration of criminal justice more especially, the exclusion of the proof of contrary statements might be attended with the worst consequences. Besides it by no means follows that the object of a party in contradicting his own witness is to impeach his veracity, it may be to show the faultiness of his memory. (See Best, page 631, 11th Edn)

33. The rigidity of the rule prohibiting a party to discredit or contradict its own witness was to an extent relaxed by evolving the terms "hostile witness" and "unfavourable witness" and by attempting to draw a distinction between the two categories. A "hostile witness" is described as one who is not desirous of telling the truth at the instance of the party calling him, and an 'unfavourable witness' is one called by a party to prove a particular fact in issue or relevant to the issue who fails to prove such fact, or proves an opposite fact. (See Cross on Evidence, p. 220, 4th Edn., citing Stephen's Digest of the Law of Evidence)

34. In the case of an 'unfavourable witness', the party calling him was allowed to contradict him by producing evidence aliunde but the prohibition against cross-examination by means of leading questions or by contradicting him with his previous inconsistent statements or by asking questions with regard to his discreditable past conduct or previous conviction, continued. But in the case of a 'hostile' witness the judge could permit his examination-in-chief to be conducted in the manner of cross-examination to the extent to which he considered necessary in the interests of justice. With the leave of the court, leading questions could be put to a hostile witness to test his memory and perception or his knowledge of the facts to which he was deposing. Even so, the party calling him, could not question him about his bad antecedents or previous convictions, nor could he produce evidence to show that the veracity of the witness was doubtful. But the position as to whether a previous inconsistent statement could be proved against a hostile witness, remained as murky as ever.

35. To settle the law with regard to this matter, Section 22 of the Common Law Procedure Act, 1854 was enacted. It was originally applicable to civil proceedings, but was since re-enacted in Section 3 of the Criminal Procedure Act, 1865 and extended in identical terms to proceedings in criminal courts as well.

36. Section 3 provides :

> A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence or by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony, but before such last-mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

37. The construction of these provisions, however, continued to cause difficulty, particularly in their application to 'unfavourable' witnesses. In Greenough v. Eccles ((1859) 5 CBNS 786 : 28 LJCP 160 : 141 ER 315), these provisions were found so confusing that Cockburn, C. J. said that "there has been a great blunder in the drawing of it, and on the part of those who adopted it".

38. To steer clear of the controversy over the meaning of the terms "hostile" witness, "adverse" witness, "unfavourable" witness which had given rise to considerable difficulty and conflict of opinion in England, the authors of the Indian Evidence Act, 1872 seem to have advisedly avoided the use of any of those terms so that, in India, the grant of permission to cross-examine his own witness by a party is not conditional on the witness being declared "adverse" or "hostile". Whether it be the grant of permission under Section 142 to put leading questions, or the leave under Section 154 to ask questions which might be put in cross-examination by the adverse party, the Indian Evidence Act leaves the matter entirely to the discretion of the court (see the observations of Sir Lawrence Jenkins in Baikuntha Nath v. Prasannamoyi (AIR 1922 PC 409 : 72IC 286)). The discretion conferred by Section 154 on the court is unqualified and untrammeled and is apart from any question of "hostility". It is to be liberally exercised whenever the court from the witnesses' demeanour, temper, attitude bearing, or the tenor and tendency of his answers, or from a perusal of his previous inconsistent statement or otherwise thinks that the grant of such permission is expedient to extract the truth and to do justice. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. Therefore, in the order granting such

permission, it is preferable to avoid the use of such expressions, such as "declared hostile". "declared unfavourable", the significance of which is still not free from the historical cobwebs which, in their wake bring a misleading legacy of confusion and conflict that had so long vexed the English courts.

39. It is important to note that the English statute differs materially from the law contained in the Indian Evidence Act in regard to cross-examination and contradiction of his own witness by a party. Under the English law, a party is not permitted to impeach the credit of his own witness by general evidence of his bad character, shady antecedents or previous conviction. In India, this can be done with the consent of the court under Section 155. Under the English Act of 1865, a party calling the witness can "cross-examine" and contradict a witness in respect of his previous inconsistent statements with the leave of the court, only when the court considers the witness to be 'adverse'. As already noticed, no such condition has been laid down in Sections 154 and 155 of the Indian Act and the grant of such leave has been left completely to the discretion of Court, the exercise of which is not fettered by or dependent upon the "hostility" of "adverseness" of the witness. In this respect, the Indian Evidence Act is in advance of the English law. The Criminal Law Revision committee of England in its Eleventh Report, made recently has recommended the adoption of a modernised version of Section 3 of the Criminal Procedure Act, 1865, allowing contradiction of both unfavourable and hostile witnesses by other evidence without leave of the court. The report is, however, still in favour of retention of the prohibition of a party's impeaching his own witness by evidence of bad character.

40. The danger of importing, without due discernment, the principles enunciated in ancient English decisions, for interpreting and applying the Indian Evidence Act, has been pointed out in several authoritative pronouncements. In Praphulla Kumar Sarkar v. Emperor (ILR 58 Cal 1404 : AIR 1931 Cal 401 : 32 Cri LJ 768 (FB)), an eminent Chief Justice, Sir George Rankin cautioned, that

> when we are invited to hark back to dicta delivered by English judges, however eminent, in the first half of the nineteenth century, it is necessary to be careful lest principles be introduced which the Indian Legislature did not see fit to enact.
>
> It was emphasised that these departures from English law "were taken either to be improvements in themselves or calculated to work better under Indian conditions".

41. Unmindful of this substantial difference between the English law and the Indian Law, on the subject, the Calcutta High Court in some of its earlier decisions, interpreted and applied Section 154 with reference to the meaning of the term "adverse" in the English statute as construed in some English decisions and enunciated the proposition that where a party calling a witness requests the court to declare him "hostile", and with the leave of the court, cross-examines the witness, the latter's evidence should be excluded altogether in criminal cases. This view proceeds on the doctrine enunciated by Campbell, C. J. in English case. Faulkner v. Brine (1858) 1 F&F 254), that the object of cross-examination of his own witness by a party is to discredit the witness in toto and to get rid of his testimony altogether. Some of these decisions in which this view was taken are : Luchiram Motilal v. Radhe Charan ((1921) 34 CLJ 107 : AIR 1922 Cal 267); E. v. Satyendra Kumar Dutti (AIR 1923 Cal 463 : 36 CLJ 173 : 24 Cri LJ 193); Surendra v. Ranee Dassi (ILR 47 Cal 1043 : AIR 1923 Cal 221 : 70 IC 687), Khijiruddin v. E. (AIR 1926 Cal 139 : 42 CLJ 506 : 27 Cri LJ 266), and Panchanan v. R. (ILR 57 Cal 1266 : AIR 1930 Cal 276 : 31 Cri LJ 1207 (DB)).

42. The fallacy underlying this view stems from the assumption that the only purpose of cross-

examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultness of the memory in the case of such a witness would be another object of cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or in a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way.

43. Protesting against the old view of the Calcutta High Court, in Shobraj v. R. (ILR 9 Pat 474 : AIR 1930 Pat 247 : 124 IC 836), Terrell J. pointed out that the main purpose of cross examination is to obtain admission, and it would be ridiculous to assert that a party cross-examining a witness is therefore prevented from relying on admission and to hold that the fact that the witness is being cross-examined implies an admission by the cross-examiner that all the witness's statements are falsehood.

44. The matter can be viewed yet from another angle. Section 154 speaks of permitting a party to put his own witness "questions which might be put in cross-examination". It is not necessarily tantamount to " cross-examining" the witness. 'Cross-examination', strictly speaking, means cross-examination by the adverse party as distinct from the party calling the witness (Section 137, Evidence Act). That is why Section 154 uses the phrase "put any questions to him which might be put in cross-examination by the adverse party". Therefore, neither the party calling him, nor the adverse party is, in law precluded from relying on any part of the statement of such a witness.

45. The aforesaid decisions of the Calcutta High Court were over ruled by a Full Bench in Praphulla Kumar Sarkar's case (supra). After an exhaustive survey of case law, Rankin, C. J. who delivered the main judgment neatly summed up the law at pages 1428-1430 of the report :

> In my opinion, the fact that a witness is dealt with under Section 154 of the Evidence Act, even when under that section he is 'cross-examined' to credit, in to way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is moreover no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say.

46. After answering in the negative, the three questions viz., whether the evidence of a witness treated as 'hostile' must be rejected in whole or in part, whether it must be rejected so far it is in favour of the party calling the witness, whether it must be rejected so far as it is in favour of the opposite party, the learned Chief Justice proceeded :

> ... the whole of the evidence so far as it effects both parties favourably or unfavourably must go to the jury for what it is worth.

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> If the previous statement is the deposition before the committing magistrate and if it is put in under Section 288, Criminal Procedure Code, so as to become evidence for all purposes, the jury may in effect be directed to choose between the two statements because both statements are evidence of the facts stated therein. But in order cases the jury may not be so directed, because prima facie the previous statement of the witness is not evidence at all against the accused of the truth of the fact stated therein. The proper direction to the jury is that before relying on the evidence given by the witness at the trial the jury should take into consideration the fact that he made the previous statement, but they must not treat the previous statement as being any evidence at all against the prisoner of the facts therein alleged.

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> In a criminal case, however, the previous unsworn statement of a witness for the prosecution is not evidence against the accused of the truth of the facts stated therein save in very special circumstances, e.g. as corroboration under Section 157 of his testimony in the witness-box on the conditions therein laid down. If the case be put of the previous statement having been in the presence and hearing of the accused, this fact might under Section 8 alter the position; but the true view even then is not that the statement is evidence of the truth of what it contains, but that if the jury think that the conduct, silence or answer of the prisoner at the time amounted to an acceptance of the statement or some part of it, the jury may consider that acceptance as an admission (The King v. Norton ((1910) 2 KB 496), Percy William v. Adams ((1923) 17 Crim App Rep 77)). But apart from such special cases, which attract special principles, the unsworn statement so far as the maker in his evidence does not confirm and repeat it, cannot be used at all against the accused as proof of the truth of what it asserts.

47. We are in respectful agreement with this enunciation. It is a correct exposition of the law on the point.

48. The Bombay (Ev. Jehangir Cama, AIR 1927 Bom 501 : 29 Bom LR 996 : 28 Cri LJ 1012 (DB)), Madras (Ammathayar v. Official Assignee, ILR 56 MAD 7 : AIR 1933 Mad 137 (DB)), Patna (Nebti v. R, ILR 19 Pat 369 : AIR 1940 PAT 289 : 41 Cri LJ 910 (DB); Shahdevv. Bipti, AIR 1969 Pat 415 : 1969 Cri LJ 1527), Rajasthan (Nandkishore v. Brijbehari, ILR 1954 Raj 822 : AIR 1955 Raj 65 (DB)), Oudh (Shyam Kumar v. E, AIR 1941 Oudh 130 : 42 Cri LJ 165 : 191 IC 466), Punjab (Khushal Singh Sunder Singh Bhatia v. State, AIR 1955 nuc (Punj) 5715), Madhya Pradesh (In re Kalusingh, AIR 1964 MP 30 : (1964) 1 Cri LJ 198), Orissa (Rana v. State, AIR 1965 Cri 31 : (1965) 1 Cri LJ 315 : 30 Cut LT 517), Mysore (In re Kaibanna Tippanna AIR 1966 Mys 248 : 1966 Cri LJ 1155), Kerala (Raman Pillai Gangadharan Pillai v. State, 1951 Ker LT 471 (DB)), and Jammu and Kashmir (Badri Nath v. State, AIR 1953 J&K 41 : 1953 Cri LJ 1719 (DB)) courts have also taken the same view.

49. In the case of an unfavourable witness, even in England the better opinion is that where a party contradicts his own witness on one part of his evidence, he does not thereby throw over all the witness's evidence, though its value may be impaired in the eyes of the court. (Halsbury, 3rd Edn., Vol. 15, para 805)

50. In Bradley v. Ricardo ((1831) 8 Bing 57 : 131 ER 321 : 1 LJ CP 36), when it was urged as an objection that this would be giving credit to the witness on one point after he has been discredited on another, Tindal, C. J. Brushed it aside with the observation that "difficulties of the same kind occur in every cause where a jury has to decide on conflicting testimony".

51. In Narayan Nathu Naik v. Maharashtra State ((1971) 1 SCR 133 : (1970) 2 SCC 1011 : 1970 SCC (Cri) 316), the court actually used the evidence of the prosecution witnesses who had partly resiled from their previous statements, to the extent they supported the prosecution, for corroborating the other witnesses.

52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part his testimony. If the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the judge should, as a matter of prudence, discard his evidence in toto.

53. It was in the context of such a case, where, as a result of the cross-examination by the public Prosecutor, the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn) (supra), with the aforesaid rule of caution - which is not to be treated as a rule of law - in mind, said that the evidence of such a witness is to be rejected en bloc.

54. In the light of the above principles, it will be seen that, in law, part of the evidence of the panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public Prosecutor, could be used or availed of by the prosecution to support its case. But as a matter of prudence, on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination, their credit was substantially, if not wholly, shaken. It was therefore, not proper for the courts below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses.

55. Nor was the High Court competent to use the statements of these witnesses recorded by the police during investigation, for seeking assurance for the prosecution story. Such use of the police statements is not permissible. Under the proviso to Section 162, Cr. P. C. such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145, Evidence Act, and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in court.

56. Thus the evidence of these interested witnesses of the trap remains unconfirmed by any independent evidence. In the peculiar circumstances of the case, we think that it would be highly unsafe to convict the appellant on the basis of their testimony, particularly when PWs 1, 7 and 8 are persons of bad antecedents and had a possible motive to see the accused removed permanently from the way of their immoral activity.

57. It is pertinent to mention here that the evidence of defence witnesses, particularly that of DWs 3 and 5, was not successfully impeached in cross-examination. The High Court has not touched their evidence at all. If the defence evidence were to be believed, at the material time, the appellant was in police uniform patrolling the railway platform and he was not wearing the pants from the pocket of which the tainted currency notes are alleged to have been recovered. According to the appellant, these pants were hanging on a peg in his room. Therefore the possibility of the tainted notes having been implanted by Dal Chand, who appears to us a person with wit more and scruples less than the ordinary, cannot be ruled out.

58. For the foregoing reasons we would allow this appeal, accord the benefit of doubt to the appellant and acquit him of the charges levelled against him.

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