

Sarup Chand

Vs

State of Punjab

Criminal Appeal No. 174 of 1984

(M. M. Dutt, G. L. Oza JJ)

02.03.1987

JUDGMENT

DUTT, J. -

1. This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court affirming the order of conviction of the appellant under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and under Section 161 IPC, and also upholding the sentence of fine as passed by the learned Special Judge, Sangrur, but reducing the sentence of imprisonment from two years to one year under Section 5 (1)(d) read with Section 5(2) of the Prevention of Corruption Act; the sentence of one year's rigorous imprisonment under Section 161 IPC has been sustained. Needless to say, the sentences of imprisonment have been directed to run concurrently.

2. The prosecution case is that PW 4 Gurcharan Singh had entered into an agreement to mortgage his land to one Baldev Singh for Rs. 55,000, and for the purpose of effecting the mortgage, he required a copy of the jamabandi. The appellant, who is the revenue patwari of the village, was approached by PW 4 on March 3, 1981 when he demanded a sum of Rs. 300 for supplying a copy of the jamabandi. The amount was settled at Rs. 200. It was arranged that PW 4 would meet the appellant at the canal bridge at 3.00 p.m. on that day. PW 4 was advised to go to the Vigilance Inspector, Sangrur. Accordingly, he went there and made a statement to the Vigilance Inspector, Gurdial Singh (PW 7). PW 4 also handed over to PW 7 two currency notes of Rs. 100 each. PW 7 applied phenolphthalein powder to the currency notes noted their numbers and handed back the same to PW 4. Thereafter, PW 4 along with PW 7 and some constables went to the village and joined PW 5 Dev Singh and PW 6 Ram Sarup and went to the canal bridge in a jeep. Gurcharan Singh was instructed to pay the money to the appellant and Dev Singh was asked to follow Gurcharan Singh and give a signal after the money had been paid.

3. The appellant came to the canal bridge at about 3.15 p.m. and demanded money from Gurcharan Singh who handed over the marked currency notes to the appellant. The appellant put the notes in the inside pocket of his coat. At the point, Dev Singh gave the signal whereupon Gurdial Singh, the Vigilance Inspector and other members of the raiding party apprehended the appellant. The Vigilance Inspector disclosed his identity to the appellant and got his person searched and recovered the currency notes.

4. After completion of the investigation, the appellant was charged with the offences and sent up for trial.

5. The learned Special Judge believed the prosecution witnesses and convicted and sentenced the appellant as mentioned above. On appeal, the High Court affirmed the conviction and, as stated already, reduced the sentence of imprisonment from two years' RI to one year's RI under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act sustaining, however, the sentence of one year's RI under Section 161 IPC and also the sentence of fine.

6. The learned counsel, appearing on behalf of the appellant, has strenuously urged that the complainant, PW 4 Gurcharan Singh, should not be believed at all. Our attention has been drawn to the evidence of PW 4 that except 22 canals of land which he mortgaged with one Ram Sarup, he had sold all his land in village Khanal-Kalan. It is submitted that in view of the fact that no land was left for being mortgaged, there was no necessity for any copy of the jamabandi and the latter demanded an illegal gratification of Rs. 200, is false. It is also submitted by the learned counsel that there is enmity between Gurcharan Singh and the appellant inasmuch as at the instance of the appellant the mutation entries in the names of the sons of the complainant had been reviewed.

7. It is true that PW 4 has stated in his cross-examination that he had sold all his land in village Khanal-Kalan. It is, however, not clear when he had sold his land. The incident had taken place on March 3, 1981 and he deposed on January 14, 1982. The appellant should have got a clarification from PW 4 as to the date of sale of his land in that village. As there is nothing to show when he had sold all his land, it is difficult to come to any conclusion that he had no land for effecting any mortgage and consequently, there was no necessity for a copy of the jamabandi.

8. We do not think that because the entries in the names of the sons of the complainant in the revenue record were reviewed at the instance of the appellant, Gurcharan Singh would have any grudge against the appellant. Therefore, we are not in a position to discard the evidence of PW 4 on the ground that he had enmity against the appellant and, as such, set up a false story against him.

9. As to the other two witnesses, namely, Dev Singh (PW 5) and Ram Sarup (PW) 6, it is submitted on behalf of the appellant that their evidence should not also be relied upon as they are related to Gurcharan Singh. There is no foundation for this contention. It appears that Gurcharan Singh and PWs 5 and 6 are the residents of the same village. They belong to the same patti, but that does not mean that they are related with one another. So far as Dev Singh is concerned, it is pointed out that in his cross-examination he admitted that he used to beat his wife and the appellant rescued her many times. We do not think that PW 5 Dev Singh has made any admission in that regard in the cross-examination. Of course, what has been recorded in the deposition prima facie suggests that such an admission was made by him. His deposition, as recorded, is as follows :

It is correct that I used to beat my wife and the accused rescued her many times.

10. In our opinion, there has been some error in recording the deposition. The word 'correct' in the deposition should be 'incorrect'. It appears from the manner in which the deposition has been recorded by the learned Special Judge that whenever he denied any suggestion, made on behalf of the appellant during his cross-examination, it has been recorded as "It is incorrect etc." It is apparent that in place of the word 'incorrect' it has been wrongly recorded as 'correct'. Needless to say, PW 5 would not make an admission that he used to beat his wife.

11. The learned counsel for the appellant has not been able to make any criticism of the evidence of the Vigilance Inspector, Gurdial Singh (PW 7). It is categorically stated by him that the sum of Rs. 200 was recovered from the accused. As the currency notes contained phenolphthalein powder, the

fingers of the accused were dipped into the solution of sodium carbide and the colour of the solution turned pink. Moreover, the inner pocket of the coat in which the appellant had kept the said two currency notes was also dipped into sodium carbide solution and the colour of the solution also turned pink. No explanation has been given by the appellant why he received the money and kept the same in his pocket. Indeed, no suggestion was given to any witness that no money was received by the appellant.

12. The learned Special Judge and the High Court have believed the evidence of the witnesses and we do not find any reason not to believe them.

13. We, therefore, affirm the conviction of the appellant under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and also under Section 161 IPC. In view, however, of the fact that about six years have passed from the date of the incident and this is the first time the appellant has committed an offence. The sentence of fine is, however, sustained.

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