

Shantilal Kashibhai Patel

Vs

State of Gujarat

Criminal Appeal No. 646 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

02.11.1992

JUDGMENT

YOGESHWAR DAYAL, J. –

1. On September 4, 1992 this Court had directed issue of notice on the special leave petition as well as on application for bail returnable in four weeks and it was indicated that the matter will be heard and finally decided on that date. However, there is no appearance on behalf of the State today.
2. Leave granted. The matter is being disposed of.
3. This is an appeal by special leave against the judgment of the Division Bench of the Gujarat High Court dated April 3, 1992.
4. Four accused persons were tried by Special Judge, Ahmedabad. Out of the said four accused only one of the accused person, namely - accused 2, a Food Inspectors has been convicted of offences punishable under Section 161 of the Indian Penal Code and Sections 5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947.
5. The three other accused were acquitted by the learned Special Judge. The State filed the appeal against the acquittal of the three acquitted accused whereas accused 2 filed an appeal against his conviction and sentence.
6. The High Court dismissed the appeal of the State against the acquittal of accused 1, 3 and 4 and at the same time dismissed the appeal of accused 2. Accused 2 has come up to this Court by way of a special leave petition against the aforesaid decision of the Division Bench.
7. The prosecution case is that the complainant Mohanlal Chhatramal Samnani is running a shop and inter alia dealing in Kimam opposite Maninagar Railway Station, Ahmedabad. On January 7, 1984, the Chief Inspector in the Health Department (accused 1) and accused 2 (appellant herein) and accused 4, who were working under him as Food Inspectors, had approached the complainant at his shop and stated that they had been in inspecting the food articles for adulteration and took a bottle of Kimam and opened it for sample and the complainant told them that it may be taken in sealed condition but they refused to do so and stated that the sample would not be passed and the complainant would be put to difficulties. This was stated by accused 1 who further stated that the complaint should be practical. The complainant enquired as to what was meant by being practical and the accused 2 (appellant) replied that "being practical" means "money". The complainant then enquired as to the amount and he was told Rs. 5,000. The complainant was not willing to make such

payment. However, he was pressurised. The complainant stated that he did not have that much money and, therefore, he was asked to pay whatever the amount he could pay immediately and the complainant opened his 'galla' and gave Rs. 600 to accused 1.

8. The next day, on January 8, 1984, accused 4 had come to his shop and enquired whether the money had been arranged but the complainant replied that it could not be done. However, under pressure he gave Rs. 500 to accused 4 and asked for more time for making arrangement for more amount. Thereafter, after about 15 days accused 2 and 4 had come to his shop demanding illegal gratification and the complainant requested for four days time. After four days against the accused 2 and 3 came to his shop and the complainant again stated that the money could not be arranged and he may be given two days' time. After great difficulties, on complainant making a promise that he would pay the amount with hundred per cent certainty, and on this final promise accused 2 and 4 asked the complainant to keep the money ready on January 30, 1984 at 8.00 p.m.

9. On January 30, 1984 the complainant approached the officer of the Anti-Corruption Bureau and gave his complaint. Two Panchas were called by the A.C.B. In the presence of those two Panchas, the numbers of 40 currency notes of Rs. 100 each were noted down in two batches of 20 each. Each of these currency notes was treated with anthracene powder and a demonstration was made and shown to the complainant and the Panaches. One bundle of Rs. 2000 was to be given to accused 1 and another bundle was to be given to accused 2 and 4. Panch No. 1 was to remain with the complainant and Panch No. 2 was to remain with the raiding party.

10. After making this preliminary panchnama the raiding party went to Maninagar and the complainant and Panch No. 1 went to the shop at about 6.30 p.m. and the others waited outside a little away. After about an hour accused 2 came to the shop and the complainant asked accused 2 to come and sit but the accused 2 replied that he was in a hurry and asked the complainant to come with him where another Inspector was waiting near the Post Office. Thereafter, the complainant went with accused 2 and Panch No. 1 followed them. Accused 3 and Jinto (absconding accused) were waiting and accused 2 introduced them to the complaint and asked the complainant as to what he had done about the money which was earlier talked about. The complainant replied that he had brought the money. The accused 2 demanded the same and the complainant took out the bundle of currency notes from one of his pockets and gave it to accused 2 who accepted it by his right hand and asked the complainant as to how much it was and the complainant replied that it was Rs. 2,000 and accused 2 asked as to for how many persons it was and the complainant replied that it was for three persons. The accused 2 asked accused 3 to count the same and while Modi, accused 3, was counting the same, the complaint gave the signal and the raiding party which had followed them immediately came there along with Panch No. 2. All of them went to the shop of the complainant where Modi was asked to give currency notes to the Panchas and exercise of ultra-violet lamp was undertaken and in the ordinary light, hands of each of the three Food Inspectors did not indicate any light change. Thereafter, under ultra-violet, hands of all were seen and the hands of Panch No. 2 and the members of the raiding party did not show any change on their hands. The hands of accused 2 (appellant) were seen in the ultra-violet light and the four fingers and thumb of the right hand showed the light blue colour and white sparkle. So also was the position with regard to the right hand fingers and thumb of Jinto and his clothes, namely - the right hand pocket of the pant, so also the fingers and thumb of both the hands of accused 3, Modi, and the left hand pocket and the woollen cap of Modi showed white sparkle and the light blue colour. The numbers of currency notes were compared with the numbers which were recorded in the preliminary panchnama and they were found to tally. The currency notes also showed the anthracene powder in the ultra-violet light. The complainant's hands were also seen and they also showed the anthracene powder in ultra-violet light

so also both the inside pockets of his coat.

11. Thereafter, the complainant and the Panchas went to the residence of accused 1. The complainant along with Panch No. 1 went to the first floor of the flat of accused 1. Accused 1 opened the door and asked these people to come inside and made them sit. The complainant offered money to accused 1. He, however refused to accept the same and, therefore, they came out and no raid was made.

12. As stated earlier all the accused were tried by the learned Special Judge and accused 1, 3 and 4 were acquitted and ultimately the appeal of the State against their acquittal was dismissed by the High Court. The High Court dismissed the appeal of accused 2 also after noticing -

(i) that the Panchas did not recognize any of the accused persons;

(ii) that there is no corroboration to what had happened in the meetings preceding the raid on January 30, 1984;

(iii) that the evidence of the complainant was disinterested and did not require any corroboration; and

(iv) that the hands of accused 2 were seen in ultra-violet light and four fingers and thumb of the right hand showed the light blue colour and white sparkle.

13. The High Court had acquitted accused 3 and 4 in spite of the fact that their fingers have also showed light blue colour and white sparkle in ultra-violet light but the High Court was not prepared to rely on that circumstance alone with the uncorroborated testimony of the complainant since according to the High Court no demand had been made by accused 3 and 4 from the complainant for any bribe.

14. It will be noticed that not only the two Panchas could not recognize any of the accused persons but there is no corroboration to the various statements of the complainant vis-a-vis accused 1 to 4 by the police officials who constituted the raiding party either. The raiding party including the police officials reached the spot at a time when they could neither hear the talk, if any, between the accused 2 and the complainant nor could see the alleged acceptance of money by accused 2 and passing it on to accused 3. We are thus left with the sole testimony of the complainant and the test of seeing anthracene powder on the hands and fingers of accused 2. The High Court had acquitted accused 3 and did not find it safe to convict him on the sole testimony of the complainant supported by the test of seeing anthracene powder on the hands and fingers of accused 3 in ultra-violet light. But on the same evidence the High Court upheld the conviction of accused 2 relying on the same evidence which was rejected vis-a-vis accused 3.

15. The High Court felt that the complainant was totally disinterested in the success of the raid and could not be called interested person and thus felt no need for corroboration of his statement.

16. The fact remains that the High Court totally ignored that statement of the complainant made during cross-examination on behalf of accused 2. In his cross-examination the complainant stated :

"It is true that accused 2 used to carry out raids on and often on Pan gallas. It is true that I had felt that he is harassing businessmen selling Pan and Masalas. It is true that that is why we thought of teaching him a lesson. It is true that in my statement before

police, I have not stated that when accused 1 asked as to why have you come, then I told that I am Kimamwala of Maninagar and according to talk with Shantilal, I have come to give money."

17. It is clear that it is not a case merely of a complainant from whom bribe was demanded and he was forced to pay the same but the complainant had thought of teaching a lesson to accused 2 for harassing the businessmen selling Pan Masalas and, therefore, it could not be said that the complainant was not interested in success or otherwise of the raid. In fact that High Court acquitted accused 3, though the evidence against him was the same as it was against accused 2. When the High Court could not find it safe to rely on the uncorroborated statement of the complainant while upholding the acquittal of accused 3 we also find it unsafe to rely on the ipse dixit of the complainant which is unsupported by both the Panch witnesses and the police officials who formed the raiding party for upholding the conviction of accused 2, appellant before us.

18. The result is that the appeal succeeds, the conviction and sentence of the appellant is set aside and the appellant is acquitted.

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