

Tej Bahadur Singh

Vs

State of U. P.

Criminal Appeal No. 522 of 1982

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

08.12.1989

JUDGMENT

PUNCHHI, J.-

1. This appeal by special leave is against the judgment and order of Allahabad High Court maintaining the convictions of the appellant recorded by the additional Special Judge, Allahabad under Section 161 Indian Penal Code and under Section 5 (2) of the Prevention of Corruption Act and the sentences imposed thereunder.
2. The Appellant, Tej Bahadur Singh, in the year 1975 was working as a Sub-Inspector in the local Intelligence Unit at Allahabad. The complainant, Raisuddin was posted there as a train Examiner. He used to reside in his own house in the locality known as Shahrarabagh. On December 18, 1975, the appellant is said to have visited the house of Raisuddin introducing himself as an official of the Intelligence Department. The appellant after making some enquiries from the complainant informed the latter that he was reported to be an active member of the Jamat-e-Islami and Muslim Majlis, threatening him as well that if these facts were reported to the authorities not only would he be adversely affected servicewise but could as well be detained preventively. Having gained ground, the appellant is said to have demanded a sum of Rs. 500 from the complainant as price for his desisting from taking any action in the matter. Though to begin with the complainant denied being a member of any of those organisations, the appellant's insistence on the payment of bribe money made the complainant agree to such course and for the purpose he sought time to arrange the money. As settled with the appellant the complainant agreed to pay to him the said amount of Rs. 500 four days later on December 21, 1975 at 7.30 p. m. in the complainant's house. However, in this meeting the complainant, as alleged, could not know the name of the appellant.
3. The complainant did not relish the idea of being dealt with in this manner. Accordingly, on the following day on December 19, 1975 he made a written complaint to the District Magistrate, Allahabad, suggesting laying of a trap for arresting the unknown public servant who had come to his house and demanded illegal gratification from him. The District Magistrate on the receipt of the complaint ordered laying of such a trap. The job was assigned to Shri H. N. Srivastava, Deputy Superintendent of Police, Circle Officer. In pursuance thereof, on the morning of December 21, 1975, Shri Srivastava had the statement of the complainant recorded by the City Magistrate, Allahabad. The numbers of currency notes worth Rs. 500 which had to pass as bribe were given in such statement. Then in the evening at about 5.00 p. m. the same currency notes were produced before Shri Srivastava for preparation of a memorandum in that regard in the presence of public witnesses. The trap party was then formed consisting of witnesses, namely, Raisuddin (PW 1), Gulam Mohammed (PW 2), Syed Kazim Hasan (PW 3), and Shri H. N. Srivastava, Deputy

Superintendent of Police (PW 5). The trap party and other police functionaries boarded a jeep from Kotwali police station and went to the house of the complainant reaching there at about 6.20 p. m. The jeep was parked on the road wherefrom they walked a hundred paces in a lane to reach the complainant's house.

4. Now some details of the house of the petitioner would be relevant. It is seen from the site plan that the outer door of the house of the petitioner faces the lane and opens in a small room admeasuring 8 ft. x 8 ft. Which measures 8 ft. x 12 ft. There is a connecting door in between these rooms, besides a window, and the said window and the door were stated to be curtained. The trap party, as goes the prosecution case, entrenched themselves in the inner room whereas the complainant Raisuddin sat in the drawing room in wait of the appellant. Both the rooms were lit by electric tubelight and it was about 6.20 p. m. at that time. Statedly, the appellant came to the house of the complainant about 15 minutes after the arrival of the trap party and was made to sit in the drawing room. The inmates of the second room were so placed as to be capable not only of listening to the talk between the complainant and the appellant but also see through the curtains what was to happen between the two. Within the hearing of the members of the trap party, it is alleged that the complainant asked the appellant as to what was the charge against him and having been repetitively told about his association with the Jamat-e-Islami and Muslim Majlis and the possibility of his being detained preventively, the demand of Rs. 500 was repeated by the appellant. At that juncture, the complainant, Raisuddin handed over those very currency notes of Rs. 500 to the appellant reference of which has already been made/ On taking those, he kept them in the right pocket of his coat. The members of the trap party had heard and seen everything. At that juncture, the trap party headed by Shri H. N. Srivastava, Deputy Superintendent of Police (PW 5), entered the drawing room. He disclosed his identity and had from the appellant his correct name and address. After offering himself for search to the appellant, Shri Srivastava (PW 5) carried our the search of the appellant and recovered the said identified currency notes worth Rs. 500 from the right pocket of the coat of the appellant. The appellant was then taken into custody and brought to the police station. A report was lodged by Shri Srivastava at Kotwali police station the same day on December 21, 1975 at 9 p. m. The matter was then investigated by another Deputy Superintendent of Police, Shri R. P. Bhanu. After completion of investigation the case was put up for trial before the Additional Special Judge, Allahabad.

5. At the trial the prosecution produced the four members of the trap party aforementioned and two witnesses of the investigation in support of its case. On the other hand, the appellant took the plea that the prosecution story was totally false and had been connected because Shri Srivastava was displease with him and had been instrumental in falsely implicating him. His counter-version was that on December 21, 1975 the day of the original occurrence, Raja Vishwanath Pratap Singh, the then Union Deputy Minister (now the Prime Minister) was to arrive at Allahabad by Kalka Mail and since he was deputed at the railway station on shadow duty, he was present there at about 5.30 p. m. wherefrom he was taken by Shri Srivastava to the police station in a jeep forcibly, implicating him in this case. He examined four witnesses in defence. Disbelieving the defence and accepting the prosecution case in entirety the Additional Special Judge, Allahabad, recorded conviction of the appellant under the two counts aforementioned and awarded sentence. The appeal of the appellant before the High Court having failed has given rise to the instant appeal.

6. Learned counsel for the appellant was at pains to re-read the statements of Raisuddin (PW 1) the complainant Ghulam Mohammad (PW 2) a government servant, who was called to the police station by a constable to be a trap witness and Kazim Hasan (PW 3) an employee of a private company, who also was called to the police station for the same purpose and that of Shri Srivastava

(PW 4) the trap leader, laying stress on minor discrepancies with regard to the incident. Such effort was, however, futile for we remained unimpressed with such approach; more so, because of the scope of Article 136 of the Constitution. The narration of the prosecution case as is given by the prosecution witnesses, to say the least, was foolproof inasmuch as none of the witnesses faulted (sic faltered) anywhere in his respective statement. On that basis, we could have dismissed the appeal, yet we do not. Rather the foolproof narration given by the prosecution witnesses has left us with the impression that the story put forward is lifeless and mechanical and does not stand scrutiny when tested on the preponderance of probabilities, having regard to human behaviour in the day-to-day happenings when moving on the road of life and on that analysis, some doubts have entered our mind which we express hereafter.

7. Those were the days of 'Emergency' declared in the country. The administrative air was changed and abnormal; so was people's behaviour. Suspicion and caution permeated the attitude and functioning of the administrators and the administered. Bearing that in mind and in that backdrop the prosecution case need have been viewed by the High Court. Now the complainant had stated that at the time of the incident he was a member of the Ticket Checker Staff Union of the Northern Railway and had been its General Secretary as well. He admitted that during the Emergency all the railway unions were under police surveillance. On December 18, 1975 when the appellant is said to have first visited him at his house the complainant could not find his name or his correct designation. The fact that the complainant was accused at that time of being a member of the Jamat-e-Islami or Muslim Majlis may have put him to alarm but that by itself could not have put him to such a terror so as to complain against the unknown public servant in writing suggesting arranging of a trap. Steps taken in that regard i. e. putting a written complaint to the District Magistrate, having obtained an order for a trap, meeting Shri Srivastava, Deputy Superintendent of police as asked, having a statement recorded by the City Magistrate, having the numbers of currency notes worth Rs. 500 mentioned in the statement, having a memorandum prepared in that regard at the police station and finally entrenching the trap party in his house, are steps based not on probability but on a mechanical certainty that the appellant would in all events visit the house of the complainant on December 21, 1975 at 7.30 p. m. The complainant did not even for a moment entertain the doubt that the visitor of December 18, 1975 could well be a fraud or a fake extortionist. He did not let even the appellant repeat the visit a time or two before coming to the conclusion that he was being subjected to pressure for doling out a substantial sum as bribe. It could well be that the appellant might not have turned up. It was speculative at least. Rather the complainant straightway taking steps of arranging a trap in these circumstances sets a doubt in our mind. This is one circumstance which sows such doubt.

8. The second circumstance is that it is inconceivable that the appellant, who is himself a Vigilance Sub-Inspector, when scheduling his visit to the house of the complainant on December 21, 1975 would himself be non-vigilant about the surroundings in which he was walking into and placing himself. On the outer scene the parking of the jeep on the roadside, wherefrom emanates a street in which the house of the complainant is situated, would by itself make him suspicious as it would not have gone unnoticed to him. That jeep may or may not have had any distinctive mark of being a police jeep, as sought to be inferred from the evidence, but that is of no consequence. The parked jeep would have caused suspicion in the mind of the appellant at least to be cautious. Further according to the complainant, the time set for meeting was 7.30 p. m. The fact that the trap party came to the house of the complainant at 6.20 p. m., more than an hour before the appointed time, are particulars which do not by themselves inspire confidence having regard to normal human behaviour.

9. The third circumstance of significance is about the happening of the incident in the house of the complainant itself. Now when the appellant had entered the house an hour earlier before his scheduled visit, it cannot be expected that the members of trap party which were said to be sitting in the adjoining back room had become instantly stone-still so as to conceal their presence from the appellant. The dimensions of those two rooms 8ft. x 8ft. and 8ft. x 12ft. separated merely by a window and a door on which curtains were hanging are suggestive of the fact that if the happenings in one room could be known to the inmates of the other, the converse would also be true. Relatively, if the members of the trap party could see and hear what was happening in the drawing room through the curtains, the inmates of the drawing room could also see the presence of others in the connecting room, huddled as they were in that small space. The appellant in these circumstances could not be expected to throw caution to winds and either ignore or become indifferent of the presence of the inmates of the adjoining room especially when both rooms were lit by electric tubelight and there was just a curtain intervening. Additionally, in such a situation there awakens the sixth sense in every human being so as to detect the presence of another in such close surroundings. The appellant could not have been so foolhardy to accept bribe in circumstances which were obviously suspicious, and that too in the house of the complainant, running the risk of being entrapped.

10. The totality of the aforesaid circumstances thus makes us to come to the conclusion that it would not be safe to sustain the conviction of the appellant on the charges framed. We may, however, hasten to add that we should not be taken to have accepted the defence of the appellant about his being present at the railway station on the evening of the day of the incident wherefrom he claims to have been arrested by Shri Srivastava, Deputy Superintendent of Police. The dust of doubt thus raised must inevitably fall on the prosecution leading to the acquittal of the appellant, and this is done by acceptance of the appeal. Fine, if paid, need be refunded to him. Ordered accordingly.

</html