

Gulam Mahmood A. Malek

Vs

State of Gujarat

Criminal Appeal No. 47 of 1975

(R. S. Sarkaria, P. S. Kailasam JJ)

10.06.1980

JUDGMENT

KAILASAM, J. –

1. This appeal is by special leave by the appellant against the judgment of the Gujarat High Court in Criminal Appeal 837 of 1973 dated December 12, 1974 reversing the order of acquittal of the trial Court and finding the appellant guilty of offences under Section 161, IPC and Section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him to three month's rigorous imprisonment.

2. The appellant is a bench Clerk in the Court of the City magistrate, 3rd Court, Ahmedabad. The charge against him is that on July 7, 1972 he accepted from one Natvarlal Govindlal Patel a sum of Rs. 2 as illegal gratification for the favour of granting an adjournment to July 18, 1972 in Criminal Case 497 of 1972 and for accepting another sum of Rs. 2 on July 18, 1972 from Natvarlal Govindlal Patel for showing favour in granting a date for the next hearing.

3. The prosecution case in brief is that the complaint Natvarlal Govindlal Patel was accused in the court in about four cases before the City magistrate. Out of these four cases, three cases were committed to the Court of Sessions and the trial was pending against Natvarlal Govindlal Patel. In the fourth case Natvarlal Govindlal Patel was convicted of an offence under section 420, IPC and sentenced to imprisonment for 9 months and so a fine of Rs. 1000. An appeal against conviction and sentence by Natvarlal Govindlal Patel also failed, Natvarlal Govindlal Patel stated that on several occasions, he paid the appellant a sum of Rs. 2

4. It is alleged that on July 7, 1972 Natvarlal Paid a sum of Rs. 2 to getting the case adjourned to July 18, 1972. Apart from the of Natvarlal is not corroborated, the trial Court found showing the case was adjourned to July 18, 1972 on July 4, 1972 and there was no need for any request by the complaint on July 7, 1972 for posting it on July 18 1972. The trial Court observed "there is absolutely no reason for him to go to the Bench Clerk on that date i.e. July 7, 1972 because he knew that next date was July 7, 1972". He was not required to go to court on July 7, 1972. The High Court accepted finding of the trial Court that the evidence of the complaint that he paid Rs. 2 to the accused on July 7, 1972 cannot be accepted.

5. The only charge that is left against the accused is that he accepted a sum of Rs. 2 on July 18, 1972. Though the accused demanded a sum of Rs. 2 on July 1972 itself, the complaint went to the police only on July 17, 1972 after an interval of 10 days and complained about the demand of bribe by the accused. The usual trap was set up and two marked notes dipped in anthracene powder were

handed over to the complaint for being given to the accused on demand. The case of the complaint is that he went to the court hall in the first floor where the accused was seated and asked for a date and when the accused demanded Rs. 2 he gave it to him. The evidence is said to be corroborated by panch witness Kirti Kumar Ex. 10. After the prearranged signal was given by the complaint the police officer and others came in. Regarding the recovery of Rs. 2 the evidence is that after the money was paid by the complaint to the accused, the police caught hold of the hand of the accused. Nothing was done for about 20 minutes. Later the accused was taken to the adjoining room and when the Sheristedar had gone to the Chief City Magistrate to inform him about the incident the search and the recovery was effected. The search was concluded within 15 minutes. The trial Court was of the view that the entire story about the complaints giving Rs. 2 and its recovery is highly artificial and evidence of the panch witness Kirti Kumar is unacceptable. The trial Court pointed out that in the court room there were several independent persons present when the offer of the bribe was made and accepted. Curiously even after the police came the money was not recovered immediately from the accused. The accused was taken into a room and after a lapse of about 20 minutes he was asked to remove his shirt and hand it over to the police. When the pocket of the shirt was searched Rs. 2 was recovered.

6. In appreciating the evidence in this case the background should not be forgotten. The complaint was prepared by Natvarlal who was accused in at least four cases. He did not have the least compunction in saying that he used to give money to the accused on several occasions. His case that he gave a bribe on July 7, 1972 was rejected. His complaint that the bribe was demanded on July 7, 1972 was lodged only on July 17, 1972. Apart from the fact that the complainant is in the nature of an accomplice, his story prima facie is suspect. Before any court could act on his testimony, corroboration in material particulars is necessary. The prosecution relies only on the evidence of Kirti Kumar, the panch witness for corroboration. Kirti Kumar is a student and employed in the office of Tube-Well Maintenance Department which is in the same building as that of the Anti-Corruption Department. No doubt there is no evidence that he is inimically disposed against the accused but he admitted that though his office usually starts at 10.30 a.m. he came to his office on that date 8.45 a.m. and joined the party who conducted the raid. Though the panch witnesses corroborate the complainant, regarding the recovery, the delay in effecting the recovery of the money, the failure to examine independent witnesses who were admittedly in the court hall and in the next room to which the accused was taken, and the recovery made, makes the entire prosecution case unacceptable.

7. The High Court while agreeing with the trial Court that the evidence of Natvarlal is suspicious and that it cannot be acted upon without sufficient corroboration found that the testimony of the panch witness was acceptable and afforded sufficient corroboration. The High Court based the conviction mainly on the ground that the marked notes were recovered from the person of the accused and that panch witness has spoken to the recovery of the money. In assessing the evidence of a witness the entire background of the prosecution story should be kept in mind. It is seen the complaint has no regard for truth and his preferring a false complaint about payment of bribe on July 7, 1972 and making the present complaint after ten days of the alleged demand cannot be ignored. In the circumstances, we do not think that it was safe for the High Court to base the conviction solely on the testimony of the panch witness. The trial Court has given convincing reasons as to why the evidence of the panch witness can not be accepted. In reversing the order of acquittal the High Court must find sufficient grounds for holding that the appreciation of the evidence by the trial Court is unsupportable. On going through the evidence in the case, we feel that the trial Court was right in not accepting testimony of the complaint and the panch witness and the High Court was not justified in interfering

with the order of acquittal.

8. In the circumstances we allow this appeal, set aside the conviction and sentence passed by the High Court and restore the order of acquittal by the trial Court.

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