

Kewal Krishan S/O Dev Raj

Vs

State of Punjab

Criminal Appeal No. 36 of 1984

(B. C. Ray, S. R. Pandian JJ)

31.01.1989

JUDGMENT

RATNAVEL PANDIAN –

1. This appeal by special leave granted under Article 136 of the Constitution of India is preferred against the correctness of the judgment dated September 12, 1983 passed by the High Court of Punjab and Haryana dismissing the criminal appeal preferred by the appellant, Kewal Krishan challenging the judgment of the Special Judge, Ferozepur in Corruption Case No. 6 of 1982 convicting the appellant under Section 5(2) of the Prevention of Corruption Act and under Section 161 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for a period of three years and pay a fine of Rs. 1000 for the conviction under each of the charges with the direction that in default of payment of fine in each case, the appellant should suffer rigorous imprisonment for one year and with a further direction that the substantive sentences of imprisonment imposed under both the charges are to run concurrently.

2. The prosecution version in brief is as follows :

The appellants was a Head Constable attached to the Police Station, Ferozepur Cantt. On November 23, 1981 at about 7.30 p.m. while this appellant and his co-accused, namely, Gurcharan Singh, Inder Singh and Gurdev Singh (who were arrayed as accused 2 to 4 and acquitted by the trial court) were on patrol duty, they intercepted a tempo driven by PW 9 and found the tempo being loaded with 8 tubes containing illicit liquor. PW 7 who is said to be the owner of the contraband, was in the tempo. The appellant demanded a sum of Rs. 3000 as illegal gratification stating that in failure of the payment of the amount, PW 7 would be taken to the CIA staff. Ultimately a bargain was struck at Rs. 2500. PW 7 accompanied by the appellant went to his house, got a sum of Rs. 1200 from his wife (PW 10) who in turn got that amount from her neighbour on pledging her jewels and gave that amount to be appellant with the promise that the balance amount of Rs. 1300 would be paid on the following day. Besides this amount, it is stated that the appellant took three tubes of illicit liquor from the tempo and obtained thumb impression of PW 7 on some blank papers and threatened that in case PW 7 failed to comply with his promise of payment of the balance amount, these papers would be used as recovery memos. The appellant paid a sum of Rs. 225 to each of the Constables and retained the major portion of Rs. 525. This led to a quarrel between the appellant and Constable Gurcharan Singh during the course of which Gurcharan Singh was assaulted by the appellant. On November 25, 1981, Gurcharan Singh gave a written complaint to the

ASP under Ex. PH. The ASP directed an investigation of his complaint by the Inspector of Police (PW 11). After the investigation, PW 11 filed the charge-sheet against this PW 1 to PW 12 and on the side of the defence DW 1 and DW 2 were examined. The case of the appellant and the other accused was one of total denial. The trial court even before assessing the evidence recorded a finding in paragraph 4 of its judgment with regard to the case of A 2 to A 4, the relevant portion of which reads thus :

... there is no evidence incriminating, particularly Gurdev Singh and Inder Singh accused. Against Gurcharan Singh also only very brief reference appears in the evidence and for obvious reasons, he has also to be let off.

3. After making the observation with regard to A 2 to A 4 as above, the trial court found A 1 guilty and convicted and sentenced him as stated above. The State has not preferred any appeal against acquittal of A 2 to A 4. The convicted appellant (Kewal Krishan) preferred an appeal before the High Court which dismissed the appeal, in our view, in a very summary manner observing as follows :

The evidence of this witness looks very natural and truthful. I am of the considered view that the evidence of this witness has statement of his wife Agya Rani (PW 10) who arranged for the money to be paid to the appellant. The recovery of the tube of illicit liquor from the appellant lends further assurance to the prosecution case. The conviction recorded by the learned Special Judge is well merited.

4. On a thorough examination of the evidence especially of PWs 7 and 10 on which the High Court has rested this finding, we are compelled to disagree with the observation and finding of the High Court for the reasons to be presently stated.

5. This case was not registered on any complaint of PW 7 nor any part of the sum [said to have been received by the appellant in the company of the acquitted accused (A 2) from PW] had been recovered. On the other hand, the prosecution claims to have unearthed the offence only on the complaint made by Gurcharan Singh (A 2). It is a case of the prosecution that the offence was committed on November 23, 1981. But the case was registered only on November 26, 1981. PW 12 on receipt of the first information report, took up investigation on November 27, 1981. According to PW 12, he recorded the statement of PWs 7 and 10 only on December 13, 1981 i.e. to say nearly 21 days after the occurrence. But it is surprising to note that PW 7 swears that PW 12 met him on the second or third day of the offence and recorded his statement and thereafter PW 12 did not contact him at all. PW 10 has deposed that the police recorded her statement on the very next day of the occurrence and thereafter she did not meet any police. Thus we find that the evidence of PW 12 on the one hand and the evidence of PW 7 and PW 10 on the other hand is irreconcilably in conflict even with reference to the dates of examination of PWs 7 and 10. If the evidence of PW 7 and PW 10 is to be accepted with regard to the dates of their examination, we have to hold that even earlier to the registration of the case, these two witnesses were contacted by the police and not afterwards. It is brought out in the cross-examination that the evidence of PW 7 in court is not in conformity with the version of his statement (Ex. DA) recorded during the investigation and quite a number of material omissions and contradictions are brought out. PW 7 has gone even to the extent of shielding Gurcharan Singh (acquitted A 2) stating that Gurcharan Singh did not accompany the appellant to his house which part of the evidence is opposed to the prosecution case. Though this witness states that he did not trade in liquor, in the next breath states that he does remember whether

he was involved in 20 to 25 excise cases. Then he admits that 10 to 12 excise cases were on trial against him. As per the prosecution, PW 7 was a bootlegger. It is brought out from this witness that he had not told the Investigation Officer that his wife raised an amount of Rs. 1200 by pawning her ornaments. When the witness was asked to explain the omissions found in his statement Ex. DA, he would unhesitatingly reply, "I cannot explain these omissions". From PW 10 it is elicited that she during the investigation stated to the police that her husband with appellant came to her house even at 8 p.m. while the case of the prosecution is that the appellant came to the house of PW 10 only at about 10.30 p.m. or 11 p.m. DW 1 who was then the writer in the police station (MHC) states that the appellant was at the station at 10.05 p.m. If it is so, as rightly pointed out by the learned defence counsel, the appellant could not have accompanied PW 7 at 10.30 or 11 p.m. to his house to get the illegal gratification. Thus a scrutiny of the evidence of PWs 7 and 10 reveals that their version is nothing but a conglomeration of contradictions. In our view their evidence is unworthy of any credence. Further the observation of the High Court that the recovery of the illicit liquor from the room of the appellant lends assurance to the prosecution case is not acceptable because according to PW 4 (the Assistance Sub-Inspector of Police) both the appellant and Gurcharan Singh was under the influence of intoxication at the time when he came to the police station.

6. For all the reasons stated above, we hold that the evidence adduced by the prosecution is totally unacceptable and untrustworthy. The reasoning given by the High Court that PW 7 is a natural and truthful witness and his evidence is corroborated by PW 10 is not well founded, but on the contrary the evidence of these two witnesses for the reasons stated above cannot form basis for sustaining the conviction recorded by the courts below.

7. In the result, the conviction and sentence recorded under both the charges by the trial court and confirmed by the appellate court are set aside and the appellant is acquitted. The fine amount, if already paid, is directed to be refunded.

8. The appeal is allowed accordingly.

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