

Ajit Kumar Vasantlal Zaveri

Vs

State of Gujarat

Criminal Appeal No. 46 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

04.09.1992

JUDGEMENT

K. JAYACHANDRA REDDY,J.

1. The sole appellant was tried under Section 161, I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 ('Act' for short). The Special Judge, Surat acquitted him. The State preferred an appeal and the High Court reversed the order of acquittal and convicted the appellant under Section 161, I.P.C. and Section 5(1)(d) read with Section 5(2) of the Act. He was sentenced under Section 161, I.P.C. to three months' R. 1. and to pay a fine of Rs. 200/- in default of payment of which to suffer R.I. for one month. However, no separate sentence was awarded for the offence under Section 5(1)(d) read with Section 5(2) of the Act.

2. The prosecution case is that P.W. 1 started a tailoring shop in the month of January, 1976. For the purpose of furnishing his shop he applied for a loan to the Bank of Baroda and his application was pending. On 9-2-1976 he applied for a licence under the Shops and Establishments Act after paying the necessary fee. Later he went to the office of the Municipal Corporation and found the accused, an Inspector under the Shops and Establishments Act in his office and requested him for a licence. The accused demanded a sum of Rs. 30/- as bribe. On 21-2-76 he happened to meet the Municipal Corporator and told him about the demand made by the accused for issuance of the licence. He was advised to give a complaint to the A.C.B. Thereupon the Corporator took P.W. 1 to the A.C.B. Office and there he made a complaint before the Inspector. In the presence of the panchas the Inspector prepared a panchnama treating three currency notes of Rs. 10/- each with phenolphthalein powder and sodium calcium borate and thereafter P.W. 1 was asked to give the amount to the accused and thus a trap was laid. Panch witness No. 1 and P.W. 1 went to the office of the accused and the tainted money was offered and it was accepted by the accused. On a signal being given the trap party rushed in and recovered the three currency notes and the accused was asked to put his hands in a glass full of water which turned pink. A panchnama was prepared and the statements of the witnesses were recorded and sanction was obtained and the chargesheet was laid. The plea of the accused was that he had not demanded any amount and that the complainant asked for a licence and he got up to search for the licence. At that time the complainant tried to thrust the amount in his pocket and the accused gave a push as a result of which the currency notes fell on the table. Just at that time the raiding party entered and recovered the page-SC2065

3. The trial Court, if we may say so, on flimsy grounds rejected the entire evidence and acquitted him. The appellate Court while reversing the order of acquittal has taken into consideration the evidence of the panch witnesses and the Inspector as well as the statement of the accused and reached the conclusion that the reasons given by the trial Court were highly unsound and warranted

interference and accordingly convicted the appellant.

4. In this appeal, the learned counsel for the appellant submitted that the main Investigating Officer has not been examined and that the plea of the accused appears to be natural and the amount alleged to be demanded by the accused was only Rs. 30/-, a small sum and that all the circumstances go to show that the case was fabricated. We see no force in any one of these submissions. The prosecution has examined another police officer who was in the company of the Inspector. He has spoken to all the details. It must be noted that the accused also has not disputed the trap and recovery of tainted money of Rs. 30/-. While it is the prosecution case that the amount was recovered from the accused, the plea of the accused has been that when the amount was being trusted he pushed the hand of the complainant aside and the notes fell on the table. The accused however admitted that when his hands were put into water the same turned pink. But his explanation has been that he was using a red ink pen and therefore his hands got stained and that was the reason of the water being turned pink. This explanation on the face of it is artificial. We find from the High Court judgment that all the circumstances have been taken into consideration and cogent and convincing reasons have been given for accepting the prosecution case. There are no merits in this appeal. Now coming to the sentence, the occurrence is said to have taken place in the year 1976 and the accused has undergone the agony of trial which took a long time and he has lost his job and has a family to support. Now at this distance of time we do not think that it is a fit case to send him back to the jail particularly having regard to the amount of bribe involved. He has been sentenced only under Section 161 and there is no minimum sentence prescribed. From the records it appears that he was in jail for some time during the trial i.e. from the date of arrest to the date of release on bail. Under these circumstances, while confirming the conviction we reduce the sentence of imprisonment to the period already undergone. The sentence of fine with default clause, however, is confirmed. Subject to this modification of sentence, the appeal is dismissed.

Appeal dismissed.

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