Prakash Chand

Vs

State (delhi administration)

Criminal Appeal No. 193 of 1974

(O. Chinnappa Reddy, R. S. Sarkaria JJ)

20.11.1978

JUDGMENT

CHINNAPPA REDDY, J. -

1. The appellant before us was convicted by the learned Special Judge, Delhi, of an offence under Section 5(1)(d) read with the Section 5(2) of the Prevention of Corruption Act and Section 161, Indian Penal Cod, and sentenced to suffer rigorous imprisonment for a period of on years on each count. He was also sentenced to pay a fine of Rs. 100. The conviction and sentence were confirmed by the High Court and the appellant has come up in appeal by special leave. The prosecution case briefly was as follows :

2. PW 6, Ram Niwas Sharma, an architect by profession prepared building plans for one M. L. Batla and submitted them to the Delhi Development Authority for sanction. The plans were submitted on May 6, 1969. They were rejected on May 26, 1969. Revised plans were thereafter submitted on June 16, 1969. Certain objections were raised and in order to comply with those objection PW 6 went to the office of the Delhi Development Authority on July 11, 1969. He met the accused who was Overseer-Section Officer and asked him to be permitted to make necessary corrections in the building plans. Instead of giving the file to PW 6 the accused demanded a sum of Rs. 30 as bribe. PW 6 told him that he did not have the money with him whereupon the accused asked him to come on July 14, 1969, in the afternoon with the money. On July 14, 1969, PW 6 went to the Anti-Corruption Officer at about 12 non and gave a report Ex. PW 1/A to PW 9, an Inspector of the Anti-corruption Establishment. PW 9 went for PWs 1 and 2 from the Sales Tax Office. The report made by PW 6 was read over to them. Thereafter, PW 6 produced three ten-rupee notes, the numbers of which were noted by PW 9 in the presence of the Panch witnesses PWs 1 and 2. Thereafter it was arranged that they should all proceed to the office of the Delhi Development Authority. There PW 6 was to give the bribe to the accused and on his giving the bribe to the accused, PW 1 was to give a signal to PW 9. As arranged, PW 6 went to the office of the Delhi Development Authority along with Panch witness. The Inspector stopped at the door of the room. PW 6 went to the table of the accused and asked him for the file for the purpose of making necessary corrections in the building plans. The accused asked him if he had brought the money. On his saying 'yes' the file was taken out and given to PW 6. As there were a number of other files on the table of the accused, PW 6 took the file to another table at a distance of one or two paces from the table of the accused. After making the corrections PW 6 handed over the file to the accused along with Rs. 30. Instead of taking the money, the accused asked PW 6 to place the money in the file which he accordingly did. The accused then took the file and placed it under the table putting his foot on it. At that stage PW 1 gave agreed signal. PW 9 came to the room disclosed his identity to the accused and questioned him whether he had accepted Rs. 30 from PW 6. The accused was stunned and kept mum. PW 9 was

then informed by PW 6 and the two Panch witnesses that the money was kept in the file under the foot of the accused. PW 9 then took out the file and found the sum of Rs. 30 in the file. The number of the currency note were compared with the numbers earlier noted at the Anti Corruption Office. Thereafter, PW 9 sent the raid report. On receipt of it, PW 7. Deputy Superintendent of Police took over the investigation. After completing the investigation, a charge-sheet was laid and the accused was duly tired convicted and sentenced as aforesaid.

3. The defence accused was that PW 6 met him on July 11, 1969 and wanted to make some corrections. He told him that he should file original sale deed. PW 6 then said that he would come on Monday with the original sale deed. On July 14, 1969, PW 6 cam to his office and wanted the file for making the necessary corrections. He took out the file and gave it to PW 6. PW 6 took the file to another table and brought it back to him after 2 or 3 minutes. According to the accused, PW 6 must have put the money into the file when he had taken the file to the other table. When the Police Officer came in and questioned him about the receipt of the bribe he straightaway told him that he had not taken any money from PW 6. According to the accused, PW 6 was annoyed with him on July 11, 1969, as he thought that he (accused) was delaying his work. He also stated that Mr. Batla, the owner of the plot, had threatened him with dire consequences because he had raised objections to the plans submitted by him.

4. Both the Panch witness examined by the prosecution did not fully support the prosecution case. They resiled from the earlier statement made by them during the course of investigation. PW 1 stated that when PW 6 went into the room where the accused was working, there was some talk between PW 6 and the accused but he did not hear what it was. He saw the accused taking out the file from the almirah and giving it to PW 6. PW 6 took it to another table and was writing something in the file. Then he took back the file to the accused. The accused was busy with his own work. The complainant placed three ten-rupee notes in the file and handed over the file to the accused who placed it under table near his feet. PW 6 signalled to him and he gave the agreed signal. The Inspector then entered the room and questioned the accused about the receipt of the bribe. The accused denied the charge. He (PW 1) then informed the Inspector that the money was in the file. The money was recovered from the file. The prosecution was permitted to cross-examine him. In cross-examination his earlier statement to the Investigating Officer were put to him. He admitted in cross-examination that when questioned by the Inspector the accused kept silent for some time as he was perplexed but thereafter told the Inspector that he had not taken any money. The evidence of the other witness, PW 2, was on the same lines as PW 1 except that stated that when questioned by the Inspector the accused kept mum and was perplexed. PW 2 was also cross-examined by the prosecution and the statements made by him to the Investigating Officer were put to him.

5. Shri Frank Anthony, learned Counsel for the appellant, submitted that the conviction was based on the uncorroborated testimony of PW 6 and that it should, therefore, be quashed. He urged that Batla, Advocate, who had employed PW 6 as an Architect had been convicted in a criminal case and that the present complaint was inspired by Batla who had previously threatened the accused with dire consequences. He pointed out that PWs 1 and 2 stated in their evidence that Batla was actually present in the anti Corruption office when they were called there by the Inspector. He invited out attention to the circumstance that some persons were standing near the table of the accused at the time when the bribe was supposed to have been given and argued that it was most unlikely that the accused would have demanded and accepted the bribe when so many people were nearby. The learned Counsel further urged that the evidence of PW 6 that he went to the office of the D.D.A. at 3 or 3.15 p.m. on July 11, 1969 could not be true as the noting on the files showed that the file was

received at 4.45 p.m. It was also contended that the lower courts had erred in law in relying upon the statements made by PWs 1 and 2 to the police. It was argued that the evidence of PWs 1 and 2 rendered the evidence of PW 6 entirely unacceptable. It was further contended that the lower courts were wrong in treating the conduct of the accused when questioned by the Police Officer as a circumstance against him.

6. We are unable to agree with the submission of Shri Anthony that no conviction can ever be based on the uncorroborated testimony of a person in the position of PW 6 who, for the sake of felicity may be described as a "trap witness". That a trap witness may perhaps be considered as person interested in the success of the trap my entitle a court to view his evidence as that of an interested witness. Where the circumstances justify it, a court may refuse to act upon the uncorroborated testimony of trap witness. On the other hand a court may well be justified in acting upon the uncorroborated testimony of a trap witness, if the court is satisfied from the facts and circumstances of the case that the witness is a witness of truth. Shri Anthony referred us to the decisions of this Court in Ram Prakash Arora v. The State of Punjab (AIR 1973 SC 498 : (1972) 3 SCC 652 : 1972 SCC (Cri) 696) and Darshan Lal v. The Delhi Administration (AIR 1974 SC 218 : (1974) 3 SCC 595 : 1974 SCC (Cri) 73). In the first case Grover. J., observed as follows :

> It must be remembered that both Joginder Singh and Dalbir Singh PWs were interested and partisan witnesses. They were concerned in the success of the trap and their evidence must be tested in the same away as that of any other interested witness an in a proper case the court may look for independent corroboration before convicting the accused person.

All that Grover, J. said was that in an appropriate case corroboration may be sought and not that corroboration should invariably be sought. In the particular case it was found that the witnesses could not be implicitly relied upon and, therefore, corroboration was necessary. In the second case a string of circumstances was noticed which made it necessary that evidence of the witnesses who had laid the trap should not be acted upon without independent corroboration. This decisions also does not lay down that the uncorroborated testimony of a trap witness can never be acted upon. That the law did not require any such corroboration was laid down in The State of Bihar v. Basawan Singh (AIR 1958 SC 500 : 1959 SCR 195 : 1958 Cri LJ 976) and Bhanuprasad Hariprasad Dave v. The State of Gujarat (AIR 1968 SC 1326, 1326 : (1969) 1 SCR 22 : 1968 Cri LJ 1505 : (1970) 1 LLJ 643) . In Bhanuprasad's case it was observed by Hegde, J., as follows :

Now coming back to the contention that the appellants could not have been convicted solely on the basis of the evidence of Ramanlal and the police witnesses, we are of opinion that it is an untenable contention. The utmost that can be said against Ramanlal, the Deputy S. P. Brulker and Santramji is that they are partisan witnesses as they were interested in the success of the trap laid by them. It cannot be said - and it was not said - that they were accomplices. Therefore, the law does not require that their evidence should be corroborated before being accepted as sufficient to found a conviction.

We have carefully gone through the evidence of PW 6. After perusing the evidence of PW 6 we are left with the impression that PW 6 is truthful witness, an impression which we share with the High Court, the final Court of fact. He has given evidence in a straight forward manner and was unshaken in cross-examination. We are unable to discover any reason to discredit his testimony. The suggestion which was made to him was that he was that he was aggrieved with the accused as he thought that he was unnecessarily raising objection, that he had a hot altercation with him and that he went to the anti-Corruption office with the help of Shri Batla. The suggestions are without

substance. PWs 1 and 2 no doubt stated that Shri Batla was present in the Anti-Corruption office when they were called there by PW 9, the Inspector. We do not have the slightest doubt that PWs 1 and 2 are not truthful witnesses and that they have given evidence in order to accommodate the accused. Their evidence on important particulars was contradicted by their earlier statement to police. Here we may refer to the grievance of Shri Anthony that the trial Judge and the High Court treated the statement made by PWs 1 and 2 to the police as substantive evidence. There is no Justification for the grievance. The witness, who were treated as hostile by the prosecution were confronted with their earlier statements to the police and their evidence was rejected as it was contradicted by their earlier statement. Such use of the statements is permissible under Section 155 of the Evidence Act and the proviso to Section 162(1) of the Code of Criminal Procedure, read with Section 145, Evidence Act.

7. Corroboration to the evidence of PW 6, if considered necessary, my be found is following circumstance : First, his evidence is corroborated by the report Ex. PW 1/A which he gave to PW 9 that day. Second, his evidence is corroborated by the conduct of the accused when he was questioned by PW 9. PW 6 stated that when PW 9 entered the room and questioned the accused whether he had accepted Rs. 30 from him, the accused was stunned and did not reply. PW 9 also stated that the accused kept mum when challenged PW 2 stated that the accused did not reply and kept mum but added that the accused was perplexed. Though PW 1 first stated in his chief examination that the accused, when questioned denied having received any bribe, later he reluctantly admitted in cross-examination that the accused kept silent for some time as he was perplexed and then denied that he had received any bribe. The immediate reaction of the accused on being questioned by PW 9 is a circumstance which corroborates the testimony of PW 6. Another circumstance which corroborates the testimony of PW 6 is that the accused was ready with the file and handed it over to PW 6 as soon as he asked for it, indicating thereby that the statement of PW 6 that the accused had asked him to come on the afternoon of July 14, 1969, was true. Yet another important circumstance which corroborates the evidence of PW 6 is that after PW 6 handed over the file to the accused he kept it under the table.

8. It was contended by the learned Counsel for the appellant that the evidence relating to the conduct of the accused when challenged by the Inspector was inadmissible as it was hit by Section 162, Criminal Procedure Code. He relied on a decision of the Andhra Pradesh High Court in D. V. Narasimham v. State (AIR 1969 AP 271 : 1969 Cri LJ 1016 : 1969 MLJ (Cri) 687). We do not agree with the submission of Shri Anthony. There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Office in the course of an investigation which is hit by Section 162, Criminal Procedure code. What is excluded by Section 162, Criminal Procedure Code is the statement made to Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act (vide Himachal Pradesh Administration v. Om Prakash ((1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975)).

9. The decision of the Andhra Pradesh High Court on which Shri Anthony placed reliance does not

support his contention. There the learned Judges were not prepared to go into the question whether the evidence relating to the conduct of the accused was admissible as that question did not directly arise for consideration. On the other hand in Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15 : 1954 Cri LJ 230), this Court appeared to be inclined to hold that evidence to the effect that the accused started trembling and showed signs of being frightened on being questioned by the Police Officer, if proved, was admissible; and in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh (AIR 1954 SC 322 : 1954 SCR 1098 : 1954 Cri LJ 910) and State of Madras v. A. Vaidyanatha Iyer (AIR 1958 SC 61 : 1958 SCR 580 : 1958 Cri LJ 232 : (1958) 2 LLJ 653), this Court actually relied on evidence relating to the conduct of the accused on being confronted by the Police Officer with the allegation that the had received a bribe,. In Rao Shiv Bahadur Singh's case the evidence relating to conduct on which reliance was placed was to the effect that the accused was confused and could furnish no explanation when questioned by the Police Officer. In Vaidyanatha Iyer's case also evidence to the effect that the accused was seen trembling and that the he silently produced the notes from the folds of his dhoti was acted upon. We, therefore, do not see any reason to rule out the evidence relating to the conduct of the accused, which lends circumstantial assurance to the testimony of PW 6.

10. On a consideration of the entire evidence we are satisfied that the appellant was rightly convicted. The other points mentioned by Shri Anthony are of a minor character and do not warrant any interference under Article 136 of the Constitution. The appeal is accordingly dismissed.

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