

Salimkhan Sardarkhan

Vs

State of Gujarat

Criminal Appeal No. 117 of 1977

(Ranganath Misra, A. N. Sen JJ)

18.09.1985

ORDER

1. This appeal by special leave is directed against the judgment of the Gujarat High Court reversing the acquittal of the appellant. The appellant was tried for offences punishable under section 161 of the India Penal Code and Section 5(1)(d) read with section 5(2) of Act 2 of 1947, on the allegation of having received Rs. 50 as bribe.

2. The appellant was a police constable and at the relevant time on November 29, 1973, he was posted at S.T. Bus Stand at Bhabar. PW 1, the informant was plying a taxi and was in the habit of parking the taxi by the side of the bus stand where such parking was prohibited. It is the prosecution case that PW 1 used to pay Rs. 5 per month to the appellant as a consideration for not prosecuting him for such illegal parking. It is the further case of the prosecution that a few days before November 29, 1973, the appellant told that informant that he should pay him (appellant) a sum of Rs. 60 representing the payment for a whole year at the rate of Rs. 5 per month as he was in need of money and it was finally settled that if the amount was paid in lump the informant would get rebate of Rs. 10 and he would have to pay Rs. 50 only. On the information given by PW 1 to the Anti Corruption staff, a trap was laid. Five 10 rupee currency notes were treated with phenolphthalein powder and made over to PW 1 to be paid as bribe. PW 9 the Inspector supervised the trap. PWs 3 and 8 were called as Panches. At about 8 in the morning on November 29, 1973, PW 1 met the appellant near Jalaram Hotel. PWs 9 and his companions remained at a distance of about 150 feet. PWs 1 and 3 went into the hotel along with the appellant. According to PW 1 he took out the five 10 rupee currency notes and paid them to the appellant who received the notes in his left hand and put them into the side pocket of his Khaki shirt. Thereupon as previously arranged PW 1 placed orders in loud voice for pondas. At this stage PW 9 and others came up to the appellant and recovered the money. It is said that the currency notes were dipped into the mixture of Sodium Carbonate and the same turned rosy in colour. Similarly the pocket of shirt and the fingers of the appellant were put to test and those too turned rosy.

3. The defence was a total denial of the bribe having been demanded and taken. The appellant stated under Section 313, CrPC that "at 9.30 a.m. when I was writing my diary in the hotel, Ramji (PW 1) came in the hotel and sat by my side. Ramji then asked whether I knew the death of one woman. I told him that I do not know anything about in through I had gone to the hospital to bring the medicine. Then he took tea and got up. Then Mankadia Saheb, Patel Saheb and Morarji came there, when standing up to go the bus stand then on Ramjibhai making some sign, Mankadia Saheb asked me to take out those notes but I refused to do so and therefore Mr. Patel took out those notes and counted ..."

4. On behalf of the appellant, it had been contended before the trial court that PWs 3 and 8 the Panch witness were interested in PW 1 and PW 1 was previously working in the police and had been removed from service. It is account of this interestedness that these Panches were not reliable. The learned trial Judge did not believe the prosecution evidence regarding acceptance of Rs. 50 by the appellant and accepted the defence stand that currency notes had been inserted by PW 1 into the pocket of the appellant. The entire evidence had been taken into account by the learned trial Judge in reaching his conclusion and he acquitted the appellant of both the charges levelled against him.

5. This judgment of acquittal was assailed by the state in appeal before the High Court. Dealing with the question as to whether the currency notes could have been inserted into the appellant's pocket, the High court observed : "On our part we find it extremely difficult to accept this version. The respondent was a policeman who was about to retire in a short time. He had been in service for more than 30 years. Even if one is extremely credulous, it is not possible to believe that a policeman would not come to know if some one sitting at a distance of 6" inserts currency notes in his left hand side pocket. To us it appears that such a feat cannot be achieved. Even if it was attempted the respondent would have come to know about it". The trial court had accepted the defence plea of possibility of insertion of the currency notes without the appellant knowing about it. The High court reversed the trial court in this regard by merely drawing a presumption on the basis of the appellant having been a policeman. The appellant was already nearing the age of superannuation as found by the High Court and had been more than 30 years in service. The High court obviously lost sight of the fact that the appellant may have lost his agility and in the peculiar circumstances indicated above the notes could have been inserted without the appellant knowing it. Very clever people who are young and agile are often victimised by pickpockets and only when their valuables have been lost the fact is noticed by them. The process here is the reverse one. Instead of the pocket being picked, currency notes have been inserted into it. The view of the trial court should not have discarded merely on the basis of what has been extracted by us above from the judgment of the High Court.

6. The allegation that PWs 3 and 8 were interested in PW 1 has not been carefully examined by the High Court yet the conclusion of the trial has been disturbed. PW 7 was admittedly present at the spot and he has categorically spoken that when the appellant's fingers were put into the mixture they did not turn rosy. The trial court had referred to this fact and relied upon it. That evidence which had been accepted probalises the defence plea that the currency notes had not been received by the appellant by his left hand and, therefore the insertion of the notes into the pocket of the appellant by some other person was more probable. This is the defence plea which had been accepted by the trial court. We are inclined to think that reversal by the High Court was not warranted.

7. We accordingly allow this appeal set aside the judgment of the High Court and restore the judgment of acquittal passed by trial court. The bail bonds of the appellant are discharged.

8. The appellant was serving as a constable and was due to superannuate on September 10, 1979. There is nothing on record to show as to what happened to him when the judgment of acquittal was set aside. We however hope and believe that the reversal of the judgment of the High Court by us will be taken due note of and such relief as the appellant to in regard to his service benefits would be extended to him without any delay.

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