

Hazari Lal

Vs

State (Delhi Administration)

Criminal Appeal No. 211 of 1974

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

15.02.1980

JUDGMENT

CHINNAPPA REDDY, J. -

1. The appellant Hazari Lal was convicted by the learned Special Judge, Delhi, of offences under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, and Section 161 of the Indian Penal Code. On the first count he was sentenced to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs. 500. On the second count he was sentenced to suffer rigorous imprisonment for a period of two years. The two sentences were directed to run concurrently. The convictions and sentences were confirmed by the High Court of Delhi.

2. The case which the prosecution set out to prove before the trial Judge was briefly as follows :

3. The scooter-rickshaw belonging to Sri Ram (PW 3) and driven by his driver Ram Lubhaya (PW 6) was involved in an accident on July 12, 1969. The scooter-rickshaw and a tonga which were involved in the accident were taken to the Police Station, Kashmere Gate by the accused, a police constable attached to that station. PW 3 obtained orders from the Magistrate for the release of his vehicle and went to the police station to obtain delivery of the vehicle. The accused, who was present took him outside and told him that the vehicle would be given to him only if he paid a bribe of Rs. 60. PW 3 then went away. He went to the Anti-Corruption Department and made a statement to Inspector Paras Nath, PW 8. After recording the statement of PW 3, PW 8 sent for two persons Davindar Kumar (PW 4) and Kewal Krishan. The statement of PW 3 was read out to PW 3 in the presence of the two panch witnesses Davindar Kumar and Kewal Krishan. PW 3 then produced six currency notes of the value of Rs. 10 each. The numbers of the notes were noted and they were treated with phenol phthalein powder. After the usual instructions were given to PW 3 and the panch witnesses, the raiding party proceeded towards Kashmere Gate. PW 3, PW 6 and Kewal Krishan went into the police station, while PW 8 and others stayed outside. The money was handed over to the accused who took it and put it inside the right hand pocket of his trousers. PW 6 and Kewal Krishan then came out and signalled to PW 8 whereupon PW 8 and the panch witnesses went inside the police station. The accused was present inside. As soon as he saw the party led by PW 8 he took out the currency notes from the right side pocket of his trousers and threw them across the wall into the adjoining room. PW 8 instructed some of the police officers accompanying him to rush to the adjoining room and to keep a watch over the notes which must have fallen there. He then introduced himself to the accused and took him to the adjoining room. Some of the notes were lying on the table of the Duty Officer in that room while others had fallen on the ground near the chair of the Duty Officer. The six notes collected in the presence of the witnesses and their numbers were compared with the numbers noted before they proceeded on the raid. The numbers tallied. The

accused was questioned by the Inspector and he denied that he had demanded any bribe and kept silent about the acceptance of the bribe. Both the hands of the accused were dipped in sodium carbonate solution and the solution which was previously colourless turned pink. The same test was repeated with the handkerchief which was taken out of the right hand side pocket of the accused and also with the trousers of the accused. Each test resulted in the bicarbonate solution turning pink. After completion of the investigation a charge-sheet was laid against the accused being for offences under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code.

4. All that has been mentioned in the previous paragraph was what the prosecution set out to prove before the trial Court. But many of the witnesses turned volte-face. PW 3 stated in his evidence that on the first occasion when he went to the police station to obtain delivery of his scooter-rickshaw it was not the accused that was present but one Hawaldar. It was the Hawaldar and not the accused that demanded the bribe of Rs. 60 from him. According to him at the time of the raid, when he, PW 6 and Kewal Krishan went inside the police station they found the accused there and asked him to take the sum of Rs. 60 and return scooter-rickshaw. PW 3 stretched his hand with the money towards the pocket of the accused's trousers but the accused said the money might be paid to the person for whom it was meant. He refused to receive the money and jerked PW 3's hand with his hand as a result of which the notes came to be flung across the wall into the neighbouring room. He told the Inspector that the notes had been flung across the wall and that the accused had neither demanded the amount from him nor accepted the money from him. On the other hand the accused had refused to take the money from him. The Inspector recovered the notes from the neighbouring room, placed them on the table and thereafter subjected the handkerchief and the pocket of the accused's trousers to the phenol phthalein test. The implication of this part of the evidence was that it was as a result of the handling of these articles by the Inspector that they came to have phenol phthalein powder and that was the reason why the solution turned pink. PW 3 was treated as hostile and cross-examined by the prosecution with reference to the earlier statements made by him. PW 6 followed suit and he too was declared hostile and cross-examined by the prosecution with reference to his earlier statements.

5. Of the two panch witness Kewal Krishan was not examined as he had become mentally deranged before the trial of the case. Davindar Kumar was examined as PW 4. This witness supported the prosecution case in some particulars but in regard to other particulars he made statements contrary to his earlier statements. He was also treated as hostile and cross-examined by the prosecution. In substance his chief-examination was to the effect that PW 3, PW 6 and Kewal Krishan went inside the police station, while he stayed outside with the Inspector PW 8. PW 3, PW 6 and Kewal Krishan came out after sometime and stated that the accused had accepted the bribe. The raiding party then went inside. On seeing the Inspector the accused got suspicious and threw away the currency notes across the wall into the neighbouring room. In examination-in-chief he also stated that before they proceeded to the police station for the raid, statement of both PW 3 and PW 6 had been recorded. He stated that after the bribe was given PW 3 also came out and signalled to PW 8 that the bribe had been given. Another statement made by him in chief-examination was that he was unable to remember if the Inspector questioned the accused at the time of the raid. As these statements were contrary to his earlier statements he was cross-examined by the prosecution.

6. Paras Nath (PW 8) spoke of the complaint made to him by PW 3, the action that he took, the raid etc. Regarding the actual raid he stated that PW 3, PW 6 and Kewal Krishan first went inside the police station. After sometime, PW 6 and Kewal Krishan came out and signalled that PW 3 had passed the bribe money and that PW 3 and the accused were in the room. When he went in, the

accused took out the notes from the right side pocket of his trousers and threw them across the wall into the adjoining room. He then spoke of the tests made by him etc.

7. On this evidence both the learned Sessions Judge and the High Court found the accused guilty of the two offences with which he was charged. Shri Frank Anthony, learned counsel for the appellant submitted that the courts below had made free use of the statements made by the witnesses in the course of the investigation as if such statements were substantive evidence. If those statements were excluded from consideration there would be no evidence of any demand or acceptance of bribe by the accused. All that the prosecution would be left with would be the evidence of the Inspector and PW 4 to the effect that the accused took out the currency notes from the right side pockets of his trousers and flung them across the wall into the adjoining room. That evidence according to the learned counsel would not be sufficient, even if accepted, to draw the presumption under Section 4(1) of the Prevention of Corruption Act. Reliance was placed upon the decisions of this Court in *Sita Ram v. State of Rajasthan* (AIR 1975 SC 1432 : (1975) 2 SCC 227 : 1975 SCC (Cri) 491), and *Suraj Mal v. State (Delhi Admn.)* (AIR 1979 SC 1408 : (1979) 4 SCC 725 : 1980 SCC (Cri) 159).

8. The learned counsel was right in his submission about the free use made by the courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by Section 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of Section 32(1) of the Indian Evidence Act or permitted to be proved under Section 27 of the Indian Evidence Act. Section 145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri H. S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the court in view of the definition of "proved" in Section 3 of the Evidence Act which is :

A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man, ought, under the circumstances of the particular case, to act upon the supposition that it exists.

We need say no more on the submission of Shri Marwah except that the definition of proved does not enable a court to take into consideration matters, including statements whose use is statutorily barred.

9. After excluding irrelevant material we are left with the evidence of PW 8 and that of PW 4 whose evidence corroborates that of PW 8 in several material particulars. We, however, wish to say that the evidence of PW 8 is entirely trustworthy and there is no need to seek any corroboration. We are not

prepared to accept the submission of Shri Frank Anthony that the fact that he is the very police officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of prudence which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance. We are forced to say this because of late we have come across several judgments of Courts of Session and sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation of evidence and decision of pure question of fact. While on this subject of appreciation of evidence we may also refer to an argument of Shri Frank Anthony based on the observation of a learned single Judge in *Kharaiti Lal v. State* ((1965) 1 DLT 362), that persons holding clerical posts and the like should not be called as panch witnesses, as such witnesses could not really be called independent witnesses as they would always be under fear of disciplinary action if they did not support the prosecution case. We do not think we can accept the submission of Shri Frank Anthony. The respectability and the veracity of a witness is not necessarily dependent upon his status in life and we are not prepared to say the clerks are less truthful and more amenable than their superior officers.

10. From the evidence of PW 8 and that of PW 4 we may take the following facts as established : PW 3 made a report to PW 8. He produced six currency notes of the denomination of ten rupees whose numbers were noted and which were treated with phenol phthalein powder. Thereafter the notes were handed over to PW 3. PW 3, PW 6 and Kewal Krishan went inside the police station. After sometime PW 6 and Kewal Krishan came out and gave a signal. PW 8 then went inside the police station. On seeing him the accused who was inside the police station with PW 3 took out some currency notes from the right side pocket of his trousers and threw them across the partition wall into the adjoining room. The notes which were so thrown out by the accused, were found to be the same notes which had been treated with phenol phthalein and handed over to PW 3 before the raid. The handkerchief which was taken out of the right side pocket of the trousers of the accused as well as the right side pocket itself were subjected to a test which showed that they too had come into contact with phenol phthalein powder. It may be noted that the circumstance that the handkerchief (Ex. P-4) recovered from the right side pocket of the pant on the person of the accused was subjected to the colour test which indicated the presence of phenol phthalein powder on that handkerchief was put to the appellant in his examination under Section 313, Criminal Procedure Code. Instead of giving any explanation as to how this phenol phthalein powder came on the handkerchief lying in his pocket, the appellant replied : "I know nothing about it". From these facts the irresistible inference must follow, in the absence of any explanation from the accused, that currency notes were obtained by the accused from PW 3. It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from PW 3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account

for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW 3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW 3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below.

11. We will now refer to the two decisions of this Court on which Shri Frank Anthony relied. In *Sita Ram v. State of Rajasthan* (AIR 1975 SC 1432 : (1975) 2 SCC 227 : 1975 SCC (Cri) 491), the evidence of the complainant was rejected and it was held that there was no evidence to establish that the accused had received any gratification from any person. On that finding the presumption under Section 4(1) of the Prevention of Corruption Act was not drawn. The question whether the rest of the evidence was sufficient to establish that the accused had obtained the money from the complainant was not considered. All that was taken as established was the recovery of certain money from the person of the accused and it was held that mere recovery of money was not enough to entitle the drawing of the presumption under Section 4(1) of the Prevention of Corruption Act. The Court did not consider the further question whether recovery of the money along with other circumstances could establish that the accused had obtained gratification from any person. In the present case we have found that the circumstances established by the prosecution entitled the court to hold that the accused received the gratification from PW 3. In *Suraj Mal v. State (Delhi Admn.)* (AIR 1979 SC 1408 : (1979) 4 SCC 725 : 1980 SCC (Cri) 159), also it was said mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in the case was not reliable to prove payment of bribe or to show that the accused voluntarily accepted the money. There can be no quarrel with that proposition but where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the court would certainly be entitled to draw the presumption under Section 4(1) of the Prevention of Corruption Act. In our view both the decisions are of no avail to the appellant and as already observed by us conclusions of fact must be drawn on the facts of each case and not on the facts of other cases. In other words there can be no precedents on questions of facts. The appeal is, therefore, dismissed.

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