

Raghubir Singh

Vs

State of Punjab

Criminal Appeal No. 142 of 1971

(A. C. Gupta, R. S. Sarkaria JJ)

10.10.1975

JUDGMENT

BHAGWATI, J. -

1. This appeal, be special leave, is directed against an order of conviction and sentence recorded against the appellant under Section 161 of the Indian Penal Code and Section 5 (1)(d), read with Section 5 (2) of the Prevention of Corruption Act, 1947. The appellant was tried by the Special Judge, Amritsar. For each of the two offences for which he was convicted he was sentenced to undergo rigorous imprisonment for one and a half year and to pay a fine of Rs. 100 or in default to undergo rigorous imprisonment for a further period of three months. This conviction of the appellant was maintained by the High Court in appeal, but the sentence of substantive imprisonment for each of the two offences was reduced from one and a half year to one year. The question which arises for consideration in this appeal is : whether, on the evidence on record, the conviction and sentence recorded against the appellant are justified, or they required to be set aside ?

2. The appellant was, at the material time, a Passenger and Goods Tax Clerk II in the office of the Excise and Taxation Officer, Amritsar. There was also another Passenger and Goods Tax Clerk I in the office at that time and his name was Harmohan Singh. One Jagdish Raj, along with his brothers, jointly owned a truck bearing No. PNA 4228 which stood in his name. Since the truck was old and needed extensive repairs, Jagdish Raj stopped plying it for hire and it remained idle in the workshop of Ajit Singh in the village Bhikhiwind since July 1, 1965. The certificate of registration of the truck was deposited by Jagdish Raj with the Licensing Officer, Amritsar since he was not plying the truck. It appears that by an order dated May 12, 1967 exemption had already been granted to Jagdish Raj from payment of goods tax in respect of the truck for the period of seven quarters from July 1, 1965 to March 31, 1967. But the goods tax for the subsequent quarters from April 1, 1967 remained to be paid by Jagdish Raj. One Brar, who was the Excise and Taxation Inspector at the relevant time insisted on payment of these arrears of goods tax, but on the request of Jagdish Raj granted him one and a half months' time to produce a certificate from the Licensing Officer, Amritsar certifying that the truck had not been plied and that the certificate of registration remained deposited with the Licensing Officer during the quarters from April 1, 1967. The case of the prosecution was that this time was granted by Brar on receipt of illegal gratification to the tune of about Rs. 20. However, some twenty days thereafter, Brar came to Bhikhiwind and impounded the truck for non-payment of arrears of goods tax and handed it over to the police station there for safe custody. On learning about this event, Jagdish Raj once again contacted Brar and on further demand being made by him, Jagdish Raj paid for the benefit of Brar a sum of Rs. 10 to the keeper of the hotel where Brar had stayed. Jagdish Raj entreated Brar to release the truck but the latter was adamant and insisted that he would not release the truck until the exemption certificate from the

Licensing Officer, Amritsar was produced and ultimately told Jagdish Raj that he should contact the appellant on July 29, 1968 as he would be on leave on that day. Jagdish Raj accordingly contacted the appellant in his office on July 29, 1968 when the appellant confronted him with the demand of a bribe of Rs. 400 for Brar and Rs. 50 for himself if Jagdish Raj wanted his work in connection with the release of the truck to be carried out expeditiously. Jagdish Raj entreated the appellant that he was not in a position to pay the large amount demanded by the appellant, but the latter remained firm and refused to reduce the amount of the bribe. On the next day, that is July 30, 1968, Jagdish Raj again contacted the appellant and repeated his request for reduction in the amount of the bribe but the appellant declined to accept a lesser amount.

3. Jagdish Raj then decided to go to the office of the Special Inquiry Agency in Amritsar for the purpose of entrapping the appellant. On his way to the office of the Special Inquiry Agency, he met Arjun Das, who was well known to him and was going on a cycle to see his sister. He persuaded Arjun Das to accompany him and both of them proceeded to the office of the Special Inquiry Agency and met Inspector Hardas Singh there. Jagdish Raj disclosed all the facts to Inspector Hardas Singh and his statement was duly recorded by Sub-Inspector Baldev Singh on the dictation of Inspector Hardas Singh and it was subsequently despatched for the registration of the case. Jagdish Raj then produced five currency notes of the denomination of rupee ten each which were duly taken into possession after having been initialled and their serial numbers having been noted in the relevant memo and were then returned to him. The necessary instructions were thereafter given to Jagdish Raj and Arjun Das. The memo was signed by Jagdish Raj, Arjun Das and one other witness named Mohan Lal. The raiding party then proceeded to the office of the Excise and Taxation Officer at about 1.30 p.m. after picking up one more witness named Makhan on the way. When they reached the office of the Excise and Taxation Officer. Jagdish Raj and Arjun Das went to the first floor where the appellant used to sit while the rest of the members of the raiding party waited below in the compound. Jagdish Raj and Arjun Das met the appellant in the room where he was sitting and the appellant told Jagdish Raj that he was waiting for him to come as it was otherwise time for him to go home. Jagdish Raj told the appellant that he would himself settle the amount with Brar, but so far as the appellant was concerned, he had brought the sum of Rs. 50 demanded by the appellant and he handed over the five marked currency notes to the appellant in the presence of Arjun Das. The appellant received the five marked currency notes and put them in the right hand pocket of his trousers and thereafter the proceeded downstairs followed by Jagdish Raj and Arjun Das as the office time was over. As soon as he came within the sight of the raiding party which was waiting in the compound, Jagdish Raj gave the agreed signal. Thereupon the appellant was apprehended by Inspector Hardas Singh in the verandah of the ground floor. The appellant was searched and the five marked currency notes were recovered from the right hand pocket of his trousers and these were taken possession of by Inspector Hardas Singh under a memo. Whilst the search was in progress, Gurdev Singh, Excise and Taxation Officer also arrived there and Inspector Hardas Singh requested him to attest the memo of recovery of the five marked currency notes, but Gurdev Singh declined to do so and observed that whosoever has committed the sin would suffer the consequences. Inspector Hardas Singh thereafter carried out the investigation and after the investigation was complete, he filed a charge-sheet against the appellant charging him for offences under Section 161 of the Indian Penal Code and Section 5 (1)(d) read with Section 5 (2) of the Prevention of Corruption Act, 1947. The appellant was, as pointed out above, convicted and sentenced by the learned Special Judge and his conviction was confirmed in appeal by the High Court, though the substantive sentence of imprisonment was slightly reduced. The appellant challenges his conviction and sentence in this appeal brought by him with special leave.

4. The conviction of the appellant rests on the oral evidence of Jagdish Raj, Arjun Das, Sub-

Inspector Baldev Singh and Inspector Hardas Singh. This evidence has been accepted both by the learned Sessions Judge as well as the High Court, but if we scrutinise this evidence closely in the light of the other evidence on record, it will be apparent that this evidence is not of such a character as to inspire confidence in the mind of the Court, and moreover, there are various other circumstances which clearly militate against the veracity of the prosecution case. We will first examine the broad circumstances of the case as appearing from the evidence on record and show how they throw grave doubt on the story as put forward by the prosecution and then proceed to consider the infirmities in the evidence of the witnesses relied upon by the prosecution.

5. In the first place, it appears clearly from the evidence that the appellant had nothing to do with the grant of exemption from payment of passenger or goods tax. The appellant was, at the material time, Passenger and Goods Tax Clerk II and, according to the evidence of Harmohan Singh, who was Passenger and Goods Tax Clerk I, the order of allocation of work made by the Excise and Taxation Officer assigned various duties of Passenger and Goods Tax Clerk II, but these did not include processing of application for exemption from payment of passenger or goods tax. The detection and recovery of passenger and goods tax was undoubtedly one of the duties entrusted to Passenger and Goods Tax Clerk II, but not the handing of applications for exemption. This was also made clear by Kashmir Singh who as an establishment clerk in the Excise and Taxation Officer. Kashmir Singh stated that "the Passenger and Goods Tax Clerk has no concern with the exemption cases and the same are dealt with by the Taxation Inspector" and he added that the release of attached property is also effect on the basis of the report of the Taxation Inspector and "the Passenger and Goods Tax Clerk has nothing to do with it". It would, therefore, be seen that the appellant was not in charge of application for exemption which were dealt with by the Taxation Inspector. It is true that so far as the detection and recovery of goods tax was concerned, it was within the charge of the appellant, but nothing remained to be done on that count at the material time when the bribe was demanded and paid, since the truck was already attached by Taxation Inspector Brar in July 12, 1968. The only issue which was then being pressed by Jagdish Raj was that relating to exemption from payment of goods tax and so far as that issue was concerned, the appellant had nothing to do with it. There was, therefore, clearly no motivation for Jagdish Raj to give bribe to the appellant for obtaining grant of exemption. This circumstance weakens the foundation on which the edifice of the prosecution story rests and introduces an element of infirmity in it.

6. But more than anything else, the evidence of Taxation Inspector Sharma makes a serious inroad in the prosecution case. The evidence of Sharma shows that it was only on August 1, 1968 that Jagdish Raj made an application for exemption from payment of goods tax supported by an affidavit and a certificate of exemption of token tax granted by the Licensing Officer. Now, obviously no exemption from payment of goods tax could be granted to Jagdish Raj until he made an application supported by a certificate of exemption of token tax issued by the Licensing Officer. The certificate of exemption of token tax issued by the Licensing Officer would show that the truck was not plied during the period for which the certificate was granted and the registration certificate of the truck was lying deposited in the office of the Registration Authority. That would be prima facie proof that the truck did not carry any goods tax for hire and was, therefore, not liable to payment of goods tax for the period for which the certificate of exemption of token tax was granted. It appears from the record that an order for issue of certificate of exemption of token tax was made by the Licensing Officer on July 25, 1968, and pursuant to the order, the certificate must have been issued to Jagdish Raj a few days later and it was on August 1, 1968 that Jagdish Raj made the application for exemption from payment of goods tax, supported by this certificate. It is difficult to see how in these circumstances, when the application for exemption supported by the certificate of exemption

of token tax was not made until August 1, 1968, any question of demanding or giving bribe could arise on July 29 or 30, 1968. If an application for exemption were already made supported by the certificate, one can understand, deplorable though it may be, that the clerk in charge of dealing with such application may demand bribe for expediting the disposal of the application or making a favourable noting on it. But one fails to see how there could be any question of demand or payment of bribe before such application was made, when, manifestly, nothing could be done in the matter of granting exemption without such application. It may be noted that even according to the evidence of Jagdish Raj, Taxation Inspector Brar stated to him on July 27, 1968 that it would not be possible for him to do anything for Jagdish Raj until Jagdish Raj produced the certificate of exemption of token tax from the Licensing Officer and that was done by Jagdish Raj only on August 1, 1968. The incident of demand of bribe by the appellant alleged to have taken place on July 29 and 30, 1968 was, therefore, clearly premature and improbable.

7. Then again the evidence of Sharma that there was redistribution of work between the two taxation inspectors, namely, Brar and Sharma on July 15 or 16, 1968 and under this redistribution of work, the case of Jagdish Raj came to be assigned to Sharma. It is, therefore, quite improbable that on July 29 and 30, 1968, the appellant would demand a bribe of Rs. 400 for Brar who had no longer anything to do with the file of Jagdish Raj. In fact, Sharma stated in his evidence that at about 10 a.m. on July 31, 1968, when he went to the room of Excise and Taxation Officer on being summoned by him, he had to pass through the room in which the appellant was sitting and at that time he saw Jagdish Raj in that room with the appellant. Sharma heard the appellant telling Jagdish Raj that Brar would no longer be attending to the work of Jagdish Raj as the file had been entrusted to Sharma. Sharma then inquired from the appellant as to what was the total amount of arrears of tax due from Jagdish Raj and the appellant gave the figure to Sharma after looking into the file. The appellant inquired from Sharma as to what should be done, whereupon, Sharma stated that half the amount of arrears should be realised from Jagdish Raj and so far as the other half was concerned, orders of the Excise and Taxation Officer should be obtained for realising the same in instalments. Sharma also stated in his evidence that when he again passed through the room occupied by the appellant on his way back from the room of the Excise and Taxation Officer to his own room, he saw Jagdish Raj still sitting with the appellant. Jagdish Raj was entreating the appellant to get an order passed regarding the payment of arrears of tax by instalments, but the appellant told him that he could not do anything in the matter and that he should approach the Excise and Taxation Officer or Sharma. Presumably, on this date, Jagdish Raj was not aware that an order had already been made on July 25, 1968 for issue of certificate of exemption of token tax and he was, therefore, anxious that until he succeeded in obtaining such certificate, he should not be pressed into making immediate payment of arrears of tax. This evidence clearly shows that the file of Jagdish Raj had been transferred to Sharma and the appellant was aware of it and he informed Jagdish Raj accordingly in so many terms. The importance of this evidence cannot be over-exaggerated, particularly since Sharma was a witness examined on behalf of the prosecution and this incident was narrated by him in his examination-in-chief. It cannot lie in the mouth of the prosecution to disown this evidence given by Sharma. If this evidence is true, as it must be taken to be - and it must be said in fairness to the Counsel on behalf of the State that nothing was urged against it - it is impossible to accept the prosecution story that the appellant demanded bribe of Rs. 400 for Brar or Rs. 50 for himself or that Jagdish Raj agreed to pay the same. This evidence, in our opinion, completely destroys the foundation of the prosecution case and knocks the bottom out of it. This evidence also falsifies the statement of Jagdish Raj that he did not see the appellant in the morning of July 31, 1968 and it was only at 1.30 p.m. that with the raiding party he went for the first time on that day to the office of the appellant, Jagdish Raj is completely belied by this evidence on an important part of

the prosecution case.

8. The prosecution case also suffers from another serious infirmity and it is that it rests entirely on the evidence of witnesses who are either interested witnesses or police witnesses. Jagdish Raj was clearly an interested witness because he was concerned in laying the trap for the appellant. Arjun Das was also an interested witness as he was a relative of Jagdish Raj. Jagdish Raj admitted in his evidence that Arjun Das was his relative and so did Arjun Das. It is a little interesting to know that Arjun Das was not secured as a witness to the raid by Inspector Hardas Singh. He was picked up by Jagdish Raj when he was going to meet his sister in Putlighar and taken to the Special Enquiry Agency. His evidence was that he had taken leave on that day from his work as he wanted to meet his sister. But curiously enough, he allowed himself to be persuaded to go as a witness of the raid and even after the raid was over at about 3 p.m. he did not go to meet his sister in Putlighar. It appears to us extremely improbable that Arjun Das was really going to meet his sister when he was diverted by Jagdish Raj and taken as a member of the raiding party. If that was the mission for which he had taken leave, he would not have gone with Jagdish Raj and even if he would have gone to meet his sister after the raid was over. It seems to us that Arjun Das had taken leave for the purpose of assisting Jagdish Raj in arranging the raid and he was clearly and indubitably an interested witness. Now it is significant that the only two persons who witnessed the actual passing of bribe were Jagdish Raj and Arjun Das. Inspector Hardas Singh knew very well that Arjun Das was brought by Jagdish Raj, and presumably, he was connected with Jagdish Raj and could not, therefore, be regarded as an independent person, even so he did not care to secure an independent person, to act as a witness of the raid. In fact, one Mohan Lal had acted as a witness when Jagdish Raj gave information to Inspector Hardas Singh in regard to the demand for bribe made by the appellant and thought he was an independent person, he was not taken as a witness by Inspector Hardas Singh when the latter went of the purpose of the raid. Instead, one Makhan, who was a sweeper in the whole-time employment of the police, was taken as a witness. But, even he was not sent along with Jagdish Raj to witness the passing of the bribe. It is indeed difficult to see how Makhan could possibly be regarded as an independent witness. It is indeed difficult to see how Makhan could possible he regarded as an independent witness. It is indeed a sad commentary on the functioning of the anti-corruption department in this case that the only safeguard against false implication in the offence of bribery, which is provided by the presence of independent and respectable witness, was completely ignored and two witnesses were taken, one of whom was a relative of Jagdish Raj and the other, a sweeper in the whole-time employment of the police. We must take this opportunity of impressing on the officers functioning in the anti-corruption department to insist on observing this safeguard as zealously and scrupulously as possible for the protection of public servants against whom a trap may have to be laid. They must seriously, endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the court is not left in any doubt as to whether or not any money was paid to the public servant by way of bribe. We cannot, in the present case, rely on the evidence of Jagdish Raj and Arjun Das for the purpose of holding that a sum of Rs. 50 was paid by Jagdish Raj to the appellant by way of bribe.

9. Even when the appellant came down to the ground floor from his room after allegedly taking the bribe of Rs. 50 and a search was made of his person, the persons, who witnessed this search were not independent and respectable witnesses. Inspector Hardas Singh and Sub-Inspector Baldev Singh were police witnesses. The other three were Jagdish Raj, Arjun Das and Makhan who were all interested witnesses. Makhan, in fact, was not even called to give evidence on behalf of the prosecution. He was dropped on the ground that he was not a man of status. Now this is also a distressing feature of the present case. We are aiming to build a just and egalitarian social order

where there will be equality of status and opportunity and it is indeed difficult to see how in such social order a sweeper who is earning his livelihood by doing honest labour can be regarded as a man of no status. Be that as it may, the fact remains that there was no independent person to witness the search of the person of the appellant and the seizure of five marked currency notes of Rs. 10 each from his person. It is a matter of regret that the prosecution did not choose to examine Gurdev Singh, Excise & Taxation Officer, though, according to the evidence of Jagdish Raj, Arjun Das, Inspector Hardas Singh and Sub-Inspector Baldev Singh, Gurdev Singh happened to come there before the person of the appellant was searched and he was a witness to the search. The only reason given by the prosecution for not examining Gurdev Singh was that he declined to attest the search memo. But that is hardly an explanation which can carry conviction. Gurdev Singh was a highly placed officer and even though he was the head of the department in which the appellant was working, we can safely assume that, if summoned, he would have told the truth, even if it hurt the appellant. We do not think it was fair on the part of the High Court to observe the Gurdev Singh, reluctance to support the case of the appellant, or his declining to become a prosecution witness against the appellant, who was his subordinate or a member of his staff, was neither exceptional nor unusual. Gurdev Singh was the only independent person who could have deposed to what happened at the time when the search of the person of the appellant was taken and it is unfortunate that the prosecution did not summon him to give evidence. There were also fifteen to twenty other persons who were assembled there at the time of the search and any one of them could have been asked to be a witness to the search. But this opportunity was also not availed of by the police. There is also one other small circumstance which is rather significant and it tends to show that the appellant did not accept any monies from Jagdish Raj as alleged by the prosecution. When Inspector Hardas Singh arrested the appellant for the purpose of searching his person, the appellant enquired from him as to why he was being arrested. That is hardly a question the appellant would have asked if he had accepted bribe from Jagdish Raj because then he would have known that he had been trapped. The evidence in regard to the search of the person of the appellant and the seizure of five marked currency notes from him is, in the context of the other facts and circumstances of the case, not such as to inspire confidence and cannot be implicitly accepted.

10. Then, there is the evidence of two defence witnesses, namely, Sohan Lal (DW 6) and Achhar Singh (DW 7). These two witnesses have clearly stated that at the time when the appellant came down from his office at about 1.45 p.m. Jagdish Raj, who was following him, caught hold of him and thereafter they grappled with each other and in the meantime the officer of the anti-corruption department and two constables arrived there and surrounded the appellant. About this time, said these two witnesses, Gurdev Singh, Excise & Taxation Officer, also came out of his office and when the police officer asked Gurdev Singh to attest a document which had been prepared by him, Gurdev Singh refused to do so on the ground that no currency notes were recovered from the appellant in his presence. Sohan Lal added that five currency notes of rupees ten each were lying on the ground and the police officer took them in his possession. This evidence given by Sohan Lal and Achhar Singh clearly supports the defence of the appellant that he had not taken five marked currency notes from Jagdish Raj and that the same were not recovered from his pocket when his person was searched. The High Court, however, failed to take this important evidence into consideration and ignored it.

11. It is clear from the aforesaid discussion that the evidence led on behalf of the prosecution is not such as to inspire confidence in the mind of the court and we must say that we are not at all satisfied that the appellant either demanded bribe of Rs. 50 from Jagdish Raj or that Jagdish Raj paid bribe of Rs. 50 to the appellant by handing over five marked currency notes to him or that five marked currency notes of Rs. 10 each were recovered from the pocket of the appellant when his person was

searched by the raiding party. We may take this opportunity of pointing out that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked currency note, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. It is but meet that science-oriented detection of crime is made a massive programme of police, for in our technological age nothing more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging liberal use of scientific research to prove guilt. Vide *Some Prakash v. State of Delhi* ((1974) 3 SCR 200 : (1974) 4 SCC 84 : 1974 SCC (Cri) 215).

12. We are, therefore, of the view that the prosecution has failed to established the guilt of the appellant and we must accordingly set aside the conviction and sentence recorded against the appellant and acquit him of the offences charged against him. The bail bonds executed by the appellant will stand discharged.

</html