

Shantilal Son of Rameshwar

Vs

State of Rajasthan

Criminal Appeal No. 152 of 1971

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

10.10.1975

JUDGMENT

BHAGWATI, J. -

1. The appellant and one Ram Narain were tried by the Sessions Judge, Kotah 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, at the material time, a clerk in the Land Record Office entrusted with the duty of furnishing certified copies of entries in land records while Ram Narain was a peon working in that office. The charge against the appellant and Ram Narain was that on or about March 31, 1967, the appellant obtained through Ram Narain by corrupt and illegal means a sum of Rs. 10 from Dhanna Lal as gratification, other than legal remuneration, as a motive or reward for issuing early copy of entries in the land records relating to the land of Dhanna Lal for Samvat years 2010 to 2013. The appellant and Ram Narain were both convicted by the learned Sessions Judge and each of them was sentenced to suffer one year rigorous imprisonment and to pay a fine of Rs. 100, or in default of payment of fine to undergo rigorous imprisonment for a further period of one month. The appellant and Ram Narain both preferred an appeal in the High Court of Rajasthan against the order of conviction and sentence recorded against them, but the appeal substantially failed and the conviction of the appellant and Ram Narain was maintained with only a slight modification in the case of Ram Narain whose conviction was limited only to Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act 1947. The imposed on the appellant and Ram Narain was, however, reduced, the substantive sentence of imprisonment being brought down to three months' rigorous imprisonment and the sentence of fine being limited only to Rs. 50 in case of each of them. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

2. Before we deal with the contentions raised on behalf of the appellant in support of the appeal, it would be convenient to state briefly the facts giving rise to the prosecution against the appellant. Dhanna Lal, who was an agriculturist in a village situate in Kotah district, was in need of a certified copy of entries relating to his land as he was required to produce them for the purpose of obtaining takavi loan from a bank. He therefore, came down to Kotah in the evening of March 28, 1967 and he brought with him, presumably for the purpose of assisting him as he was a stranger in Kotah, one Ram Nath, who was panch of his village. Ram Nath and Dhanna Lal went to the Collectorate in the morning of March 29, 1967 and there Dhanna Lal preferred an application for obtaining a certified copy of the entries to the Sadar Kanungo, but he was asked to submit the application to the clerk who was incharge of preparing, certified copies. Dhanna Lal thereupon took the application to the appellant and after affixing a court fee stamp of Rs. 2, which represented the court fee for urgent copy, submitted it to the appellant. The appellant had his table in a room in which there were many

other clerks doing work of the Land Record Office. The appellant, after taking the application from Dhanna Lal, asked him to sit outside whereupon Dhanna Lal and Ram Nath sat in the veranda outside the room. Sometime thereafter Ram Narain, who was a peon in the office, came to Dhanna Lal and asked him what was the matter for which he had come. Dhanna Lal told Ram Narain that he had come to obtain certified copy of entries in the land record. Ram Narain stated that without some gratification no copies were issued in the office. Dhanna Lal thereupon inquired as to how much amount would have to be paid, on which Ram Narain went inside and after some time returned and said that about Rs. 25 would have to be paid since Dhanna Lal wanted copy for Samvat 2010 to 2013. Dhanna Lal found this amount rather high, whereupon Ram Narain once again went inside the room and coming out after a while, he told Dhanna Lal that the clerk had stated that Rs. 10 would be alright. Dhanna Lal expressed his inability to pay even this amount and the answer of Ram Narain was that in that event Dhanna Lal would have to wait for ten to fifteen days to get certified copy. This happened on March 29, 1967.

3. On the next day, i.e. on March 30, 1967, Dhanna Lal and Ram Nath once again went to the Land Record Office in the morning and had discussion with Ram Narain. Ram Narain went inside the room and after coming out stated that certified copy of the entries would be issued on the next day if a sum of Rs. 10 were paid. Dhanna Lal and Ram Nath thereafter left the office and while they were coming out they met a person called Shyam Narain, who was known to Ram Nath. They narrated the incident in regard to the demand for bribe to Shyam Narain. Shyam Narain told them not to yield to the demand but to see him in the evening. It appears that Dhanna Lal and Ram Nath thereafter met Shyam Narain not in the evening of that day but in the morning of the next day, i.e., March 31, 1967. Shyam Narain got an application written by Ram Nath and signed by Dhanna Lal and he asked them to go to the Deputy Superintendent, Anti-Corruption Department and to present the application to him. The Deputy Superintendent thereupon arranged a raid by going through the usual procedure of having a panchnama of two currency notes of five-rupee each which were produced by Dhanna Lal and which were to be handed over by Dhanna Lal to Ram Narain when he demanded them. The Deputy Superintendent also arranged to secure a panch witness called Pushp Kumar. The raiding party then proceeded to the Collectorate at about 2 p.m. The Deputy Superintendent, Head Constable Uma Shankar and other policemen waited in the compound of the Land Record Office near the tamarind tree, while Dhanna Lal, Ram Nath and Pushp Kumar proceeded to the veranda on the first floor where the room of the copying clerks was situate. Ram Narain was sitting outside the room and on seeing Dhanna Lal he said that the certified copy was ready and asked him whether he has brought the money. Dhanna Lal said that he had got the money and that Ram Narain should call the clerk and get the certified copy issued. Ram Narain thereupon called the appellant outside in the veranda and the appellant told Dhanna Lal that the certified copy was ready and that he should give the money to Ram Narain and take the certified copy. Dhanna Lal thereupon gave the two marked currency notes of five-rupee each to Ram Narain and the appellant then took Dhanna Lal inside the room and after obtaining his signature in a register handed over the certified copy to him. Dhanna Lal, after coming out, gave the agreed signal, on which the Deputy Superintendent of Police, Head Constable Uma Shankar and others ran up to the veranda. The Deputy Superintendent asked Ram Narain to produce the two five-rupee currency notes which had been given by Dhanna Lal, whereupon Ram Narain produced the two currency notes stating that he had taken them on the instructions of the appellant. The Deputy Superintendent prepared a panchnama of the seizure of the two currency notes and arrested Ram Narain. Thereafter, the case was investigated by the Deputy Superintendent of Police and after the investigation was completed, the appellant and Ram Narain were charge-sheeted. This charge led to their conviction and sentence and that is how the present appeal has come before this Court.

4. Now, there are some very salient features of this case which stand out prominently and cannot escape notice. They throw considerable light on the veracity of the prosecution case and cause grave doubt whether the appellant had anything at all to do with the demand of Rs. 10 by way of bribe by Ram Narain. In the first place, it is significant to note that on both the days on which the demand for bribe was made by Ram Narain, namely March 29 and 30, 1967, there was no direct talk between the appellant on the one hand and Dhanna Lal or Ram Nath on the other. Neither Dhanna Lal nor Ram Nath met the appellant, nor did the appellant make any demand for bribe from either of them. Even when Dhanna Lal submitted his application for certified copy to the appellant, no demand - not even a suggestion - for a bribe was made to him by the appellant. It was only Ram Narain, who represented to Dhanna Lal and Ram Nath that a sum of Rs. 10 would have to be paid to the clerk in-charge of the preparation of certified copy, that is the appellant, if Dhanna Lal wanted certified copy early, or else he would have to wait for ten to fifteen days. Ram Narain, according to the evidence of Dhanna Lal and Ram Nath, did go inside the room apparently for the purpose of discussing with the appellant the question of the amount of the bribe and appeared to convey to Dhanna Lal and Ram Nath that it was the appellant who was demanding the amount of the bribe, but it is quite possible that Ram Narain merely made a pretence and did not have any discussion with the appellant and the appellant did not have the ghost of an idea that Ram Narain was trying to extract some money from Dhanna Lal in his name. It would be extremely unsafe to rely on what Ram Narain supposedly said to Dhanna Lal and Ram Nath in regard to the demand for bribe alleged to have been made by the appellant. It would indeed be hazardous to impute to the appellant complicity in the demand for bribe merely on the basis of statements supposed to have been made by Ram Narain on who was, even on taking a most charitable view of the matter, an accomplice. It may also be noted that though Dhanna Lal stated in his examination-in-chief that he gave the application for certified copy to the appellant, he went back upon this statement in his cross-examination and confessed that he did not know the name of the clerk to whom he had given the application. Dhanna Lal added that the clerk to whom the application was given by him stated that the certified copy would be issued in seven days. That was quite a natural statement on the part of the clerk to make since the copying fee paid by Dhanna Lal was only Re. 1 which was the fee for an ordinary certified copy and the normal time within which an ordinary certified copy would be issued is seven days. It is true that Dhanna Lal maintained in his evidence that he had affixed court fee stamp of Rs. 2 for urgent certified copy but that is belied by the certified copy of the entry in the land record Ex. P-4 where the copying fee shown to have been paid by the applicant is mentioned as Re. 1. Perhaps Dhanna Lal came forward with the story of having paid copying fee for urgent certified copy in order to account for his going to the Land Record Officer on the next day. If he had paid copying fee only for an ordinary certified copy, it is difficult to understand how he could have expected to receive the certified copy on the next day and gone to the land Record Office for that purpose.

5. Secondly, the evidence given by Dhanna Lal and Ram Nath in regard to the demand for bribe made by Ram Narain is in conflict with the report made by Dhanna Lal to the Deputy Superintendent of Police for the purpose of entrapping the appellant and Ram Narain. The case, as unfolded in the evidence of Dhanna Lal and Ram Nath, was that the demand for bribe was made by Ram Narain on March 29 and 30, 1967 and the amount of bribe was settled at Rs. 10 on March 30, 1967, while according to the report made by Dhanna Lal to the deputy Superintendent of Police, the talk about the bribe took place for the first time between Ram Narain and Dhanna Lal on March 31, 1967 when he went to take the certified copy. This cannot be regarded as a trivial or insignificant discrepancy having no relevance to the veracity of the prosecution case. It is a significant departure made by Dhanna Lal and Ram Nath in their evidence and we do not think that their evidence can be regarded as reliable or trustworthy. It leaves an indelible infirmity on the evidence led on behalf of

the prosecution so far as the demand for bribe made by Ram Narain is concerned.

6. The only incriminating circumstance on which reliance was placed on behalf of the prosecution for connecting the appellant with the taking of bribe by Ram Narain was that when, on March 31, 1967, Dhanna Lal and Ram Narain along with the raiding party went to the Land Record Office for the purpose of giving the bribe, the appellant came out of the room and on being told by Dhanna Lal that he had brought the monies, he asked Dhanna Lal to hand over the monies to Ram Narain and to take the certified copy and then Dhanna Lal went inside the room with the appellant and the appellant gave him the certified copy after obtaining his signature in the register. Now, there can be no doubt that if this part of the prosecution story is accepted, the participation of the appellant in taking of the bribe would be completely established. But we do not think that the evidence led on behalf of the prosecution is sufficient to establish this part of the prosecution version. It is no doubt true that Dhanna Lal, Ram Nath and Pushp Kumar deposed to this incident which is supposed to have taken place in the first floor verandah outside the room of the copying clerks, but the evidence of Dhanna Lal and Ram Nath is that of interested witnesses because they were the persons responsible for laying the trap and so far as Pushp Kumar is concerned, we do not think it safe to act on his sole testimony. More so, when we find that though the Deputy Superintendent of Police was waiting in the compound under the tamarind tree from where he could see what was happening in the first floor verandah, he did not depose to having seen the appellant coming out of the room, talking to Dhanna Lal and then going back inside the room with him. The Deputy Superintendent of Police, of course, attempted to explain this in his cross-examination by saying that Dhanna Lal, Ram Nath, Pushp Kumar and Ram Narain were not visible to him from the place where he was waiting under the tamarind tree, because he was behind the tree, but his explanation runs counter to the first information report made by him immediately after the raid, where he stated that he, together with Head Constable Uma Shankar and other members of his staff, kept standing under the tamarind tree "From where verandah of the Land Record Office is clearly visible". Head Constable Uma Shankar undoubtedly stated that he saw that Ram Narain went inside the office and after a while came out with the appellant and the appellant had some talk with Dhanna Lal and then he went back inside the office and thereafter Dhanna Lal gave two five-rupee currency notes to Ram Narain. But it is difficult to appreciate how Head Constable Uma Shankar could see this incident when the Deputy Superintendent of Police could not. The only explanation which the Deputy Superintendent of Police could offer for this difference in their versions was that he was standing behind the tamarind tree while Head Constable Uma Shankar was in the open compound. This explanation, however, cannot be accepted because in the first information report it was clearly stated by the Deputy Superintendent of Police that he "together with the staff and Head Constable Uma Shankar remained standing under the English tamarind tree". Moreover, it is inexplicable as to why the Deputy Superintendent of Police should not have sent for the appellant from his room and arrested him or at least made inquiries from him. In fact the members of the raiding party saw the appellant coming out of the room and talking to Dhanna Lal and heard him asking Dhanna Lal to hand over the monies to Ram Narain and then found him taking Dhanna Lal inside the room for the purpose of giving him the certified copy. It is also significant to note that when Ram Narain was arrested, he stated that he had taken the monies at the instance of the appellant, but even so, the Deputy Superintendent of Police did not think it fit to summon the appellant and to enquire from him because, as appearing from the recovery memo Ex. P-5, he believed that the bribe was taken by Ram Narain, nor for the appellant, but "in the name of the record clerk". The entire conduct of the Deputy Superintendent of Police and the members of the raiding party was inconsistent with their having seen the appellant participating in the incident and taking the bribe or having anything to do with it.

7. We are, therefore, of the view that the evidence led on behalf of the prosecution is wholly

insufficient to establish beyond reasonable doubt that the appellant made a demand for bribe through Ram Narain or accepted any bribe from Dhanna Lal for giving early certified copy of the entries in the Land Record. We must, consequently, set aside the order of 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 cancelled.

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